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U.S. PREFERENCE PROGRAMS: OPTIONS FOR REFORM

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BEFORE THE

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U.S. PREFERENCE PROGRAMS: OPTIONS FOR REFORM

TUESDAY, MARCH 9, 2010

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:35 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Wyden and Grassley.

Also present: Democratic Staff: Bill Dauster, Deputy Staff Director and General Counsel; Amber Cottle, Chief International Trade Counsel; Ayesha Khanna, International Trade Counsel; and Chelsea Thomas, Professional Staff. Republican Staff: Stephen Schaefer, Chief International Trade Counsel; Claudia Poteet, International Trade Policy Advisor; and David Ross, International Trade Counsel.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will come to order.

The book of Luke says, "From everyone who has been given much, much will be required." Our Nation has been given much. Every time I go home to Montana or travel around the country, I am struck by our fertile soil, our rich natural resources, and our talented workforce.

And we have made much of what we have been given. American farmers and ranchers have used our fertile soil to reap bountiful harvests and produce delicious American beef. American engineers have harnessed our natural resources to bolster our domestic energy supply, and American entrepreneurs have employed our talented workforce to drive this country's ingenuity and growth.

We have been blessed, we have been given much, but much is also required of us. We must use what we have been given not only to help ourselves, but to help others, and our trade preference programs do just that.

Since 1974, this country has maintained trade preference programs that give developing countries duty-free access to the U.S. market. These programs recognize that not every country has been given the vast bounty that we have been given, and these programs respond by lending a hand, not a handout. The benefits that these programs provide encourage investment, boost production, and increase employment to help developing countries help themselves.

But our preference programs face an uncertain future. Three of these preference programs, the Generalized System of Preferences, the Andean Trade Preference Act, and the Caribbean Basin Trade Partnership Act, expire later this year. One of our preference program beneficiary countries, Haiti, witnessed unprecedented devastation earlier this year.

We must lend a hand. We must assist Haiti's earthquake recovery efforts by creating additional incentives for investment in Haiti's apparel sector. We must also extend our expiring programs, and we must begin the larger task of reforming all of our trade preference programs.

In the 35 years since Congress first passed GSP, the world has changed dramatically. Some developing countries, such as India and Brazil, have reaped the benefits of trade liberalization but continue to suffer from high unemployment and abject poverty. Others, such as Cambodia and Rwanda, look to export-driven growth and foreign investment to provide long-term stability as they continue their heroic recoveries from genocide. And others, such as Bangladesh and Afghanistan, struggle with disadvantages arising from political instability and lack of infrastructure.

We must transform our preference programs to reflect this change in reality, but as we modify these programs we must also remember what successful reform means. Successful reform means certainty. Beneficiary countries, investors, and U.S. companies that rely on these imports need certainty that the programs will remain in place over the long run. Only then can they make the sound production and investment decisions that will lead to increased development and poverty alleviation.

Successful reform means meaningful and enforceable eligibility criteria. We must, for example, ensure that our preference programs encourage strong labor standards, even as they improve economic standards, and we must enforce the eligibility criteria systematically and regularly.

Successful reform means benefits for the countries that need them the most. We must provide generous benefits to least-developed countries like Cambodia that are using economic development to create social and political stability.

Successful reform means programs that work. We must streamline operational provisions, such as rules of origin, to eliminate the current patchwork of rules that are hard to implement and harder to enforce.

So let us come together to speed Haiti's earthquake recovery, extend our expiring programs, and enact successful preference program reform. Let us remember all that we have been given, and let us remember all that is required of us.

I am now pleased to begin our hearing with Eric Norris, executive director of global marketing, FMC Lithium Division. Following Mr. Norris is Ed Gresser, senior fellow and director of the Trade and Global Markets Project for the Democratic Leadership Council. It is always a great pleasure to see you here, Ed.

And our third witness is Jeff Vogt, global economic policy specialist in the Policy Department of the AFL–CIO. And finally, we welcome Gregory Simpkins, vice president of policy and programs at the Leon H. Sullivan Foundation.

Thank you all for coming. As is our usual practice, I would like each of you to summarize your statements, and we will put the entire statement in the record.

So we will begin with you, Mr. Norris.

STATEMENT OF ERIC NORRIS, EXECUTIVE DIRECTOR OF GLOBAL MARKETING, FMC LITHIUM DIVISION, CHARLOTTE, NC

Mr. NORRIS. Chairman Baucus and members of the Finance Committee, my name is Eric Norris. I am the global commercial director at FMC Specialty Chemicals, Lithium Division, based in North Carolina.

FMC Corporation is a 126-year-old diversified U.S. manufacturing company and a leading producer of value-added lithium materials for industrial and consumer use, including lithium-ion batteries.

FMC is the only integrated producer of lithium products, the only domestic producer of lithium products. Approximately 300 jobs in North Carolina are directly tied to that manufacturing activity.

As a member of the Coalition for GSP, we strongly urge the committee to take into consideration the detrimental effect that limitation of the GSP program would have on U.S. manufacturers. In recent years, growth of our lithium business has been driven by the increased value of lithium-ion and lithium-polymer batteries, including those being used and currently being considered for use and developed for use in electric vehicles.

The GSP program is key in allowing FMC to use economical sources of lithium raw materials in its U.S. manufacturing operations from deposits we have developed in the Andes Mountains in Argentina. Our domestic source of economic lithium supply was exhausted in the 1990s, and we now source all of our lithium raw material needs from our wholly owned subsidiary in Salta, Argentina.

Approximately 75 percent of the world's supply of lithium currently comes from what are called continental brine solars that are located in the Andean Mountains in Argentina and Chile, with much of the rest being produced in China today. Lithium recovery in the United States is not currently economical, although there are U.S. sources that are a potential for development. Once imported from Argentina, FMC's lithium facility in Bessemer City, NC processes these lithium materials from Argentina for domestic sale and export.

Mr. Chairman, I would like to make the following three points regarding the importance of reauthorizing the GSP program. First, the additional cost of importing lithium carbonate and lithium chloride from Argentina without the GSP tariff preference would place FMC at a competitive disadvantage. FMC's major competitors in the U.S. market source their lithium from Chile, which has duty-free benefits under the U.S. FTA. The GSP program, thus, allows U.S. operations to compete on a level playing field against the competition.

Therefore, second, the removal of GSP benefits would result in additional cost to the company, not borne by our foreign competitors. Increased duty costs ultimately must be passed on to domestic and global customers and/or result in the risk of lost sales to our corporation. A loss of the GSP benefit, therefore, would diminish the competitiveness of FMC's lithium products versus those of its offshore rivals.

To put this in perspective, prices recently for lithium in the global market have declined, on the order of 20 percent, putting an even more important onus on cost control across the board, including the importance of this GSP preference.

Third, from our direct experience, I would say that the GSP program has worked well and contains appropriate checks and balances. In the 2006 GSP Annual Review, FMC faced a loss for tariff preferences due to the GSP rule that calls for the removal of products from the program when a single country supplies over 50 percent of U.S. imports of a particular item. Since nearly all lithium carbonate and chloride is sourced from either Chile or Argentina, U.S. import levels are split roughly 50/50 between the two countries.

At that time, FMC petitioned the GSP Subcommittee and the U.S. International Trade Commission in 2007, and after a rigorous process the President granted a Competitive Need Limit, or CNL, waiver for lithium carbonate and chloride from Argentina. This decision recognized the importance of this duty-free trade to both the U.S. and Argentine economies. It also demonstrates that the GSP program has appropriate checks and balances. Indeed, a country's GSP benefits for products can be removed where the tariff benefits are no longer found necessary.

In summary, Mr. Chairman, at a time when the U.S. economy is fragile and we are just beginning to see the signs of recovery from the financial crisis, Congress should not allow preference programs that benefit U.S. manufacturers to expire or limit them without sufficient study. In our specific case, the higher costs associated with the tariff would ultimately work their way down to our customers and U.S. consumers and jeopardize U.S. manufacturing jobs.

In conducting its review of reforms to U.S. preference programs, we urge the Finance Committee to take into account the implications to U.S. manufacturers. We appreciate your consideration of these views and allowing us to testify here today, and I would be glad to answer any questions. Thank you.

The CHAIRMAN. Thank you, Mr. Norris.

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

The CHAIRMAN. Mr. Gresser, you are next.

STATEMENT OF EDWARD GRESSER, SENIOR FELLOW AND DIRECTOR, TRADE AND GLOBAL MARKETS PROJECT, DEMOCRATIC LEADERSHIP COUNCIL, WASHINGTON, DC

Mr. GRESSER. Thank you, Mr. Chairman. Thank you for this opportunity to testify on our trade preference programs.

I begin with two premises. First, as your quote from Luke suggests, we are the world's wealthiest and most powerful Nation, and we should feel some responsibility to help the poor. Second, I believe doing so is a matter of enlightened self-interest, as well as of ethics.

My written testimony highlights three successes of the last decade in poor country trade: Haiti and Cambodia in high-tariff clothes, and Ethiopia in zero-tariff birdseed. In each case, we find a country, once a failed state and a security challenge, using trade to begin reducing deep poverty, help young women find dignified work, and help low-income farmers raise income, so they are more able to resist radicalism and transnational crime, and also emerge as a buyer of American goods. As a group, in fact, the 139 beneficiaries buy a sixth of our manufacturing exports and our farm products.

So to help poor states succeed in trade is to do something good in its own right, and also to support some of our economic and security interests. But America's tariff system is not ideal for the purpose. Concentrated in clothes and a few farm products, it is often tougher on poor countries than developed nations and oil producers.

Pakistan is an example, facing a $315-million tariff penalty on $3.2 billion worth of bed sheets, towels, and clothes. By comparison, Britain's $47 billion in airplanes, medicine, oil, and so forth get only a $280 million penalty. Other low-income states can face even harsher treatment.

Our six preferences attempt to ease this tilt and also create incentives for beneficiaries to work with us on policy goals outside trade. They are modest in scale, covering in total about 1.6 percent of our non-oil imports. They are neither guarantees of export success for beneficiaries nor substitutes for multilateral liberalization, nor are they full tariff waivers. About 64 percent of our imports from beneficiaries came in duty-free last year. By comparison, 57 percent of Chinese goods and 66 percent of European Union goods came in duty-free under the NTR tariffs.

But the preferences are, nonetheless, a valuable part of our trade development and security policy. GSP helps many lower-income countries, including strategic allies like Indonesia, the Philippines, Turkey, and Thailand, compete with larger rivals, and this has human benefits as well.

Thailand's silver jewelry industry, for example, uses GSP to employ a full-time workforce and tens of thousands of rural people in part-time jobs, which create some autonomy for women workers and give some farm families some income stability. The Qualifying Industrial Zone (QIZ) program is helping Israel integrate with its peace partners. HOPE II (the Haitian Hemispheric Opportunity through Partnership Encouragement program) nearly doubled Haiti's industrial employment before the earthquake.

But the preferences have some problems that make them less effective than they should be. Let me highlight three. First, in general, the system is too complex. Differing rules, eligibility requirements, and product coverage make preferences confusing for importers and less helpful as incentives and policy tools for the U.S. Government.

Second, the system has a geographical gap, largely missing low-income Asian and Muslim states, and thus doing less to alleviate poverty and support security than they should. Our tariff treatment of Pakistan squares poorly with the premise of last year's foreign aid bill that encouraging job creation and growth is essential to our effort to fight violent fundamentalism there.

Cambodia's case may be especially urgent, as the Asian state hit hardest by the crisis and suffering the greatest job loss, and may also be especially compelling as a country trying to find a high labor standard route to trade success. Afghanistan and Bangladesh are in similar positions.

Third and finally, the African preference program is weakening, with the AGOA garment trade down since 2005, and never very successful in improving our farm trade relationships.

With reform, I believe the preference system can come closer to its potential. Let me note four ideas. First, simplify the system. Leaving the QIZ as a branch of the U.S.-Israel FTA, merge the other five programs into one; add the light manufacturers excluded from GSP to this program, leaving clothing benefits for least-developed and selected low-income and security-sensitive countries; and scrap tariffs on goods no longer made here at all, as Senator Cantwell's Affordable Footwear Act would do for shoes, and Senator Wyden, I believe, has adjusted for outdoor jackets.

Second, create a single set of conditions, scrapping some outdated ones and perhaps creating new criteria evaluating beneficiaries' participation in climate change talks and the willingness of more advanced countries to open markets to their poorer neighbors.

Third, retain a focus on Africa with generous rules and incentives for continental integration, but view garment trade as a longer-term goal and focus more immediately on ways to encourage farm trade—for example, improving market information in unique products like birdseed and shea butter—and help Africa speed up its Development Corridors logistics program, both through aid and by asking more in financial contribution from resource exporters like South Africa and Nigeria.

Fourth, act quickly to improve HOPE II for Haiti and broaden the QIZ. Such a revision would mean, I think, a better system which does a bit more to help the very poor and asks a bit more from the more advanced beneficiaries. It would still have natural limits. Beneficiaries should not view preference, or the American market in general, as their sole recourse in trade. Neither can any trade policy substitute for peace and political stability, education and worker training, efficient logistics, transparency, and anti-corruption and other measures essential to development.

But a better preference system will play its part, and that part is important. No nation could do more than ours to ease poverty and speed development through trade. As we fulfill this responsibility, we benefit from strength and security in new markets. These facts have been the foundation of our preferences since 1974 and remain so today.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Gresser.

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

The CHAIRMAN. Mr. Vogt?

STATEMENT OF JEFF VOGT, GLOBAL ECONOMIC POLICY SPECIALIST, POLICY DEPARTMENT, AFL–CIO, WASHINGTON, DC

Mr. VOGT. Chairman Baucus and members of the committee, on behalf of the over 11.5 million members of the AFL–CIO, I thank you for the opportunity to review the operation of the U.S. trade preference programs. While the AFL–CIO is interested in multiple aspects of U.S. trade programs, I will focus today on the labor eligibility criteria of the GSP and related preference programs.

I have submitted for the hearing record written testimony that both examines in detail the problems with the current system, as well as articulates a reasonable, straightforward proposal for reform based on universal eligibility criteria and a more rational, transparent, and consistent process to review violations of those criteria. I will be happy to answer any questions you may have with regard to that testimony.

The labor criteria of our trade preference programs are of critical importance to the global labor movement. The AFL–CIO, together with partner unions and workers in numerous developing countries in Latin America, Africa, and Asia, has used this important tool several times over the last 25 years. In the best cases, it has brought about modest improvements in labor laws or resolution to long-pending cases.

Indeed, our most recent experience with Bangladesh shows that GSP can be used to create needed political space for positive change. Today, the vast majority of workers in the export processing zones of Bangladesh now have some form of worker representation on the job because of the hard work of local labor organizations that have made use of the political space generated by the continuing review of GSP by USTR. Now these workers can begin to organize and bargain for their fair share of the gains of international trade.

However, the application of labor rights criteria in trade preference programs has been highly inconsistent over the years. Often unrelated geopolitical and foreign policy interests or sensitivity to the economic interests of individual corporations has meant that clear cases of egregious labor rights violations are never accepted for review, or that cases, once accepted, are dropped without evidence of any meaningful improvement in the areas outlined in the complaint.

The lack of clear criteria for the acceptance of petitions, of any fixed timelines by when the government must rule on the acceptability of a petition or on the merits, and any obligation that the government ever provide a written and public rationale for its actions has allowed the USTR in past administrations to exercise almost unfettered discretion to apply the law.

Even now, USTR has failed to accept for review two detailed petitions filed by the AFL–CIO. In one case, Sri Lanka, the petitioning unions seek only a hearing of their case and for the U.S. Government to engage with the Government of Sri Lanka to adopt a comprehensive work plan to enact needed legal reforms and to address persistent problems in labor law enforcement.

Yet nearly 2 years later, it remains unclear whether the case will be accepted for review. No one in the administration questions the petition on its merits. The lack of consistency, we find, over the last

25 years has substantially undermined the legitimacy of the program.

A new set of procedures that puts a premium on transparent, consistently applied criteria with reasonable time lines and agency decision-making based on the merits would go a long way to improve the functioning of the labor provisions, which has been spotty at best. I propose a new set of procedures in the written testimony.

We also need to take a fresh look at the eligibility criteria themselves. Trade preference programs still refer to "internationally recognized worker rights." There are important differences between "internationally recognized worker rights" and the ILO Core Labor Rights, which, as you know, are deemed the universal minimum standard of labor rights adopted by the ILO and its member countries.

For example, "internationally recognized worker rights" do not include the prohibition on discrimination in respect of employment and occupation. In addition, the preference programs currently refer to a "minimum age for the employment of children," which is weaker than the ILO formulation of the "effective abolition of child labor."

Further, the labor criteria require only that a country take steps to afford these rights. The current preference programs in practice require a country to improve labor standards over time but not require a country to have achieved any basic level of compliance in order to be eligible. Thus, a country may have horrendous labor laws and practices so long as it temporarily and marginally improves after a petition is filed.

I want to close my comments today by making clear that we do not view the goal of filing labor petitions to be the suspension of preferences; it never has been. Rather, we file petitions with the aim of bringing about demonstrable improvements in the administration of labor justice, and thus improvement in the lives of workers and the economies of beneficiary countries.

Thus, the approach taken to labor violations should be cooperative, at least initially, and that is why we have proposed that petitions lead first to the adoption of remediation plans with clear benchmarks developed by the U.S. Government, with the input and continued participation of the petitioners, workers, employers, and governments to address and resolve systematic violations of worker rights, and of course capacity building to help countries address these problems would be greatly needed and appreciated.

If countries are making real progress based on that plan but have not yet met the benchmarks so that they end up in an initial review, of course they should be given more time. Of course, the threat of suspension or withdrawal of benefits must be retained and wielded if governments simply fail to abide by their legal obligations under the preference programs. We do support the preference programs, and with modifications with regard to labor rights and other criteria, I think that we could continue to support them.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Vogt.

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

The CHAIRMAN. Mr. Simpkins?

STATEMENT OF GREGORY SIMPKINS, VICE PRESIDENT OF POLICY AND PROGRAMS, LEON H. SULLIVAN FOUNDATION, WASHINGTON, DC

Mr. SIMPKINS. Good morning. I would like to thank Finance Committee Chairman Baucus and the rest of the committee for this opportunity to testify on the impact of the African Growth and Opportunity Act on behalf of the Leon H. Sullivan Foundation.

When I attended the August 2009 AGOA Forum in Nairobi, Kenya, I heard complaints from African participants that AGOA was not as effective as it could be because its term needed to be extended and its coverage of products needed to be expanded. U.S. Government officials responded that AGOA had already been extended to 2015, and that relatively few of the more than 6,400 tariff lines were being currently used by Africans.

This disparity is the result of a disconnect on the how and why of AGOA that must be corrected. There is joint fault for the incomplete success of AGOA and other trade preference programs. Neither the United States nor African governments have done the most effective job of working in concert to achieve our mutually desired goal in this regard. AGOA has been extended several times, but the uncertainty of how long it will be in effect has been a disincentive to long-term investment. Our government has made trade rules as complex and arcane as tax law. As for sustainable development, officials in our government have lamented that the vertical integration in cotton, yarn, cloth, and finished clothing has not happened as we expected. However, our process has not fully taken into account the impediments that have made such integration all but impossible in some circumstances. Meanwhile, we have neglected the African agricultural sector, in which more than 70 percent of Africans work.

This brings me to the point about capacity building. Each year, the Office of the U.S. Trade Representative issues an AGOA report that cites hundreds of millions of dollars spent by the U.S. Government on capacity building in support of AGOA. Unfortunately, surprisingly little is spent in imparting a solid understanding of the AGOA process directly to African agricultural producers, for example.

Finally, the last statistics I saw indicated that less than 10 percent of African trade was internal to Africa. In my experience in teaching Africans about the AGOA process, I was told by producers quite often that they were more interested in selling to Americans under AGOA than to their neighbors. These producers did not do the calculations necessary to determine whether non-African trade was more profitable than inter-African trade.

Based on the points I have presented, here are the recommendations I would offer. AGOA is based on the Generalized System of Preferences, which also is subject to periodic renewal.

The U.S. Government should make AGOA and GSP permanent, subject to review, to remove the reluctance to source products in Africa. All of our reasonable requirements can be maintained to determine which countries should continue to benefit from AGOA, even as the overall program continues.

The U.S. Government should support infrastructure programs to lower costs for African producers to reach U.S. markets. For example, the German Marshall Fund and the Hewlitt Foundation are working on a Development Corridors program to stimulate the expansion of existing, and the creation of new, transportation structures to allow African products, especially those produced by small, older farmers, to be brought to market.

The U.S. Government should target capacity building on U.S. trade rules and processes to the African private sector, African government officials, and African civil society together. Governments must understand how to make the playing field level, while the private sector understands the rules under which they must operate, and civil society plays the watchdog on the whole process.

The U.S. Government should eliminate existing product exclusions under AGOA, which are primarily in agricultural products. This would have negligible impact on American agricultural competitiveness, but would be of great benefit to African agricultural producers, who comprise such a high percentage of African productive capacity.

Using its taxation authority, the U.S. Government should create tax incentives to stimulate economic development by encouraging American investment in non-extractive, labor-intensive sectors such as the agricultural and hospitality industries in Africa, as well as encouraging shipping companies to provide adequate transportation options to African exporters.

In order to assist in the African process of regionalization, U.S. Government aid programs should take into account the regional impact of single-country grants and create regional grants to help regional economic communities better facilitate the creation of regional markets that are more attractive destinations for U.S. investment in product sourcing and more efficient exporters of African products.

During the last 12 years, a variety of stakeholders—government, civil society, and business—has worked together to make sure that AGOA is as successful as possible. Through our continued cooperation, we can remove the obstacles to full utilization of U.S. trade preference programs, and AGOA can be made more successful broadly than it is currently.

Thank you. I am prepared to answer any questions the committee may have.

The CHAIRMAN. Thank you very much, Mr. Simpkins.

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

The CHAIRMAN. Mr. Gresser, you outlined four areas for reform. I wonder if you could just very briefly expand on those a little bit.

Mr. GRESSER. All right. I guess the first area I am thinking about is an overall simplification of the program. We have six programs, if you count the QIZ as a preference. Each of them has somewhat different qualifications, somewhat different product coverage, somewhat different rules of origin. I think it would be far simpler for the buyers of goods here in the United States to deal with one program that has consistent rules and consistent eligibility requirements across the full spectrum of preference beneficiaries.

Second, there is a geographic gap in the programs. They do very little to help a group of low-income Asian and majority-Muslim states. I would cite, in particular, Cambodia, Bangladesh, Afghanistan, Pakistan, Nepal, and a couple of others. These are often countries that are central to our national security debates in America. They are countries that suffer from very deep poverty and would benefit a great deal from being able to sell the clothes, home linens, those things they produce, duty-free, and compete more effectively with China, India, and other big producers.

Third, I think the Africa program, as Mr. Simpkins was suggesting, needs some rethinking and refocusing on rural industry and agriculture. This can include some additional market access. But also, I think, when I look at the African agricultural trade profile, I see two things: one is about $25 billion in exports to Europe and about $1 billion to the United States, so Africa is quite capable of exporting large quantities of farm products, and they do now; second, successes often emerging in zero-tariff, non-import sensitive products through better market information.

The one I highlight in the testimony is high-quality birdseed from Ethiopia, called niger seed. You can find it in Home Depots and things around here. This only became a big Ethiopian export after traders from Singapore suggested to the Ethiopians they could find a market in the United States. It is a zero-tariff product, it is not import-sensitive, and it is now the largest single Ethiopian export to the United States. I think there are a lot of products like that where better information to farmers and agricultural marketers could increase trade, could help African rural people, without really causing trade stress in the United States.

Finally, I take your point about the need to help Haiti fairly urgently. As I understand it, the garment factories in Haiti came through the earthquake fairly well. With some fixing up of the port, I would think that the garment industry can be one of the pillars of Haiti's recovery from this really disastrous and horrible event.

So, that would be my outline of reform: simplification, unification of some programs, better market access for Cambodia, for Pakistan, for Bangladesh, low-income Asian and Muslim countries, and special attention to Africa and to Haiti.

The CHAIRMAN. So what do you think explains the geographic disparity? How did we get into that?

Mr. GRESSER. The geographic disparity has two sources. One, in 1974, when the GSP was created, it excluded clothes, household linens, shoes, luggage, handbags, and so forth. These are very high-tariff products. At that time, they employed, I believe, about 1.4 million people in the United States. Since then, tariffs have been preserved. They have been kept out of the GSP. Employment has gone down to about 0.2 million, so about a 90-percent drop. It is no longer really an import-sensitive set of industries.

We have created CBI, ATPA, AGOA, which have clothing benefits. There has never been a clothing benefit for low-income Asian and low-income Muslim countries, with the exception of Egypt, under QIZ. These are the things that Cambodia specializes in. These are the things that drive the economies of Bangladesh and Pakistan. This is the bigger employer that they rely on for growth and development.

We wind up with a system that excludes their main industries from the preferences and imposes very high tariff penalties, much higher than European countries often get on much larger volumes of trade. I think by closing that gap, by giving them textile and clothing benefits, you could really help those countries weather competition with China, continue to create jobs, especially for young women coming from rural areas, and really do a lot of good for those countries.

The CHAIRMAN. Do you know the value of products coming into the United States under GSP, total?

Mr. GRESSER. Yes, I do. It is, last year, about $20 billion, or $21 billion, including oil, and about $13.5 billion not including oil.

The CHAIRMAN. All right. Now, has that $13.5 billion risen? Is it about flat, or fallen off over the years? What is the trend?

Mr. GRESSER. It dropped considerably last year, because all U.S. imports dropped pretty fast.

The CHAIRMAN. Right.

Mr. GRESSER. Over time, it is fairly stable. Preferences in general are about 2 percent of non-oil imports to the U.S. The membership has changed. Twenty years ago, it would be about the same fraction of trade, but the big sellers would be Mexico, Israel, Singapore, Korea. Those countries have graduated or gone on to become FTA partners. Other countries have risen up and become competitive in the GSP products. So the overall volume is about the same.

The CHAIRMAN. All right. Thank you very much.

Senator Grassley?

Senator GRASSLEY. I was not here to give my opening statement, so I hope, before I ask questions, I could give my opening statement.

The CHAIRMAN. Absolutely, Senator. I regret that I have a meeting with Leader Reid in 5 minutes, so you are in charge.

Senator GRASSLEY. Thank you. I appreciate that.

The CHAIRMAN. All right.

OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM IOWA

Senator GRASSLEY. This is the third hearing in 3 years that this committee is conducting to address the operation and potential reform of our trade preference programs. Now is the time for more detailed discussion of potential reform ideas. The chairman and I are engaged in detailed discussion with the aim of coming up with joint reform legislation. Hopefully we can achieve that.

We will continue working hard on this because it is a very important priority. Ideally, I would hope that we could introduce and mark up a bill by the end of the second quarter of this year, so today's hearing is timely. The testimony that we received from our witnesses, as well as any public comments submitted for the record, will inform this joint effort.

To begin, I would note that the chairman and I are engaged in a separate stand-alone effort with our colleagues on the Ways and Means Committee to enact Haiti-specific trade preference legislation that will assist Haiti in its long-term recovery.

While that ongoing effort to help Haiti is urgent, it is not the focus of today's hearing. Instead, our focus today is on the broader reform efforts which primarily involve the Generalized System of Preferences. We are also examining how GSP operates in relation to the Andean Trade Preference Act, the African Growth and Opportunity Act, and the Caribbean Basin Economic Recovery Act.

I would reiterate some of the elements that I think are essential to reform of preferences. A preference program should have firm graduation provisions, both on a product-specific and country-specific basis. The point of graduation is 2-fold. First, graduation creates opportunities for other beneficiary developing countries to take advantage of the preferences, perhaps not immediately, but down the road.

Second, at a certain point of development, preferences should not be extended to advanced developing economies. Instead, we should expect and receive more reciprocity in our trading relationships with advanced developing economies.

In addition, preferences should be extended to a trading partner based upon clear eligibility criteria, which should be reviewed regularly and transparently. Preferences should be structured so that the rules of origin and product coverage promote new trade flows to maximize a potential for economic development, particularly among least-developed countries.

I can appreciate calls for a more rationalized distribution of our trade capacity building funds so that capacity building works hand-in-hand with our trade preferences. We should examine ways to accomplish that with the Foreign Relations Committee. But if we can craft a reform package that adequately addresses the elements I outlined, I can appreciate calls for a longer-term authorization of our preference programs.

As the chairman and I proceed with this effort, I will continue to monitor the actions of advanced developing countries that benefit from our unilateral preference programs, particularly in the context of Doha Round trade negotiations. If unilateral access to the U.S. market impedes progress in realizing meaningful reciprocal market access concessions in the Doha negotiations, we should reconsider the extension of such unilateral trade preferences.

In sum, the reform I have in mind is based upon specific principles, such as simplifying the operation of our trade preference programs, expanding the number of eligible countries that actually benefits from our trade preference programs, and expecting more from countries that benefit from the preference programs, particularly advanced developing countries.

With these principles in mind, I look forward to the questioning of our witnesses. I am going to start with Ed Gresser.

Given your testimony, you appear to agree with those who believe we should extend textile and apparel benefits to such Asian countries as Bangladesh and Cambodia. But as you know, others argue that if we take that step we will undo all of the progress that sub-Saharan Africa has made under the African Growth and Opportunity Act. So I would ask you to respond to those concerns. After you have answered, I would ask Mr. Simpkins for a reaction to your answer.

Mr. GRESSER. Thank you. I think that is a very important, very good question. I would make a couple of points. First, the clothing business is essentially the lifeline of Cambodia. It is the driver of growth and urban employment in Bangladesh. It is important to Africa, but not nearly so much.

The textile and clothing exports to the U.S. are about 60 percent of Cambodia's exports to the world, about 25 or 30 percent of Bangladesh's, and about 1 percent of Africa's exports, excluding oil and metals. So there is a difference of reliance, and I think the benefit will mean more to those low-income Asian and Muslim countries than it might to Africa.

Second, I think that Africa, to succeed in the clothing business, has to work hard at logistical efficiencies. The problem AGOA has encountered is that the African exporters have not been able to provide as much volume and quick delivery to the importers as they need. That will take time to fix.

I think there are good African initiatives under way, through Development Corridors, but I do not think in the interim it is helpful to tell Africans that they should not have to compete with other low-income countries elsewhere in the world when, in fact, the Asian LDCs and Pakistan really rely much more on those businesses than the African countries do.

The testimony I submitted, and I think Mr. Simpkins echoed this in some ways, looked to rural industry and agriculture in a way that can refocus AGOA while we work on the logistical industries that will help Africa succeed in the textile business.

Senator GRASSLEY. Mr. Simpkins?

Mr. SIMPKINS. Theoretically, I do agree with my colleague, Mr. Gresser, there should be competition. But the Asian countries, like Bangladesh, India, China, already out-compete Africa to a significant extent. If we extend these benefits, these preferential benefits to these Asian countries right now, there is no fall-back position, which could be agriculture, but the agricultural sector in Africa is not really prepared to gin up as sufficiently to create the kind of jobs and the kind of wealth creation that we intended AGOA to provide.

I think that we have kind of slept on the agriculture sector, as I mentioned in my testimony and I think he has referred to as well. In the long run, competition is what we say we want. It is certainly what we encourage in our country. But before we can remove this benefit that Africa has, which, in effect, giving it to the Asians would remove it from the Africans, I think we need to look at how Africa would respond in terms of being able to replace the lost jobs.

Senator GRASSLEY. All right.

Mr. GRESSER. Just one clarifying statement. I do not suggest providing a preference to China or a clothing preference to India. It is limited to the very low-income Asian countries.

Senator GRASSLEY. All right. I would like to direct a question to anybody who could answer it—and you all do not have to tackle it, but I would like to have one or two of you—on whether the committee should consider removing petroleum products from the Generalized System of Preferences. Have any of you given that any thought that you could share?

Mr. GRESSER. Personally, as an analyst, the inclusion of the petroleum products makes it very hard to figure out how successful the programs are. The petroleum products have specific duties of

5 cents and sometimes 10 cents per barrel of oil. I do not think they affect trade very much. If the committee wishes to remove them, I do not think it would damage anyone's interests in any big way, and it would give us a better sense of, how much help are the preferences giving to the beneficiaries?

Senator GRASSLEY. I presume none of the others has given much thought to it, so I will go on then. If you do have some thoughts on it after you think about it a while and could submit an opinion in writing, I would appreciate it.

Again, to Mr. Gresser, when you testified before this committee in 2008, you cautioned against a permanent extension of our trade preference programs. You argued that "making programs fully permanent might mean giving up occasional opportunities to improve them and adapt them to changing conditions." In your view, if Congress reforms the GSP program, what would be a reasonable duration for Congress to set?

Mr. GRESSER. I think durations need to be long enough to give importers and investors the sense that the programs will be there long enough to matter and to justify the investment. I think in cases like that of Haiti, like that of the African Growth and Opportunity Act, longer extensions are important. For more advanced countries, I think we would help ourselves by having relatively more frequent opportunities to review the program and see how they are being used.

Senator GRASSLEY. Yes.

Do you want to go ahead, Senator? I have some more questions, but maybe you take your 5 minutes and then I will do a second round.

Senator WYDEN. Thank you, Senator Grassley. I appreciate it.

As chairman of the Trade Subcommittee here on the Finance Committee, I am looking forward very much to working with you and Chairman Baucus on these issues, and I am glad you are approaching it in a bipartisan way.

We have an excellent panel here. I have long felt that free trade is not an end, it is a means. America's trade policies ought to be designed and tailored so that they are a means to raising living standards in our country and elsewhere. All of you have made that point today: eliminating tariffs alone is not a development strategy in and of itself. We have to make sure that eligibility criteria are a central part of our trade preference programs.

For example, any economic progress that can be achieved in Uganda by the African Growth and Opportunity Act, in my view, is strongly undermined if its parliament passes a law to jail or execute all of its gay population. So it was appropriate for the Congress to link AGOA eligibility to the protection of human rights, as Congress did in 2000 when we passed that law.

You all may be aware that we have been in contact with Secretary Clinton and with Ambassador Kirk, and they clearly feel that the emphasis on the recognition of internationally accepted human rights is an important issue as we go forward in our relationship with Uganda and with other countries.

So let me just go down the row, if I might, starting with you, Mr. Simpkins and Mr. Vogt. Should Congress provide trade preferences to countries that engage in violations of internationally accepted human rights? I do not believe so, and I continue to say that the African Growth and Opportunity Act, and HOPE for the Haiti issue, I think that they got it right. They got the point across, that those approaches should be a model for trade preferences. Let me just go down the row, since time is short. We will start with you, Mr. Simpkins. Are they a pretty good model?

Mr. SIMPKINS. Well, when we worked on the original AGOA bill, we knew that there were some human rights standards, labor standards already imbedded in the underlying GSP. But we thought that it was important to add extra verbiage to specifically talk about the need for human rights. So, yes, human rights should be a primary standard that we use.

At my foundation, we have the Global Sullivan Principles for Corporate Social Responsibility, part of which looks at human rights and labor rights. So we feel that it is very important to pursue these goals. The case you mentioned of Uganda, what they have done with this law is really unconscionable, because it calls for the execution of people who are homosexual and the jailing of people who refuse to turn them in to the government. So, it has gone way overboard.

Now, in terms of requiring certain human rights standards, I think it is incumbent on us, because of cultural differences, to at least provide a warning, to at least explain what we mean when we say human rights, what are those human rights, and to provide capacity building where possible for people to understand how to implement the standards that we are talking about. I do not think that it should mean an immediate cessation of all benefits, but it should be made clear that we do not stand for the kind of things that the Ugandans are doing right now.

Senator WYDEN. Well said.

Mr. Vogt?

Mr. VOGT. I agree with Mr. Simpkins. I believe with all the trade preference programs, we should be improving them across the board and have a uniform set of eligibility criteria, which I think should definitely include human rights, labor rights being among internationally recognized human rights, and also agreeing that there should be a transparent and effective process to engage with countries if there is a human rights issue that arises in the beneficiary country so we can try to resolve the situation cooperatively and, if that is not possible, then to be able to use the threat of suspension or limitation of the preferences to advocate for improvements in human rights and worker rights.

Senator WYDEN. Mr. Gresser?

Mr. GRESSER. Yes. I share the view. When a country's government is guilty of grave and systematic human rights abuses, the country should not be rewarded. I look at a couple of cases in GSP. Zimbabwe, for example, has been kept out of AGOA on human rights grounds, but continues to enjoy pretty lucrative GSP benefits. In the western hemisphere, Venezuela is not allowed into the Andean program, but likewise is a big GSP user. Those are anomalies, and they should not really happen. You should have, I think, across the beneficiaries, a single set of eligibility criteria.

Senator WYDEN. Mr. Norris? Quickly. Then I am just going to make another point for the record, because my time is already up. Mr. Norris?

Mr. NORRIS. As I am not an expert in trade preference programs, I cannot render a broad opinion. But certainly intellectually, I cannot argue with what my colleagues have put forth here.

Senator WYDEN. Thank you.

Mr. Chairman, thank you for your courtesy. I look forward very much to working with you and the chairman as we go forward on these issues.

Senator GRASSLEY. I have some more questions. Are we going to quit when I am finished? All right. So I am the last thing between you and a cup of coffee. [Laughter.]

I will go back to Mr. Gresser. What is your reaction to Mr. Vogt's suggestion that petitioners should be able to request suspension of trade benefits at the industry level as opposed to the country level? If you support the idea, do you believe Congress should amend the existing GSP laws to make it more explicit that the President could take such a step?

Mr. GRESSER. In principle, I agree with that point of view. One of the problems with the eligibility criteria is that removal of benefits is essentially—especially if it is done across the board—is punishment to, among other people, the workers in those industries. If a petitioner is concerned about labor rights in seafood packaging, hypothetically, it strikes me as odd, and in a way counterproductive, to punish workers in the clothing industry or the electric wire industry for the flaws of factory managers in seafood.

So some ability to target suspension of benefits to the offending party, I think, is important. To the second part of your question, should Congress include this more specifically in legislation, I am going to have to ask you for a couple of days to look at the law. I do not know enough about the current phrasing to answer it very intelligently.

Senator GRASSLEY. Submit it in writing then.

Mr. GRESSER. Yes, I will.

Senator GRASSLEY. Thank you.

Mr. Vogt, in a footnote to your written testimony you indicate that your labor rights proposal could result in an entire country losing its preferences because of labor violation in an industry that is not itself receiving preferences. Or to put it another way, even if the industries receiving preferences adopt and follow the labor rules you are proposing, they could lose their preferences.

Now, maybe my understanding of it is not correct, so tell me whether or not I am right or wrong. If so, why is that appropriate, in your view?

Mr. VOGT. I will give you a current example. Currently, there is a GSP petition against the government of Uzbekistan. That is a situation in which you have, as a matter of state policy, the government of Uzbekistan forcing school children into cotton fields to pick cotton for exports. Cotton is not covered by GSP, but you also have a state policy that is violating a core international worker right.

You typically find that, if you have the government failing to enforce or itself violating the laws in one sector, it is going to be doing it in others. It is not usually the case that you have just very bad problems with non-compliance in a single sector.

So I think, in order to put pressure on a country to address problems in a non-GSP eligible sector, you could, as currently is the case, either threaten suspension to the entire country, which is typically the practice of USTR now, or to imply a threat to other sectors that would be dissuasive enough to move the government to take action in the sector where the problem is.

Senator GRASSLEY. All right.

I have another question for you. Under your proposed modification to the GSP program, developing countries would have 3 to 5 years to come into compliance with your proposed new labor standards. How many of the 131 GSP-eligible countries currently meet those standards, and which countries do not currently meet the standards?

Now, if that is too long of an answer or too imprecise at this point, you can submit it in writing, but we would like that information.

Mr. VOGT. I can give you a brief response now and a more complete response in writing. But I think what we are calling for in our proposal is that countries simply commit themselves to the obligations they have already taken as members of the International Labor Organization, which is the respect of the International Core Labor Standards in their laws, and to enforce those. So point one would be that we are not asking for anything in our proposal that governments around the world, as members of the ILO, have not already taken on board as a commitment.

I think giving countries, developing countries and least-developed countries, a reasonable amount of time to transition—for example, to adopt the laws that are necessary to bring them into compliance with these international minimum standards, which they already have agreed to adopt, a number of years for developing countries and perhaps a little bit more leeway for least-developed countries—is appropriate.

Obviously then, once you have the right laws on the books, having the right enforcement mechanisms is another issue. We realize that will take time to develop, resources to develop, and of course we also recognize that that will take some time and are willing to both advocate for the resources and for the time for those countries to put those mechanisms into place.

Senator GRASSLEY. All right.

Mr. Norris, in your testimony you stated support for the GSP Competitive Need Limitation, or as we refer to it, CNL, stating that it is a "balanced" approach because it provides flexibility and the evaluation of individual circumstances. As you know, there are many critics of CNLs that would like to see these limits eliminated.

Question: do you think eliminating CNLs would concentrate program benefits in one country or a small group of countries?

Mr. NORRIS. I really do not know if I am in a position to answer that from an expert point of view. All I can say is that, from our point of view, our situation in the import of lithium into the United States, it was an onerous process to go through. We had to go through numerous groups to achieve it. But it was important for our business, and it achieved an objective of creating the stability we would desire for bringing lithium into the United States and manufacturing it here and shipping it both within and outside of the country.

Senator GRASSLEY. Well, if you have any thoughts on the broader question I asked and you could submit an answer in writing, I would appreciate it.

Mr. NORRIS. Certainly.

Senator GRASSLEY. Also, for you as well, given FMC Corporation's experience with the GSP review process, did you find it to be transparent? Can you point to any flaws in the review process or offer any suggestion for improving the review process?

Mr. NORRIS. No. I think this program has worked very well for us, and I cannot point to anything specifically in the review process that could be more transparent or improved upon. Our view going forward is to have it remain in effect, have some stability and predictability about it. I think the big issue going forward is the uncertainty associated with that and what that does to how we need to operate competitively in the marketplace.

Senator GRASSLEY. All right.

Mr. Simpkins, in your testimony you state that the AGOA rules of origin are complex. In your view, what rule of origin would be most beneficial to the development of sub-Saharan Africa, and would it be appropriate to extend that rule of origin to GSP beneficiary countries as well?

Mr. SIMPKINS. Well, Senator, I think that one of the problems that we have, for example, with the third-party fabric, is that I know that members of the Senate particularly have been upset about the vertical integration. But the Francophone countries, the Anglophone countries, the Lusophone countries were all, while they were under colonialism, programmed to deal only with other countries of their language groups or the mother country.

So when independence came, they were not accustomed to working together. Again, as I said in my testimony, in doing training in a country like Benin, for example, cotton is a major product of Benin. One would think that they would work together with a major producing country like Nigeria to produce the fabrics and the yarns and the clothing. They do not because they are not programmed to do so.

The flights between countries in Africa do not exist. There was a trade mission from the State of Maryland last year that went to Senegal and wanted to go to Cameroon. There are no direct flights. So there are a lot of impediments to prevent African countries from taking advantage of AGOA benefits.

Right now, you have to source products, textile products, either from the United States or from other African countries. The United States is too expensive, the other African countries are not prepared to really do that kind of trade, so we have had to use the third-party benefits provision over and over. I realize that that is straining the patience of some here who want the Africans to do better, but if we want them to do better we have to help them make it possible to do better.

Senator GRASSLEY. Also for you, Mr. Simpkins, what impact would the extension of duty-free and quota-free access for least-developed countries have on sub-Saharan Africa, and would you support such a proposal, if not in the short term, then perhaps over the course of a phase-in period?

Mr. SIMPKINS. I would say, in the short-term it would be very disastrous for Africa, for some of these other producers in developing countries. I mentioned India and China. Of course, they are not low-income. Bangladesh, for example, is low-income, but Bangladesh already out-produces the Africans in terms of textiles and apparel.

If you give them the same sort of benefits that the Africans have today, the African textile industry will further collapse. It is already shedding jobs. I think phase-in could work if we now help to boost the agriculture sector and other sectors in Africa so that jobs lost in textiles and apparel can be replaced in other industries.

Also, to help target what the African textile producers provide, for example, certain heritage products. But of course, the Africans would have to be more diligent in protecting their intellectual property rights, which I think is the reason why you have countries like India producing more Kente cloth than Ghana, which invented it.

Senator GRASSLEY. All right.

Mr. Vogt, have you discussed your labor proposals with the governments of any least-developed countries or any other beneficiary countries? If so, which countries support your approach and which ones might oppose it?

Mr. VOGT. I have not spoken with any LDC country governments on this. But again, to refer to my last point, there is no reason for any country that is a member of the ILO to oppose this proposal because it is simply requiring them to live up to the obligations they have already undertaken as members of the International Labor Organization.

Senator GRASSLEY. I may have some questions to submit in writing to some of you, but that is the end of the questions that we have right at this moment.

So for Senator Baucus, the chairman of the committee, and the rest of the committee, I thank you very much for the hard work you put into this preparation.

Thank you very much.

[Whereupon, at 10:40 a.m., the hearing was concluded.]

APPENDIX

Additional Material Submitted for the Record

Hearing Statement of Senator Max Baucus (D-Mont.)
Regarding Trade Preference Program Reform

The Book of Luke says: "From everyone who has been given much, much will be required."

Our great nation has been given much. Every time I go home to Montana, or travel around the country, I am struck by our fertile soil, our rich natural resources, and our talented workforce.

And we have made much of what we have been given. American farmers and ranchers have used our fertile soil to reap bountiful harvests and produce delicious American beef. American engineers have harnessed our natural resources to bolster our domestic energy supply. And American entrepreneurs have employed our talented workforce to drive this country's ingenuity and growth.

We have been blessed. And we have been given much. But much is also required of us.

We must use what we have been given not only to help ourselves, but also to help others. And our trade preference programs do just that.

Since 1974, this country has maintained trade preference programs that give developing countries duty-free access to the U.S. market. These programs recognize that not every country has been given the vast bounty that we have been given. And these programs respond by lending a hand, not a handout. The benefits that these programs provide encourage investment, boost production, and increase employment. They help developing countries help themselves.

But our preference programs face an uncertain future. Three of these preference programs -- the Generalized System of Preferences, the Andean Trade Preferences Act, and the Caribbean Basin Trade Partnership Act -- expire later this year. And one of our preference program beneficiary countries – Haiti – witnessed unprecedented devastation earlier this year.

We must lend a hand. We must assist Haiti's earthquake recovery efforts by creating additional incentives for investment in Haiti's apparel sector. We must extend our expiring programs. And we must begin the larger task of reforming all of our trade preference programs.

In the 35 years since Congress first passed GSP, the world has changed dramatically. Some developing countries, such as India and Brazil, have reaped the benefits of trade liberalization but continue to suffer from high unemployment and abject poverty. Others, such as Cambodia and Rwanda, look to export-driven growth and foreign investment to provide long-term stability as they continue their heroic recoveries from genocide. And others, such as Bangladesh and Afghanistan, struggle with disadvantages arising from political instability and lack of infrastructure.

We must transform our preference programs to reflect this changing reality. But as we modify these programs, we must also remember what successful reform means.

Successful reform means certainty. Beneficiary countries, investors, and the U.S. companies that rely on these imports need certainty that the programs will remain in place over the long term. Only then can they make the sound production and investment decisions that will lead to increased development and poverty alleviation.

Successful reform means meaningful and enforceable eligibility criteria. We must, for example, ensure that our preference programs encourage strong labor standards, even as they improve economic standards. And we must enforce the eligibility criteria systematically and regularly.

Successful reform means benefits for the countries that need them the most. We must provide generous benefits to least developed countries like Cambodia that are using economic development to create social and political stability.

And successful reform means programs that work. We must streamline operational provisions, such as rules of origin, to eliminate the current patchwork of rules that are hard to implement and harder to enforce.

So let us come together to speed Haiti's earthquake recovery, extend our expiring programs, and enact successful preference program reform. Let us remember all that we have been given. And let us remember all that is required of us.

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United States Senate
Committee on Finance

Sen. Chuck Grassley · Iowa
Ranking Member

Opening Statement of Senator Chuck Grassley
Hearing, "U.S. Preference Programs: Options for Reform"
Tuesday, March 9, 2010

This is the third hearing in three years that this Committee is conducting to address the operation and potential reform of our trade preference programs. Now is the time for a more detailed discussion of potential reform ideas. The Chairman and I are engaged in detailed discussions with the aim of coming up with joint reform legislation. Hopefully we can achieve that. We'll continue working hard on this, because it is a very important priority. Ideally, I would hope that we could introduce and markup a bill by the end of the second quarter this year. So, today's hearing is timely, and the testimony that we receive from our witnesses, as well as any public comments submitted for the record, will inform our joint effort.

To begin, I would note that the Chairman and I are engaged in a separate, standalone, effort with our colleagues on the Ways and Means Committee to enact Haiti-specific trade preference legislation that will assist Haiti in its long-term recovery efforts. While that ongoing effort to help Haiti is urgent, it is not the focus of today's hearing. Instead, our focus today is on our broader reform effort, which primarily involves the Generalized System of Preferences, or GSP. We are also examining how GSP operates in relation to the Andean Trade Preference Act, the African Growth Opportunity Act, and the Caribbean Basin Economic Recovery Act.

I want to reiterate some of the elements that I think are essential to a reform of our preference programs. A preference program should have firm graduation provisions, both on a product-specific and a country-specific basis. The point of graduation is two-fold. First, graduation creates opportunities for other beneficiary developing countries to take advantage of the preferences—perhaps not immediately, but down the road.

Second, at a certain point of development, preferences should not be extended to advanced developing economies—instead, we should expect and receive more reciprocity in our trading relationships with advanced developing economies.

In addition, preferences should be extended to a trading partner based upon clear eligibility criteria, which should be reviewed regularly and transparently.

And, preferences should be structured so that rules of origin and product coverage promote new trade flows to maximize the potential for economic development, particularly among least-developed countries.

I can appreciate calls for a more rationalized distribution of our trade capacity building funds, so that capacity building works hand-in-hand with our trade preferences. We should examine ways to accomplish that with our colleagues on the Foreign Relations Committee.

And, if we can craft a reform package that adequately addresses the elements I've outlined, I can appreciate calls for a longer-term authorization of our preference programs. As the Chairman and I proceed with our effort, I will continue to monitor the actions of advanced developing countries that benefit from our unilateral preference programs, particularly in the context of the Doha Round trade negotiations. If unilateral access to the U.S. market impedes progress in realizing meaningful reciprocal market access concessions in the Doha negotiations, we should reconsider the extension of such unilateral trade preferences.

In sum, the reform I have in mind is based on specific principles, such as simplifying the operation of our trade preference programs, expanding the number of eligible countries that actually benefit from our trade preference programs, and expecting more from the countries that benefit from our preference programs—particularly advanced developing countries. With these principles in mind, I look forward to hearing the testimony of today's witnesses.

U.S. TRADE PREFERENCE PROGRAMS: OPTIONS FOR REFORM

Edward Gresser
Director, Project on Trade and Global Markets
Democratic Leadership Council

Senate Committee on Finance
March 9, 2010

Mr. Chairman, Ranking Member Grassley, Members of the Committee, thank you for inviting me to testify today on America's trade preference programs. I direct the Trade and Global Markets Project at the Democratic Leadership Council. My testimony reflects personal views but draws on discussions conducted last year through an informal Trade Preferences Working Group, joining experts, development advocates, union and business representatives, and others hoping to create a more effective preference system.

INTRODUCTION AND MAIN POINTS

Trade preference programs have been part of American trade policy since creation of the Generalized System of Preferences in 1974. We now have six: GSP, the Caribbean Basin Initiative, the Andean Trade Preference and Drug Eradication Act, Qualifying Industrial Zones in the Middle East, the African Growth and Opportunity Act, and HOPE II for Haiti. Each aims to help poor countries succeed in trade, ease inequities in our trade regime, and meet American humanitarian, economic, and security goals. My testimony makes three main points about this system:

- First, the preference programs are a valuable part of American trade policy. Covering only 1.6 percent of America's non-oil imports, but about a sixth of non-oil imports from beneficiaries, they encourage development and job creation in poor nations; assist some of our foreign policies; and encourage respect for labor standards, intellectual property, and other good-government policies.

- Second, the preferences have weaknesses. Their conditionalities, product coverage, and rules of origin are often confusing and sometimes incompatible or antiquated. They offer little to many large majority-Muslim countries and least-developed Asian countries – Pakistan, Cambodia and Bangladesh are examples – and so do less than they should to alleviate poverty and support American security goals. Several programs, in particular the African Growth and Opportunity Act and the Andean Act, are losing effectiveness. And Haiti faces an emergency and needs a coordinated effort in which trade preference has a place.

- Third, the preferences have inherent limits and face new challenges. They are neither substitutes for broad multilateral liberalization nor guarantees of export success for beneficiaries, and should not be asked to assume these roles. And the world economy has changed since their creation, with our tariff system somewhat less effective as a tool to direct or limit trade and large developing countries playing greater roles as exporters and markets for their neighbors. Preferences need to respond and adapt to these shifts to remain successful.

With these points in mind, I believe the Committee's title for this hearing – Options for Reform – is well-chosen. A simpler and more integrated (but not uniform) program which offers wider benefits, has more effective links to aid programs, and asks more of some beneficiaries could do more for both the preferences' core mission of development and poverty alleviation, and for American policy goals.

I. TRADE AS DEVELOPMENT TOOL

America is the world's largest trading nation, conducting $3.5 trillion in goods and services trade last year. Over the decades, the Committee has designed an array of policies to ensure that these flows of trade meet America's needs: market-opening negotiations, enforcement at the WTO and in FTAs, export promotion, trade remedy laws, Trade Adjustment Assistance, unilateral preferences and more. Ideally, these policies mesh to create an open economy at home for efficiency, competitiveness and living standards; open foreign markets to U.S. goods and services to support growth and quality jobs; ensure fair treatment for American workers, businesses and farmers; defend the American and global economies against uncontrolled trade restrictions in crises; help workers and communities manage competition; and assist the poorest and weakest at home and abroad.

Debate on these policies usually focuses on our major trading partners – Europe, China, Canada, Mexico and Japan – and our FTA relationships. But trade with lower-income countries is significant as well, on both ethical and practical grounds. For dozens of countries in Africa, Asia, Latin America and the Middle East, trade with America is essential to alleviation of poverty, economic stability and national development. Three brief examples illustrate this fact:

Haiti: Until January's earthquake, Haiti was becoming a manufacturing center for T-shirts and other clothes. International provision of security through the UN's blue-helmet force, and a reviving government under President Rene Preval, had given the U.S. HOPE II preference program space to work. About 24,000 Haitians worked in the country's 27 garment factories in 2008; by January, HOPE II had helped raise this total to 39,000 and lifted exports above $500 million for the first time since 1987. Paid roughly $5 per day – about four times Haiti's $1.20-per-day per capita income – each garment-worker was thought to feed and house an extended family of 10, meaning HOPE II had likely enabled 150,000 more people to afford regular meals. As most factories seem to have survived the earthquake, the garment industry is now one Haiti's main hopes for recovery.

Ethiopia: Ethiopia is America's top foreign source of high-quality birdseed. Since 2000, American petshops and big-box retailers (like the Wheaton, MD, Home Depot at which I buy garden rakes and grass seed) have been importing 16,000 to 48,000 tons of "noug" or "niger seed" per year to sell to American birdwatchers. A small black oilseed traditionally grown for cooking oil, noug is attractive to songbirds and duty-free under America's permanent tariff system. Noug exports now bring Ethiopia about $40 million in export revenue last year, two-fifths of total exports to the United States. This means additional cash income for thousands of upland farmers, who at annual earnings often around $200 a year are among the poorest people in the world and not long ago lived under constant threat of famine.

Cambodia: Cotton and polyester pajamas, blouses and other garments sold in American malls make up almost 60 percent of Cambodia's exports to the world. In 1996, as the Finance Committee marked up the bill lifting the post-1975 embargo, Cambodia's main urban employers were government agencies, the army, and foreign relief groups. By 2008 – one turn of Asia's traditional twelve-year calendar – Cambodia was home to 343 garment factories, which exported about $2.4 billion worth of clothes to the United States a year and employed 333,000 young women as sewing-machine operators. Analysts I interviewed in Phnom Penh believed that on average, each of these workers saved enough money, often in the form of silver jewelry, to raise her rural family's food security from two months to a year. These workers also benefit from a unique experiment in labor standards, in which the International Labor Organization monitors exporting factories for compliance with laws on child labor, minimum wage, sexual harassment, rights to organize and other issues. And apart from production workers, Cambodian garment plants also employed about 5,000 young urban high-school and college graduates as middle managers responsible for marketing, payroll and other tasks. These people are the nucleus of a future national business class able to replace the one the Khmer Rouge destroyed in the 1970s.

These are representative rather than exceptional cases. In total, exports to the United States often bring the 139 preference beneficiaries five times the capital they receive from direct investment by American companies, remittances, charitable donations and foreign aid combined. In human terms, success in trade creates jobs which pay regular wages and are usually subject to inspections and regulations. Such conditions are a sharp contrast to the experience of the 60 percent of developing-world workers who earn livelihoods in informal fields like day-labor on construction sites, domestic service, and small-scale peddling, which rarely offer either reliable wages or legal protections.[1]

For the United States, successes like these have practical as well as humanitarian implications. Haiti, Ethiopia and Cambodia were all once considered 'failed states,' unable to support themselves and posing security challenges for their neighbors and the United States. Their success in trade is helping them – and dozens of countries in less dire circumstances – diversify economies, raise income, and develop the capacity to resist radicalism and transnational crime. This in turn creates markets for our own sophisticated manufactures and value-added farm products. Cambodia is a significant importer of U.S.-made cars, Haiti of farm products, and Ethiopia of aircraft; as a group, preference beneficiaries buy almost a sixth of our manufacturing and farm exports.

II. THE U.S. TARIFF SYSTEM

Our trade regime, however, is in some ways badly designed to help such countries succeed. The nine tariff-cutting agreements from 1947 to 1997 helped create an American trade regime largely open for high-tech goods, natural resource products and most heavy-industry goods. But they preserved most tariffs on clothes, home textiles, shoes, some other household goods and a few foods. Table 1 summarizes the system in 2009, excluding goods imported under free trade agreements and preference programs.

TABLE 1: THE U.S. TARIFF SYSTEM BY PRODUCT, 2009

PRODUCT	IMPORTS	TARIFF PENALTY	RATE
All NTR Goods	**$1.257 trillion**	**$21.1 billion**	**1.7%**
High-Tariff Manufactures	**$97.6 billion**	**$12.0 billion**	**12.3%**
Clothes	$56.6 billion	$8.3 billion	14.7%
Leather/Luggage	$6.3	$0.83	13.2%
Shoes	$17.2	$1.70	10.0%
Costume Jewelry	$1.3	$0.11	8.7%
Silverware/tableware	$1.3	$0.11	8.2%
Household linen	$8.5	$0.64	7.5%
Watches	$2.4	$0.11	4.4%
Sports & Fishing Equipment	$4.4	$0.15	3.3%
Two Agricultural Products	**$1.06 billion**	**$0.13 billion**	**12.3%**
Orange juice	$0.17	$0.05	26.8%
Cheese	$0.89	$0.08	9.4%
Other	**$1158 billion**	**$9.0 billion**	**0.8%**
Cars	$49	$1.2	2.5%
Audiovisual	$28	$0.3	1.6%
Other agriculture	$52	$0.5	1.0%
Other low-moderate tariff	$271	$6.6	0.9%
Energy	$158	$0.2	0.1%
Pharmaceuticals/medicines	$56	$0.003	0%
Computers & semiconductors	$70	$0.01	0%
Other zero/minimal tariff	$525	$0.1	0%

Source: ITC Dataweb. Excludes all goods imported from FTA partners and under preferences.

The light or nonexistent duties on high-tech goods and resource products make America's market relatively open for wealthy economies and oil producers. In 2009, about 66 percent of goods from the European Union arrived duty-free. This included medicines, artwork, scientific and medical equipment, information technologies, aircraft, military ordinance and so on. Large, diversified emerging economies too find a relatively open market: 57 percent of Chinese goods arrived duty-free, including toys, telephones, digital cameras, furniture, personal computers and computer accessories. Treatment of oil from Saudi Arabia, Venezuela and other energy producers is gentler still.

But high tariffs on clothes, shoes, other light goods and some farm products make American trade policy much tougher on low-income countries lacking large natural resource endowments. As Table 2 shows, even with the preference programs in place, goods from Cambodia, Pakistan and Bangladesh face average tariff rates 10 or 20 times those imposed on products from rich countries, and often higher actual tariff penalties than those on goods from countries like Britain, France, Brazil, Russia and Saudi Arabia.

TABLE 2: THE U.S. TARIFF SYSTEM, WORLD AND 20 SELECTED PARTNERS, 2009

COUNTRY	IMPORTS	TARIFF PENALTY	RATE
Cambodia+	$1.92 billion	$318 million	16.6%
Bangladesh+	$3.70	$563	15.2%
Pakistan+	$3.16	$315	10.0%
Indonesia+	$12.9	$807	6.2%
China	$295.0	$9,512	3.2%
India+	$21.2	$683	3.2%
Thailand+	$19.0	$390	2.1%
WORLD, NTR only	**$1.257 trillion**	**$21.1 billion**	**1.7%**
Japan	$96 billion	$1,543 million	1.6%
Germany	$70 billion	$930	1.3%
Brazil+	$19.6 billion	$207	1.1%
France	$34	$285	0.8%
Malaysia	$23	$156	0.7%
United Kingdom	$47	$281	0.6%
Russia+	$17.4	$51	0.3%
Egypt*	$2.1	$8	0.2%
Jamaica*	$0.5	$0.2	0.1%
South Africa*	$5.9	$7	0.1%
Saudi Arabia	$21	$33	0.1%
Haiti*	$0.55	$0.3	0.1%
Ghana*	$0.13	$0.04	0.05%

*+ GSP Beneficiary; * GSP and Regional Preference Beneficiary. All data from ITC Dataweb.*

Thus we have a policy challenge. America benefits in practical ways from development in poor countries. Ethics suggest that as the world's wealthiest and most powerful nation, we ought to treat poor countries at least as well as our richer partners. But our trade regime often does the reverse.

III. THE SIX PREFERENCE PROGRAMS

The six preference programs help us solve this challenge by waiving some (and in a few cases most) tariffs for poorer countries. They also help achieve some policy goals by asking beneficiaries to meet a set of conditions. These differ by program, but include a ceiling on per capita income, cooperation against terrorism, respect for human rights, equal treatment for American exporters, progress toward respect for internationally recognized worker rights, implementation of intellectual property rights and other issues. In chronological order the programs are as follows:

- *GSP:* The Generalized System of Preferences, our oldest preference, dates to 1974. It waives tariffs on low- and middle-tariff manufactured goods from 111 countries and 19 dependent territories, with a simple rule of origin requiring 35 percent of a good's value to originate in the beneficiary country, but excludes such high-tariff products as clothes, shoes, luggage, home linens, watches, and many glass and ceramic goods. In 2009, GSP covered $20.2 billion in imports, including $6.6 billion in oil. GSP imports of jewelry, automobile and bus parts, radial tires and ferro-alloys totaled respectively $1.1 billion, $0.7 billion, $0.6 billion and $0.3 billion; other important GSP imports included insulated wiring, cut stone, chemicals, aluminum, copper, zinc, electric motors and tanned leather. Leading beneficiaries (setting aside oil exporters) included Thailand, India, Brazil, Indonesia, South Africa, the Philippines, Turkey, Argentina and Russia.

These tariff waivers have human impact: Thailand's silver jewelry makers, competing successfully with larger Chinese firms through the GSP waiver of NTR tariffs ranging from 5 to 13.5 percent, employ not only a full-time workforce in Bangkok and Chiang Mai, but tens of thousands of rural women and artisanal workers. Often these are part-time jobs that provide some autonomy for women workers, and some income stability for farm families relying for most of their income on unpredictably priced rice crops and rubber-tapping. Turkey's stone-cutting industry and Indonesia's decorative wooden painting- and photograph-frames do the same.

Regional Preferences: The five regional preference systems also waive tariffs on clothing and some other high-tariff goods. In chronological order, they are:

- *Caribbean Basin Initiative (CBI)* – CBI and its Caribbean-island counterpart CBERA, dating to 1985, exempt 19 countries and territories from tariffs on clothes and other goods, and covered about $1.4 billion in non-oil trade excluding HOPE trade with Haiti in 2009. With Central America and the Dominican Republic phasing into CAFTA, the main users are Haiti, Jamaica and Trinidad.

- *Andean Trade Preference and Drug Eradication Act (ATPDEA)* – The Andean program dates to 1991. Created to help Peru, Colombia, Bolivia and Ecuador find alternatives to narcotics production, it now includes clothes too but remains important in rural areas. Its waiver of the 6.5 percent NTR tariff on flowers helps support as many as 182,000 jobs in flower-growing operations around Bogota, and allows Colombia to supply most of our Valentine's Day roses. With the U.S.-Peru Trade Promotion Agreement now in effect and Bolivia's benefits suspended, ATPDEA's only two long-term beneficiaries are Colombia and Ecuador, and Colombia's membership depends on Congress' ultimate decision on the US-Colombia Trade Promotion Agreement.

- *Qualifying Industrial* Zones (QIZ) – The QIZ program, technically a modification of the U.S.-Israel Free Trade Agreement, waives tariffs on goods made in Jordan, Egypt, and the West Bank and Gaza Strip by joint Israeli-Arab industrial projects, or in factories whose goods use Israeli inputs. Launched in 1996 after the Israel-Jordan peace treaty, it still covers much US-Jordan trade. However, as the U.S.-Jordan FTA replaces QIZ tariff policy, Egypt is now its largest user. Egypt in 2009 exported $850 million worth of clothes from 15 QIZs – nearly half of our $2.1 billion in Egyptian imports – and employed about 200,000 people in Cairo, Alexandria, Port Suez and Upper Egypt.

- *African Growth and Opportunity Act (AGOA)* – Dating to 2000, AGOA enrolls 37 of the 48 sub-Saharan African states. (Non-participants are Cameroon, Central African Republic, Cote d'Ivoire, Eritrea, Mauritania, Somalia, Sudan, Zimbabwe and as of late

2009 Madagascar, Guinea and Niger.) AGOA is unusual in allowing African garment producers to use 'third-country' fabrics – that is, cloth and yarn from India, Pakistan, China and other developing-world producers – rather than solely locally- or American-made cloth, and also offers beneficiaries additional technical assistance. However, oil accounted for $25.5 billion of $28 billion in AGOA imports last year; the remaining $2.6 billion included clothes sewn in Kenya, Lesotho, Madagascar, and Swaziland; fresh flowers from Kenya and Ethiopia; and cars, steel, citrus and wine from South Africa.

- *Haitian Hemispheric Opportunity Through Partnership (HOPE)* – Haiti's HOPE act dates to 2006 and was revised as "HOPE II" in 2008. Before the January earthquake, it had raised imports from Haiti to above $500 million in 2009, surpassing for the first time the peak levels before the collapse of the Duvalierist governments. This industry appears to remain viable, and can be a driver of Haiti's recovery, as the garment factories, most new and often built to international standard, seem to have survived relatively well. Port infrastructure however has been badly damaged, and quick provision of both rebuilding assistance and longer-term benefits will be essential.

3. Scale of Preference Trade

Altogether, the six programs waived tariffs on $62 billion in imports last year – about 4 percent of America's $1.55 trillion in merchandise imports, and 26 percent of the $244 billion in imports from beneficiaries. Oil and other fuels, though, accounted for two-thirds of the $62 billion and are usually covered only by small specific duties of a dime or quarter per barrel. Excluding oil, preferences waived tariffs on $21 billion in manufactured goods and farm imports, or 1.6 percent of U.S. non-energy imports and 15 percent of non-energy imports from beneficiaries.

TABLE 3: IMPORTS UNDER NTR, FTAS, AND PREFERENCES, 2009

PROGRAM	ALL GOODS	ALL GOODS EXCLUDING ENERGY
TOTAL	**$1.549 trillion**	**$1.287 trillion**
NTR (MFN)	**$1.247 trillion**	**$1.090 trillion**
FTAs	**$241 billion**	**$176 billion**
NAFTA	$220	$156
Other FTA partners	$21	$20
Preferences	**$62 billion**	**$21 billion**
GSP	$20.2	$13.6
CBI/CBTPA	$1.9	$1.0
ATPDEA	$9.7	$2.3
AGOA	$28.1	$2.6
QIZ	$1.5	$1.4
Haitian HOPE	$0.4	$0.4

Source: ITC Dataweb

Preferences do not, finally, waive all tariffs. Apart from the preference imports, about $90 billion in imports from beneficiaries – diamonds, computer accessories, rubber, sulfur, shrimp, coffee, ammonia, cocoa beans, cameras – are duty-free under NTR tariffs. Tariffs applied in full to the remaining $86 billion in imports from beneficiaries last year, including such products as Pakistani towels, Brazilian chemicals and Indonesian shoes. Thus about 64 percent of the goods Americans bought from preference beneficiaries arrived duty-free, meaning preferences ease American tariffs enough to give beneficiaries treatment comparable to that European or Chinese goods receive under NTR rates.

IV. WEAKNESSES: SOME INHERENT, SOME SOLUBLE

In many ways the preferences are a success. In the 1980s and 1990s, CBI helped Central American countries diversify their economies and ease creation of a stable peace. The Andean program provides employment for rural Colombians and Ecuadorans as well as offering Americans a modest Valentine's Day tax-cut. The QIZ program is a unique experiment in economic integration between Israel and its peace partners; AGOA has given several African states a start in the garment business. Many friendly middle- and lower-middle income states – Paraguay, Armenia, and other small countries, as well as larger users – rely on GSP for competitiveness vis-à-vis China, while American manufacturers use it to reduce input costs. But the preferences also have weaknesses – some inherent and difficult to solve, but others which reform can fix.

1. Trade Diversion and Concerns on Preference Erosion

First, preferences (like free trade agreements) have at least two inherent weaknesses. These are their potential to create unwanted trade diversions, and the risk that they may create psychological and political obstacles to larger trade initiatives.

FTAs and preferences set different tariff rates for different countries on identical products. This complicates the U.S. trade regime and can divert trade away from competitive producers. At times the preferences' goals outweigh the disadvantages. If diversion affects large, wealthy economies – if we buy insulated wiring from Thailand under GSP rather than from China, or a bottle of olive oil from Tunisia rather than Italy or Spain – this is economically "inefficient" but may have compensating developmental benefit. If diversion affects poorer countries, the preference or FTA can do unintended harm. In practice, the harmful effects are likely difficult to predict and may go unnoticed.

Beneficiaries can also overrate the importance of preferences. Fear of "preference erosion" – i.e. worries about falling tariff margins vis-à-vis competitors – has become a concern in the WTO's Doha Round and America's preference debate. But preference margins are mostly small, often require complex rules of origin that raise cost, and can fade over time as regions without preference invest in efficient logistics and worker productivity. Poor countries should view preferences as helpful in exporting to America and other rich countries, but not as guarantees. They should also seek the opportunities in large emerging economies like China, India, Egypt, South Africa and Brazil which ideally would come from a successful Doha Round; and in the interim, these large countries can reasonably be expected to begin their own preference programs.

2. Complex System, Sometimes Antiquated Conditions and Product Exclusions

Second, the preference system has become complex as individual programs have multiplied. Their different rules of origin, eligibility requirements and product exclusions add paperwork and complexity. This makes preferences less attractive to importers, and can create policy contradictions in which countries are disqualified from one program but eligible for others offering more benefits. Zimbabwe is a striking example: barred from AGOA for human rights violations, it nonetheless receives GSP waivers of tariffs on metals and tobacco covering half of its exports to the United States.

Further, several GSP conditionalities and limits are antiquated. One, barring countries "controlled by international communism" unless they have MFN status, applies only to Cuba and North Korea, both of which are covered by separate embargos. Another excludes luggage, handbags, glass, tableware, home linens and clothes from GSP. In 1974 these industries were large if fragile employers in the United States, providing about 1.7 million jobs in a labor market of 65 million jobs. Today, despite the preservation of tariffs, they employ roughly 0.2 million people in a 109-million job labor market. Magnified by retail markups and sales taxes, tariffs on these goods likely cost American families $25 billion to $30 billion per year. Several especially high-tariff clothing, luggage and shoe products excluded from GSP – usually goods made of cheap and simple materials, where tariff rates can rise to 48 percent – are no longer made in the U.S. at all.

3. Geographical Gaps: Muslim World and Least-Developed Asia

Third, the preferences have important geographical gaps. They do little to assist least-developed Asian-Pacific states or the large majority-Muslim countries which lack oil wealth. Thus they do far less to reduce poverty than they could, and contribute little to our effort against radicalism and fundamentalism in the Middle East and South Asia.

More specifically, no geographic program applies to least-developed countries Afghanistan, Bangladesh, Cambodia, East Timor, Laos, Nepal, the Pacific island states and Yemen, or to low-income states like Pakistan, Mongolia and Sri Lanka. Though all these countries are GSP beneficiaries, they have not yet developed the sophisticated mid-range manufacturing industries whose products would be eligible for GSP tariff waivers, and the clothes and textiles at which they are proficient are excluded. With GSP offering them little benefit, most of their exports face NTR tariffs.

One example is Pakistan's leading export to the United States: towels. Each container of towels exported to the U.S., according to Pakistan's towel-industry trade association, employs 485 Pakistani men and women. This means stable, wage-earning employment for young women seeking self-reliance in a conservative society, enables both men and women to care for families, and helps the Pakistani public see the U.S. not as a looming political and military presence or threat to religion, but as a customer and job-provider. Pakistani towels face a 9.1 percent tariff under the NTR system and are excluded by statute from GSP; but towels made in 78 FTA partners and regional preference beneficiaries are duty-free. The same applies to Pakistan's clothes and home linens. In total, Pakistani exporters see a $315 million penalty on $3.2 billion in exports, more than the $281 million penalty imposed on $47 billion in British goods. How does this square with the pledge at last September's "Friends of Democratic Pakistan" summit to "positively consider Pakistan's call for enhanced market access and trade development?"[2] Or with the more basic American view, embodied in last year's large foreign aid increase, that success in a battle against violent fundamentalism requires a strong civil society, private-sector employment and sustainable economic growth in Pakistan?

Cambodia's case is similar and urgent. Since GSP excludes clothing, Cambodia's pajamas, pullover shirts, cotton pants and other clothes face full NTR tariff penalties. Cambodian goods suffered a $318 million tariff penalty on $1.9 billion in goods in 2009, well above the $281 million penalty on our $47 billion in British pharmaceuticals, airplane parts, artwork and other sophisticated goods. Inequitable at best, with Cambodia suffering more (as the World Bank reports) from the financial crisis than any other Asian country such treatment endangers the industry and Cambodia's development. The ILO has reported, and Cambodia's Commerce Minister Cham Prasidh highlighted in testimony, that last year 54 of 343 exporting factories closed and 54,000 of 333,000 young women working as sewing machine operators lost their jobs.[3]

If we grant Cambodia the benefits most least-developed countries now receive, many will be able to return to dignified work, support themselves, and again contribute to the stability of their rural villages. Should we choose not to do so, Cambodia's progress toward recovery from the Vietnam War and Khmer Rouge era will be set back, the credibility of America's support for international labor standards will be damaged, and a chance to show the world a high-road path out of poverty will recede into the future.

Like Cambodia and on a larger scale, Bangladesh has used garment exports (to Europe as well as the US) to develop a modern industrial base. Nobel laureate Dr. Mohammad Yunus observed in his 2007 testimony to the Committee that a successful garment industry is joining micro-credit programs to create a "social revolution,"[4] in which poverty rates are falling and millions of young women becoming wage-earners and supporters of families. Dismissed a generation ago as a "basket case" doomed to perpetual instability, poverty, and radicalism, Bangladesh now has a realistic hope to escape least-developed status in this decade. Preferences could contribute to this goal but offer little. Bangladeshi products are mostly mass-market clothes (plus shrimp, duty-free under the NTR tariff schedule), facing tariff rates as high as those on Cambodian goods. GSP covered only four of Bangladeshi's top 100 exports to the United States last year (tobacco, golf equipment and plastic packaging) and reduced tariffs on Bangladeshi goods by an insignificant $1.5 million out of $563 million – a penalty well above that imposed on much larger volumes of British, French, Russian or Saudi goods.

Afghanistan is also an important potential user of trade preferences. Security makes this a long-term challenge, but should this winter's NATO/Afghan offensives and civilian-government policies succeed, Afghanistan might focus on traditional products such as temperate-climate fruits, carpets, handicraft leather and stonework.

4. African and Andean Programs Weakening

Fourth, two programs have lost momentum. The Andean program's difficulties have an obvious cause – Peru is an FTA partner, Colombia may become one, Bolivia has been suspended, there are some controversies over Ecuador's participation as well, and it has never been clear why Paraguay is not eligible. Here the challenge is less immediate revision of the program than development of a general policy for the Andean region, including support for democratic and friendly governments, human rights, and response to the spread of virulent populism, with an appropriate role for trade including a decision on the US-Colombia FTA and a preference program designed for non-FTA partners.

AGOA's challenges are more complex. AGOA, which will mark its 10th anniversary in May, oversaw $28 billion in imports in 2009. But oil made up nearly 90 percent of this total. Despite favorable rules of origin, Africa's share of the U.S. clothing market in 2009 was barely above the level it held in 2000, as the program went into effect. And with Madagascar suspended, only four of the 38 AGOA beneficiaries – Kenya, Lesotho, Mauritius[5] and Swaziland – are significant clothing-benefit users. AGOA-based import growth in value-added agriculture and sophisticated manufactures remains confined to South Africa, and most African farm exports to the United States are instead in permanently duty-free goods like coffee, tea, vanilla, cocoa beans and birdseed.

TABLE 4: AGOA SHARE OF U.S. FARM AND CLOTHING IMPORTS, 2000-2009

	2000	**2004**	**2009**
AGRICULTURE			
Imports from World	$39.0 billion	$54.0 billion	$65.4 billion
From Africa	$791	$1.126	$1.222
From AGOA members	$508	$620	$698
AGOA member share	1.3%	1.1%	1.1%
CLOTHING			
Imports from World	$64.1 billion	$72.2 billion	$69.3 billion
From AGOA members	$0.73 billion	$1.76 billion	$0.92 billion
AGOA member share	1.2%	2.4%	1.3%

Source: ITC Dataweb for clothing, USDA Global Agricultural Trade System for farm trade.

These trends reflect logistical weaknesses relative to competitors in other regions. The World Bank's "Doing Business Across Borders" report finds that to export a container of goods from Africa requires 33 days and costs on average $1,942. East Asia requires 23 days and costs $909; Latin America, 19 days and $1,244.[6] The data in turn illustrate problems in infrastructure and governance. A report last fall in Kenya's *New Times*, for example, found 24 police checks, 14 road blocks and 13 weighbridges for trade on the Northern Corridor from Kigali to Mombasa.[7] If such internal obstacles make African businesses less able than Asian or Latin rivals to supply goods to buyers rapidly and in volume, tariff margins will not be enough to make up the difference.

We can also, however, draw on successes – especially in farm products – for ideas on strengthening trade policy for Africa. AGOA's waiver of flower tariffs is helping

Kenya and Ethiopia adapt existing supply-chains meant for Europe to supply American florists. In shea butter, coffee, tea and niger seed, America's NTR tariffs are zero and Africa has succeeded by providing unique or especially high-quality products. The NGO "LightYear IP" provides an example of creative use of intellectual property, as it helps Ethiopia develop brand recognition to add value to its coffee.[8]

V. RECOMMENDATIONS

In sum, the preferences' core mission remains valid. But they have clear weaknesses reform can help address. Let me make three specific recommendations.

Recommendation 1: Simplify and Unify Preferences

First, the programs are too numerous and complex – and many programs with conflicting rules and eligibility criteria make a less effective system. With one exception, they should be replaced with a simpler, unified program. I suggest three steps:

A. Combine five existing preferences into one. The QIZ program would remain a branch of the US-Israel FTA, but GSP, AGOA, ATPA, CBI and HOPE would be merged into a single program. This would retain special rules of origin for Africa and Haiti; continue to give Africa special incentives for integration; and make least-developed countries like Cambodia and Bangladesh, and selected very low-income countries like Pakistan and Mongolia, eligible for similar full duty-free and quota-free treatment.

B. Add the manufactured goods excluded from GSP to this program. Clothing benefits remain most appropriate for least-developed countries and selected low-income and security-sensitive countries. Luggage, leather and similar goods would be open to all beneficiaries, and all beneficiaries would be able to cumulate value-added across borders to meet rule-of-origin requirements. However, tariffs on products no longer made in the United States have simply evolved into taxes, and should (as Senator Cantwell suggests in the Affordable Footwear Act proposal) be scrapped on an MFN basis to assist the low-income American families who they affect most.

C. Create uniform eligibility criteria for all beneficiaries, based on AGOA's two mandatory and five discretionary conditionalities. These would encourage rule of law, anti-corruption and poverty alleviation, and remove benefits for countries involved in activities that undermine American national security. An environmental clause requiring participation in any climate-change agreement may also be appropriate, as would a discretionary clause evaluating the willingness of large and advance beneficiaries to open markets for poorer and smaller neighbors. Finally, a new program would drop the outdated condition banning countries "dominated by international communism," and replace it with a clause excluding countries which provide 5 percent or more of America's total merchandise imports, to ensure that the preferences remain focused on small and poorer states. Embassies in beneficiary countries should report regularly on compliance with these conditions, with the U.S. Trade Representative in consultation with Congress responsible for final decisions on withdrawal of benefits.

Recommendation 2: Refocus AGOA and Mesh with Technical Support[9]

Second, AGOA needs revitalization and refocusing, centered on a better meshing of trade benefits with technical assistance programs to improve logistics and supply-chains. A revitalized AGOA should also ask Africa's leading economies and natural-resource exporters for some financial support in developing African infrastructure.

AGOA's special textile features – encouragement of regional integration through liberal eligibility for wealthy countries as well as LDCs, and liberal rules of origin – remain valuable and should be preserved. But experience shows that this is a long-term objective, which depends on developing logistical infrastructure and internal integration. In the interim, better information about market opportunities and regulatory requirements in the United States can help Africans develop trade in products that are not import-sensitive and sometimes not covered by any tariff. One important and more or less cost-free part of this should be assignments to U.S. Embassies to find options for adapting existing supply-chains to U.S.-African trade, and to encourage (as the ONE campaign has suggested) use of USAID's Trade Hubs to build awareness among African businesses and farmers about market opportunities and link Africans with American experts on customs procedures, sanitary and phytosanitary requirements and other regulatory issues.

These policy steps should come together with support for African efforts to ease logistical problems and deepen development around corridors already in use for natural-resource industries. These "Development Corridors" reflect Nelson Mandela's vision for adapting trade and transport routes now linking mines to ports to give landlocked states access to the outside world, encourage intra-African farm trade, and speed industrial integration. NEPAD, the New Economic Partnership for African Development, identifies 26 corridors around the continent. The World Bank's *Doing Business in Landlocked Countries* report highlights a successful example, in which border cooperation agreements signed by Mali and Senegal in 2008 cut the number of checkpoints from 25 to 4, and reduced average transport time from the Sahel to Dakar port from over a week to a day or two.[10] Their completion is as much an aid and assistance issue as a trade policy issue, and the projects need support from the World Bank, the African Development Bank and bilateral donors including the United States. They also, and primarily, need sustained commitment from resource-rich African states. Nigeria earned $20 billion to $70 billion a year through energy exports in the last decade, and South Africa's earnings from metals were comparable. If a small but meaningful share of this goes to continent-wide development, they will earn the money back.

3. Recommendation 3: Upgrade Haitian HOPE, Expand QIZ

Finally, two specific recommendations. The Committee is working quickly to provide trade support for Haiti during its recovery from the earthquake. I applaud these efforts and view the garment industry as a likely central contributor to Haiti's revival. A long-term guarantee of tariff waivers with especially generous rules, combined with a focused effort to repair the port and ensure that workers can travel easily to their factories, will be essential in the coming months. Meanwhile, Egypt, Israel and Jordan are seeking additional QIZ designations and rule-changes to encourage further economic integration. This would be welcome at any time, but is probably especially valuable given the tensions in the region and the blocked Israel-Palestinian negotiating process.

CONCLUSION

Beyond these specific recommendations, and in conclusion, a few final thoughts. Tariff policy is a complex topic. Preferences add to it equally complex questions of conditionalities, rules of origin and competition among beneficiaries. But a few relatively simple observations can be a guide as we look toward reform.

They begin with our own responsibility as the world's wealthiest and most powerful nation. A trade policy built upon a foundation of ethics and enlightened self-interest enables America to do more than any other country to support poor-country farmers and young women seeking autonomy and dignified work; and help weak nations alleviate poverty, combat radicalism and fundamentalism, and emerge as peaceful, stable and self-supporting states. We should fulfill this responsibility for its own sake; and as we do so, we draw some practical benefit in economics and security.

But as important as America and its policies are, we are not the world's sole recourse. Our share of world imports dropped over the past decade. The European Union is close behind, China is rising fast, Japan remains a major market, and large developing countries like India, Brazil, Egypt and South Africa are rapidly growing importers. Beneficiary countries should see exporting to the United States (or the rich world in general) as one among several options, not their only hope for success in trade. As we reform and improve our preference programs, we should look to other wealthy states to do the same, and to the large and fast-growing developing nations to open their own markets to their poorer and smaller neighbors.

And trade policy itself has limits. The best-designed trade policy – preference, FTA, multilateral agreement or other option – will fail as a development tool without peace and political stability, universal education, an effective rule of law, and functioning internal markets and safety nets. Here aid can often help, but responsibility lies ultimately with the governments of developing countries.

With these limits understood, however, trade preferences are an important and valuable part of American trade policy. Since 1974 they have been a good-faith effort to promote development and better lives in poor countries. In this time they have done much good. With continued commitment and careful reform, they can do the same in this new decade.

Thank you very much.

[1] Marc Bacchetta, Ekkehard Ernst and Juana Bustamante, *Globalization and Informal Jobs in Developing Countries*, ILO/WTO, pp. 17 and 127, at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_115087.pdf

[2] Leaders Statement at "Friends of Democratic Pakistan Summit," September 24, 2009, at http://www.state.gov/p/sca/friends/131015.htm

[3] International Labour Organization, BetterFactories baseline report August 2009, at http://www.betterfactories.org/resourcedet.aspx?z=7&iddoc=117&c=1

[4] Testimony of Dr. Muhammad Yunus, Senate Committee on Finance, May 16, 2007, at http://finance.senate.gov/hearings/45809.pdf

[5] Note: Mauritius's clothing exports to the United States have dropped by about half since passage of AGOA.

[6] World Bank "Doing Business" database, at http://www.doingbusiness.org/ExploreTopics/TradingAcrossBorders

[7] Barigye, Tony, "Stakeholders Decry Rampant Barriers to Trade in EAC," *New Times* (Rwanda), September 20, 2009, http://allafrica.com/stories/200909210739.html.

[8] See Light Years IP, at http://www.lightyearsip.net/projects/ethiopiancoffee/ for review of Ethiopia's trademarking of distinctive coffees.

[9] I am grateful to Katrin Kuhlmann of the German Marshall Fund's office in Washington for her contribution and advice on African logistical issues and Development Corridors.

[10] World Bank, *Doing Business in Landlocked Countries, 2009*, pg. 9, at http://www.doingbusiness.org/documents/DB09_landlocked.pdf

Testimony of Eric Norris, FMC Corporation
Before the
Committee on Finance
United States Senate

Hearing on U.S. Preference Programs: Options for Reform

March 9, 2010

Chairman Baucus, Ranking Member Grassley, and members of the Committee, thank you for inviting me here today to discuss the operation of U.S. trade preference programs.

My name is Eric Norris, Global Commercial Director at FMC Specialty Chemicals' Lithium Division, based in North Carolina.

FMC is a 126-year-old, diversified U.S. manufacturing company. It is a leading producer of value-added lithium materials for industrial and consumer use, including for lithium batteries such as those used in electric vehicles.

As a member of the Coalition for GSP, my testimony today will focus on the importance to FMC of the Generalized System of Preferences, or GSP program. We strongly urge the Committee to take into consideration the detrimental effect that limitation of the GSP program would have on U.S. manufacturers when considering options for reform of U.S. trade preferences.

FMC's Lithium Business Relies Upon GSP Program

FMC Specialty Chemicals is a global supplier of value-added lithium products. In recent years, growth has been driven by increased use of lithium ion and lithium polymer batteries. FMC is increasingly optimistic in regard to future use of lithium ion technologies in hybrid-electric and all-electric vehicles. We are also pleased to see that Congress has recognized the valuable role lithium has in the future of transportation.

The GSP program is key in allowing FMC to use economical sources of lithium raw materials in its U.S. manufacturing operations from deposits we developed in the Andes Mountains in Argentina. FMC's domestic supply of lithium was exhausted in the 1990's, and the company now sources all of its lithium raw material needs from its wholly-owned subsidiary in Salta, Argentina. Approximately 75% of the world's supply of lithium currently comes from continental brine solars located in the Andean Mountains in Argentina and Chile, with much of the rest being produced in China. Lithium recovery in the United States is not currently economical, though the U.S. does have significant potential lithium sources.

Once imported, FMC's lithium facility in Bessemer City, North Carolina processes these lithium materials from Argentina into value-added lithium products for domestic sale and for export. FMC is the only integrated domestic manufacturer of lithium products. Approximately 300 jobs in North Carolina are directly tied to this lithium manufacturing.

Consequences of Limiting GSP Program Beneficiaries

The additional cost of importing lithium carbonate and lithium chloride from Argentina without the GSP tariff preference would place FMC at a competitive disadvantage. FMC's major competitors in the U.S. market source their lithium from Chile, which has duty-free benefits under the U.S. FTA. The GSP program, and specifically the duty-free benefits for lithium raw materials from Argentina, allows FMC's U.S. operations to sustain U.S. manufacturing of downstream lithium products.

The imposition of a 3.7% MFN duty on FMC's lithium carbonate and chloride imports from Argentina may not seem terribly significant on its face, but the consequences for our business would indeed be felt. The removal of GSP benefits would result in additional costs to the company not borne by FMC's foreign competitors. Increased duty costs ultimately must be passed on to domestic and global customers at the risk of lost sales. A loss of the GSP benefit, therefore, would diminish the competitiveness of FMC's lithium products versus those of its offshore rivals. To put this in perspective, prices for lithium have declined over 20% in 2009, putting significant additional pressure on our cost control.

FMC may have to consider moving downstream lithium production facilities closer to export markets if the GSP preference were to be removed. The GSP preference for lithium carbonates and chloride from Argentina is necessary to ensure that FMC's U.S. manufacturing of value-added lithium products is on a level playing field with foreign competitors, since, to reiterate, our domestic competitors source from Chile.

GSP Program Has Worked Well

In FMC's experience, the GSP program has worked as intended. In part because of the GSP tariff benefits, FMC made a significant capital investment in Argentina. From its inception in 1997, FMC's facility in Argentina has exported to the United States duty-free under the GSP program. This has contributed greatly to the economic development of the rural Salta region, where FMC is a major exporter and employer.

The checks and balances built into the GSP program have also worked as intended in the case of lithium from Argentina. As mentioned, the supply of lithium carbonate and chloride is extremely limited on a worldwide basis. In the

2006 GSP Annual Review, FMC faced the loss of tariff preferences due to the GSP rule that calls for the removal of products from the program when a single country supplies over 50% of U.S. imports of a particular item. Since nearly all lithium carbonate and chloride is sourced from either Chile or Argentina, U.S. import levels are split roughly 50-50 between the two countries.

After FMC petitioned the GSP Subcommittee and the U.S. International Trade Commission in 2007, the President granted a Competitive Need Limit (CNL) waiver for lithium carbonate and chloride from Argentina. This decision recognized the importance of this duty-free trade to both the U.S. and Argentine economies. There are no other GSP beneficiary countries that export or are capable of exporting lithium carbonate and chloride to the United States. While extremely significant to FMC, U.S. import levels of lithium raw materials from Argentina do not come close to the dollar-value threshold for GSP beneficiary countries.

This example demonstrates that the GSP program is currently designed well. It removes a country's GSP benefits for products where there tariff benefits are no longer necessary, but allows for flexibility and a closer evaluation of circumstances in individual cases such as ours. In our view, this balanced approach should be kept.

Renewal of GSP Program Would Help U.S. Manufacturing

At a time when the U.S. economy recovery remains uncertain and maintaining domestic jobs is a priority, Congress should not allow preference programs that benefit U.S. manufacturers to expire. While we recognize the goal of expanding the benefits of these programs to lesser-developed countries, the preferences for more advanced developing countries should not be cut without ample consideration of the effects on the U.S. economy. The removal of GSP eligibility for lithium carbonate imports from Argentina, for example, would disproportionately harm a U.S. company, and do nothing for other GSP beneficiaries.

Indeed, the higher costs associated with the tariff would ultimately work their way down to our customers and U.S. consumers, and jeopardize U.S. manufacturing jobs. In conducting its review of reforms to U.S. preference programs, the Finance Committee should take into account the implications on U.S. business. We appreciate your consideration of these views.

I would be pleased to answer any questions.

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Testimony before the Senate Finance Committee On Trade Preference Programs

Gregory B. Simpkins
Vice President for Policy and Program Development
Leon H. Sullivan Foundation

March 9, 2010

Good morning. Let me thank Finance Committee Chairman Senator Max Baucus and Ranking Member Senator Charles Grassley and the rest of the committee members for the opportunity to testify before the committee today. It is a great honor to address you on the important issue of trade preference reform.

First of all, let me say that my organization, the Leon H. Sullivan Foundation, in pursuit of our mission to advocate for the poor and disadvantaged worldwide, has been active in promoting American trade policy that will enable Africa to truly join the global economy of the 21st century by building wealth, becoming economically independent and developing middle class societies in which democracy can not only survive, but thrive.

We have led efforts such as the successful civil society promotion of the African Growth and Opportunity Act Acceleration legislation a few years ago. We have organized the last three AGOA Civil Society Forums. Through our biennial Leon H. Sullivan Summits, we have brought together African and American business people and provided international forums on trade policy. We currently have organized a coalition of civil society organizations, businesses and even government officials known as the U.S. Civil Society Coalition for African Trade and Investment.

Personally, I have been involved in the effort to pass several versions of AGOA since I first worked for the House Africa Subcommittee in the mid-1990s. I have trained African business people and government officials on how to access AGOA benefits. I am now representing my organization with numerous partners on examining the most effective changes to current U.S. trade preference policy. I will focus my remarks on preference programs as they relate to Africa.

When I attended the August 2009 AGOA Forum in Nairobi, Kenya, I heard complaints from African participants that AGOA was not as effective as it could be because its term needed to be extended, and its coverage of products needed to be expanded. U.S. government officials responded that AGOA had already been extended to 2015 and that relatively few of the more than 6,400 tariff lines were being used currently by Africans. This disparity is the result of a disconnect on the how and why of AGOA that must be corrected.

African producers aren't taking full advantage of AGOA, but we have made it unnecessarily difficult to do so. The U.S. government has extended AGOA, but what officials see as a long extension is too short for business people asked to make longer-term investments. African governments have been too slow to make the necessary adjustments to enable their producers to better compete on the world market, including trade preference compliance issues and internal trade process issues.

When developing countries, such as those in Africa, became independent beginning in the 1950s, it became clear that their economies were unable to compete with those of North America and Europe. The United States and other developed countries began in the 1960s to accord preferential treatment to imports from developing countries to give them a boost. This resulted in programs such as the Generalized System of Preferences, the Africa Growth and Opportunity Act, the Andean Trade Preferences Act/Andean Trade

Preferences and Drug Eradication Act and the West Bank/Gaza Strip Qualifying Industrial Zones Preferences.

The reason we and other developed nations deviated from the fundamental principles of the General Agreement on Tariff and Trade (and subsequently the World Trade Organization) was that colonialism had crippled the ability of newly independent developing countries to produce and sell world-class products and market them in a globalizing economy.

Some of the developing countries were able to utilize initial assistance and grow their economies, such as the so-called Asian Tigers: Hong Kong, Singapore, South Korea and Taiwan. In Africa, however, obstacles prevented many economies from taking off. These obstacles included continued neocolonial foreign economic interference, disastrous national leadership decisions, the until-recently slow pace of regional economic integration, non-existent or ineffective infrastructure and over-reliance on basic, non-value added products.

GSP and AGOA, which was built on a GSP foundation, were meant to give a boost to African countries by providing benefits such as special tariff reductions to make them more competitive. However, our efforts, though well-intentioned, have been just enough off the mark that they have not accomplished our desired goal of enabling African countries to become more self-sufficient through more successful international trade. There is joint fault for this incomplete success. Neither the United States nor African governments have done the most effective job of working in concert to achieve our mutually desired goal in this regard.

The broader trade coalition with whom my organization is cooperating includes other NGOs seeking to eliminate poverty, trade experts, product experts, former government officials and those who have trained on accessing trade preference benefits. The Preferences Reform Working Group has come to consensus on five general principles regarding trade preference programs that we don't believe are in full effect currently. We believe any successful trade preference program must be:

- Certain, reliable, predictable and long-term;
- Simple to use;
- Encouraging to sustainable development and value-added production opportunities in the beneficiary countries, covering all products that beneficiary countries are capable of producing;
- Sensitive to beneficiaries' differing or unique development needs, and
- Linked wherever possible to targeted policies and programs to build capacity to participate in markets and take full advantage of preferential market access.

AGOA has been extended several times, but the uncertainty of how long it will be in effect has been a disincentive to long-term investment. Those sourcing products from Africa have been leery of major capital outlays because without the tariff benefits under AGOA, it is not as cost-effective to buy from African sources. High transportation costs make African trade less attractive, and it isn't just that that moving goods costs more. The lack of transportation options means that products such as fresh fruit and vegetables and meat would take too long to reach American markets to be competitive.

Our government has made trade rules as complex and arcane as tax law. We have had to revise the AGOA rules of origin provision on textiles and apparel several times. In agriculture, we have sanitary/phyto-sanitary rules that have not been fully explained to African agricultural producers. We train government officials in hopes they will pass on information to their farmers, but they have not.

As for sustainable development, officials in our government have lamented that the vertical integration in cotton, yarn and cloth and finished clothing has not happened as we expected. However, our process has not fully taken into account the impediments that have made such integration all but impossible in some circumstances. Under colonialism, African countries were trained to deal with the colonial power or at best other countries in their language group, and the infrastructure was set to confirm this trade paradigm. Moreover, we have not encouraged American investment in Africa much beyond the extractive industries sectors.

A land-locked country like Mali, for example, must depend on the port of Dakar in Senegal for its non-air shipping. Prior to an agreement with Senegal, it took Mali cargo up to 10 days to reach Dakar, but is now down to 1-2 days, and checkpoints have been reduced from 25 to 4. This dynamic is repeated across the continent in countries with no access to the sea, goods that cannot adequately be shipped by air, especially agricultural products, and varying relations with neighbors who have sea ports. Thus, a one-size-fits-all trade policy regarding transportation is not feasible.

In the several versions of AGOA approved by Congress and signed into law, textiles and apparel have been featured heavily. The thinking was that production of textiles and apparel was the key to industrialization in Africa as it had been in England, America and other early industrializing countries. At first, it seemed to be working, but once the Multi-Fiber Agreement expired in 2005, China and the other Asian nations asserted their mass production and transportation advantages and swamped the export of African textiles and apparel to our country. This is not a situation that will be reversed over the near term, if ever. African producers may increase their production of so-called "heritage" products, but that is only if they strengthen their vigilance in protecting their intellectual property rights, enhance quality standards and improve the speed of product delivery.

Meanwhile, we have neglected the African agriculture sector, in which more than 70% of Africans work. The colonial powers established agricultural processing, such as cereal factories, only to abandon them when they departed. Without value-added production, African agricultural producers are at the mercy of fluctuating world market prices for basic products. Again, we have not sufficiently encouraged American investment in agro-processing or helped make it simpler for African agricultural producers to get their goods into U.S. markets.

This brings me to the point about capacity building. Each year, the Office of the U.S. Trade Representative issues an AGOA report that cites hundreds of millions of dollars spent by the U.S. government on capacity building in support of AGOA. When you subtract the money spent by USTR to teach Africans about World Trade Organization rules and procedures and the money spent to teach African government officials about AGOA, there is surprisingly little spent in imparting a solid understanding of the AGOA process directly to African agricultural producers. If the person who plants the seed, tends the plant and harvests the crop doesn't clearly know what is and is not acceptable for export to America, we have missed an opportunity to help Africans help themselves.

Finally, the last statistics I saw indicated that less than 10% of African trade was internal to Africa. In my experience in teaching Africans about the AGOA process, I was told by producers quite often that they were more interested in selling to America under AGOA than to their neighbors. We sold the concept of AGOA so well that these producers didn't do the calculations necessary to determine whether non-African trade was more profitable than intra-African trade. Add to this equation the limited infrastructure that was never designed to facilitate intra-African trade, and you have a situation in which what seems like common sense to us is not completely feasible in real life. Regionalization in Africa is a process that is intended to unify the continent – first through economic unification. This process is happening slowly, but it is happening. We must encourage it to the extent we can.

Based on the scenarios I have presented, here are the recommendations I would offer:

- AGOA is based on GSP, which also is subject to periodic renewal. The U.S. government should make AGOA and GSP permanent subject to review to remove the reluctance to source products in Africa. All of our reasonable requirements can be maintained to determine which countries should continue to benefit from AGOA even as the overall program continues.

- The U.S. government should support infrastructure programs to lower costs for African producers to reach U.S. markets. For example, the German Marshall Fund and the Hewlett Foundation are working on a Development Corridors program to stimulate the expansion of existing and creation of new transportation structures to allow African products, especially those produced by smallholder farmers, to be brought to market.

- The U.S. government should target capacity building on U.S. trade rules and processes to the African private sector, African government officials and African civil society together. Governments must understand how to make the playing field level, while the private sectors understands the rules under which they must operate and civil society plays watchdog on the whole process.

- The U.S. government should eliminate existing product exclusions under AGOA, which are primarily in agricultural products. This would have negligible impact on American agricultural competitiveness, but would be of great benefit to

African agricultural producers, who comprise such a high percentage of African productive capacity.

- Using its taxation authority, the U.S. government should create tax incentives to stimulate economic development by encouraging American investment in non-extractive, labor-intensive sectors such as the agriculture and hospitality industries in Africa, as well as encouraging shipping companies to provide adequate transportation options to African exporters.

- In order to assist in the African process of regionalization, U.S. government aid programs should take into account the regional impact of single-country grants and create regional grants to help Regional Economic Communities better facilitate the creation of regional markets that are more attractive destinations for U.S. investment and product sourcing and more efficient exporters of African products. Manchester Trade, a trade facilitation firm, has a Partnership for African Economic Growth and Opportunity proposal for facilitating African regional and international trade that should be examined for its U.S. policy implications.

During the last 12 years, a variety of stakeholders have made great contributions to the U.S. effort to create an AGOA that is an effective and mutually beneficial trade preference program. Companies such as Chevron, Coca-Cola and The Limited; the Office of the U.S. Trade Representative's Office of African Affairs and the current and former government officials in the Blacks in Government – Africa Secretariat, and civil society-led coalitions such as the Trade, Aid and Security Coalition and the Partnership to Cut Hunger and Poverty in Africa have successfully worked in collaboration toward this goal. Through our continued cooperation, we can remove the obstacles to full utilization of U.S. trade preference programs, and AGOA can be made more broadly successful than it is currently.

Thank you.

TESTIMONY OF

**JEFFREY S. VOGT,
GLOBAL ECONOMIC POLICY SPECIALIST,
AMERICAN FEDERATION OF LABOR &
CONGRESS OF INDUSTRIAL ORGANIZATIONS**

BEFORE THE SENATE FINANCE COMMITTEE

**HEARING ON U.S. PREFERENCE PROGRAMS:
OPTIONS FOR REFORM**

MARCH 9, 2010

Chairman Baucus, Ranking Member Grassley and members of this committee, on behalf of the over 11 million members of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), I thank you for the opportunity to address options for the future of U.S. preference programs. While the AFL-CIO is interested in the reform of multiple aspects of the preference program system, I will focus today on the labor eligibility criteria.

Introduction

In 1984, labor advocates succeeded in passing legislation conditioning a country's eligibility under the Generalized System of Preferences (GSP) on "taking steps to afford internationally recognized worker rights."[1] These rights include: the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.[2] The rationale for linking trade and labor rights was two-fold: i) workers who are able to exercise these fundamental rights will be able to bargain collectively for better wages and working conditions, ensuring that the benefits of trade accrue not only to capital but also to labor; and ii) while developing countries should be able to attract investment based on a comparative wage advantage, it should not benefit from wages that are artificially low due to labor repression.

Economic research has also demonstrated that the adoption and enforcement of these core labor rights is essential to broad-based economic development. As the Organization for Economic Cooperation and Development (OECD) pointed out in a 2000 report, International Trade and Core Labor Standards, "countries which strengthen their core labor standards can increase efficiency by raising skill levels in the workforce and by

[1] 19 USC 2462(b)(2)(G).

[2] In 2000, countries were further required to implement their commitments "to eliminate the worst forms of child labor" to remain eligible. See 19 USC 2462(b)(2)(H).

creating an environment which encourages innovation and higher productivity."[3] The OECD also found in a 1996 report, entitled Trade, Employment and Labor Standards, that "any fear on the part of developing countries that better core standards would negatively affect either their economic performance or their competitive position in world markets has no economic rationale."[4]

Today, U.S. general or regional trade preference programs all contain either the GSP labor clause or a minor variation thereof.[5] However, there are significant substantive and procedural problems with the current labor provisions.

A. SUMMARY OF PROBLEMS WITH CURRENT GSP LABOR STANDARD AND PROCEDURES

1. Outdated Standard

In 1998, the member states of the International Labor Organization (ILO) agreed on a set of universal, core labor rights applicable to all members regardless of level of development. These core labor rights were enshrined in the ILO Declaration on Fundamental Principles and Rights at Work, which commits all members to respect, promote and realize four categories of labor rights: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labor, the abolition of child labor and the elimination of discrimination in respect of employment and occupation. Importantly, all members are obliged to respect, promote and realize these principles and rights regardless as to whether they have ratified the relevant, underlying conventions. This touchstone has now been incorporated into all bilateral free trade agreements pending as of May 10, 2007.

Despite the adoption of these principles and rights over ten years ago, trade preference programs still refer to "internationally recognized worker rights" (IRWR). There are important differences between IRWR and the core labor rights. For example, IRWR do not include the prohibition on discrimination in respect of employment and occupation contained to the ILO Declaration. In addition, the preference programs currently refer to "a minimum age for the employment of children," which is weaker than the ILO formulation, "the effective abolition of child labor." It has also been argued that the rights collectively defined as IRWR do not refer to any external source of law and thus

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[3] OECD, International Trade and Core Labour Standards (Oct. 2000), available online at http://www.oecd.org/dataoecd/2/36/1917944.pdf.

[4] See also, Aidt, Toke & Zafiris Tzannatos, UNIONS AND COLLECTIVE BARGAINING, ECONOMIC EFFECTS IN A GLOBAL ENVIRONMENT, World Bank (2002), available online at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2002/09/13/000094946_02083104140023/Rendered/PDF/multi-page.pdf.

[5] See, e.g. African Growth and Opportunities Act (AGOA), substituting "making continual progress toward establishing" in place of the "taking steps to afford" approach in GSP. The Haitian Hemispheric Opportunity through Partnership Encouragement Act (HHOPE) also contains a substantial labor monitoring program based on the ILO Cambodia labor monitoring project.

may be invested with any meaning given to them by the USTR, rather than the meaning conferred upon those rights by the international community through the ILO.[6]

2. No Minimum Level of Compliance

The current preference programs simply require a country to improve labor standards over time, but do not require a country to have achieved any basic level of compliance to be eligible. A country may therefore have horrendous labor laws and practices (2 on a scale of 10), so long as it temporarily and marginally improves them after a petition is filed (3 of 10).

3. Limited Petition Filing Window

Preference programs, with the exception of the CBI and AGOA, allow for third parties to submit petitions alleging the violation of any eligibility criteria. The regulations implementing each program limit petitions to only once a year, though the statute imposes no such limitation. If a major labor rights violation occurs a month after the petition window closes, a potential petitioner will have to wait nearly an entire year to raise the matter through a petition process. Further, the petition windows for the various programs are not coordinated, nor are they fixed (in practice), meaning that the petition window can (and does) change from year to year.[7] In 2003, the petition window was never opened. The U.S. government has also failed to regularly review the compliance of beneficiary countries and self-initiate appropriate action.

4. No New Information Rule

A determination that a country does not merit review should not bar subsequent petitions on the same or similar issues, as it has in the past. The so-called "no new information" rule, 15 CFR 2007.0(b)(5) and 2007.1(a)(4), has no statutory foundation and should be abolished.[8] In general, the rule prohibits the filing of a petition on any matter that has been raised in a previous petition against the same country. Thus, a country could take minimal steps towards compliance just to avoid review and then backslide into

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[6] An infamous example of this is the so-called "Clatanoff Rule," articulated by former Assistant USTR for Labor, William "Bud" Clatanoff. At a 2003 conference at the National Academy of Sciences regarding the monitoring of international labor standards, he stated with regard to freedom of association: "If someone tries to form a union, they can't get shot, fired or jailed. I'm sorry. I know there are thousands of pages of ILO jurisprudence I am not going to read, but that's my criteria – shot, fired or jailed, you're not given freedom of association."

[7] 15 CFR 2007.3 does provide that petition shall be conducted at least once a year according to the schedule set forth in therein. The deadline for petitions established in the regulations is June 1, unless otherwise specified by notice in the Federal Register. The petitions are rarely, if ever, due on that date. In 2009, petitions were actually due on June 24th. In 2004, petitions were due on December 14th.

[8] 15 CFR 2007.0(b) During the annual reviews and general reviews conducted pursuant to the schedule set out in §2007.3 any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in section 502(b) or 502(c) (19 U.S.C. 2642 (b) and (c)). Such requests must: (5) supply any other relevant information as requested by the GSP Subcommittee. *If the subject matter of the request has been reviewed pursuant to a previous request, the request must include substantial new information warranting further consideration of the issue.*

noncompliance once suspension of benefits is no longer threatened. If a petitioner were to file a complaint on the same subject matter, the petition could be rejected if the new information were not deemed sufficiently substantial.

5. Exercise of Excessive Executive Discretion

a. Meritorious Petition Not Accepted for Review and No Reason Given

The only reason to reject a country practice petition for review that finds any support in the statute or regulations is that the petition fails to set forth facts that, if substantiated, would demonstrate that the beneficiary country in question has not taken steps to afford workers internationally recognized worker rights.[9] However, numerous well-supported petitions detailing widespread and/or serious violations of worker rights have been rejected in the past without any official explanation. The government should accept for review a petition if the statements contained therein, if substantiated, would constitute a failure of the beneficiary country to comply with its obligations or commitments under the labor clause. If a petition is rejected, the government should provide in writing the reasons for that decision. If a defect in the submission could be remedied, the government should instruct the petitioner what is needed to make the petition acceptable for review. Further, the criteria that the GSP subcommittee of the Trade Policy Staff Committee (TPSC) employs to determine whether to accept or reject a GSP petition for review should be public.

b. Abuse of Continuing Review

USTR has often put countries under a "continuing review," a probationary period during which the government waits to see whether a country is making sufficient progress necessary to retain its eligibility. Using a "continuing review" as a means to provoke the improvements necessary to avoid suspension is legitimate. However, some reviews have continued for several years while workers' rights continued unabated. Thailand, for example, was under review for nine consecutive years while it maintained GSP eligibility. Reviews should rarely, if ever, last for more than two petition cycles without a final determination of eligibility. No country will undertake needed reforms if it believes that there is no real chance that market access could be limited, suspended or withdrawn.

c. Executive Branch Fails to Limit, Suspend or Withdraw Preferences, even in Clear Cases.

[9] See, 15 CFR 2007.0(b) During the annual reviews and general reviews conducted pursuant to the schedule set out in Sec. 2007.3 any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in section 502(b) or 502(c) (19 U.S.C. 2642 (b) and (c)). Such requests must (1) specify the name of the person or the group requesting the review; (2) identify the beneficiary country that would be subject to the review; (3) indicate the specific section 502(b) or 502(c) criteria which the requestor believes warrants review; (4) provide a statement of reasons why the beneficiary country's status should be reviewed along with all available supporting information; (5) supply any other relevant information as requested by the GSP Subcommittee.

GSP does provide the President some discretion to continue to extend preferences even if the country fails to meet the worker rights eligibility criteria. Section 2462(b)(2)(G) of the GSP provides that "The President shall not designate any country a beneficiary developing country under this subchapter if any of the following applies: such country has not taken steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country." Section 2462(b)(2) does provide, however, that subparagraphs (G) and (H)(to the extent that the work "by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children") "shall not prevent the designation of any country as a beneficiary country under this subchapter if the president determines that such designation will be in the national economic interest of the United States and reports such determination to the congress with the reasons therefore." (emphasis added).

Despite this limited grant of discretion, several country practice reviews over the last 25 years have been closed with no action taken (limitation, suspension or withdrawal) and with no apparent steps taken by the foreign government to afford IRWR. Given the complete lack of transparency, it is impossible to ascertain the basis for inaction and determine whether it is rooted in the clear statutory language outlining the scope of presidential discretion or whether other extra-statutory factors are considered by subordinate committees such as the TPSC when making a recommendation to the President.[10] The discretion exercised by the TPSC in practice and afforded the President under the statute is so broad that it could form the basis for inaction on almost every petition.

6. Country v. Industry-Level Enforcement

Nothing currently prevents USTR from suspending trade preferences with regard to a specific industry or industries where rampant violations occur (rather than suspending or

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[10] 15 CFR 2007.2(g) and (h) regulate the process by which recommendations are made to the President. Nowhere do the regulations provide the TPSC (and superior committees) discretion to weigh considerations unrelated to the program's eligibility criteria.

(g) The TPSC shall review the work of the GSP Subcommittee and shall conduct, as necessary, further reviews of requests submitted and accepted under this part. Unless subject to additional review, the TPSC shall prepare recommendations for the President on any modifications to the GSP under this part. The Chairman of the TPSC shall report the results of the TPSC's review to the U.S. Trade Representative who may convene the Trade Policy Review Group (TPRG) or the Trade Policy Committee (TPC) for further review of recommendations and other decisions as necessary. The U.S. Trade Representative, after receiving the advice of the TPSC, TPRG or TPC, shall make recommendations to the President on any modifications to the GSP under this part, including recommendations that no modifications be made.

(h) In considering whether to recommend: (1) That additional articles be designated as eligible for the GSP; (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; (3) that product coverage be otherwise modified; or (4) that changes be made with respect to the GSP status of eligible beneficiary countries, the GSP Subcommittee on behalf of the TPSC, TPRG, or TPC shall review the relevant information submitted in connection with or concerning a request under this part together with any other information which may be available relevant to the statutory prerequisites for Presidential action contained in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461-2465).

withdrawing preferences at the country level). With very rare exceptions, such as Pakistan, where USTR suspended preferences in the 1990s for carpets, surgical instruments and soccer balls, USTR has not exercised this flexibility and has instead limited itself to a determination as to whether to suspend or withdraw trade preferences for an entire country. The targeted limitation of preferences should be used more frequently.

B. A BETTER WAY

Below is a comprehensive set of proposals to reform both the labor eligibility criteria as well as the process for reviewing complaints, remediating violations and making determinations as to whether to suspend preferences in whole or in part.[11] These recommendations could be applied to reform of any or all of the extant preference programs, or lay the foundation for a new, unified preference program.

1. Eligibility Standard(s)

Establishing new eligibility criteria for a broadly revamped preferences scheme requires several related choices. For example, tiers of development and levels of market access could be uniform or layered. For purposes of this testimony, we assume three baskets of trade preferences based on a combination of level of development and market access. However, should the program evolve and take another shape, these suggestions would need to be adapted.

Also, note that only labor eligibility criteria are discussed here. One would expect that other criteria would be required, including those related to good governance, human rights, the environment and others.

a. Basic Preference for Developing Countries

Assuming levels of market access similar to the current GSP program for developing countries, the following criteria should be met to be or remain eligible.

Standard

- The country must make continual progress towards adopting laws consistent with core labor rights and must have adopted laws consistent with the ILO core labor rights within 3-5 years of the program entering into force to remain eligible.
- Though the obligation is to make progress during the transition period, the country cannot have laws that prohibit (de jure or de facto) the exercise of a core labor right (eg., bar on the formation of unions or a minimum requirement of 100 members to form a union) or fail to have laws governing acceptable conditions of work with respect to minimum wage, hours, and health and safety.

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[11] Note: We believe that beneficiary countries must also meet eligibility criteria with regard to human rights, rule of law and good governance and the environment. Those criteria are not spelled out here.

<u>Level of Enforcement</u>

- During the transition period, the country must make continual progress towards effectively enforcing its laws related to the core labor rights and acceptable conditions of work; once the transition period ends, the country must effectively enforce those laws.
- Though the obligation is to make continual progress during the transition period towards effective enforcement, the country, at a minimum, must have tribunals for the enforcement of such labor rights and acceptable conditions of work, which shall be fair, equitable, and transparent; provide for the possibility of remedies such as fines, penalties, or temporary work closures; and allow for the appeal or review, as appropriate, of decisions to impartial and independent tribunals.
- Though a country retains the right to the reasonable exercise of discretion and to *bona fide* decisions with regard to the allocation of its resources, the country must, at a minimum, not reduce the percentage of its annual budget for labor enforcement and should increase the budget for labor enforcement proportionately as the economy expands.
- The country cannot be on Tier 3 of US State Dept Trafficking Report (those countries whose governments do not fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards and are not making significant efforts to do so).[12]

b. GSP-Plus

Currently, the U.S. has no incentive based program that ties greater levels of market access to certain vulnerable developing countries to compliance with a higher set of eligibility criteria. The European Union currently has such a program – GSP Plus. If the U.S. were to incorporate such an approach, a developing country could be eligible to export more goods at a preferential tariff rate than possible under the basic GSP. If correctly designed and implemented, a incentive based program that rewarded better labor practices could result in better labor laws and practices. If such a program were to be established, the following eligibility criteria would be appropriate. Such countries should also be subject to more rigorous oversight on compliance with the eligibility criteria.

To be eligible, the country must:

- have adopted laws and regulations consistent with the core labor rights
- must effectively enforce those laws and all other national laws governing worker rights and social protection

[12] In 2009, this list included: Burma, Iran, North Korea, Syria, Chad, Kuwait, Papua New Guinea, Zimbabwe, Cuba, Malaysia, Saudi Arabia, Eritrea, Mauritania, Sudan, Fiji, Niger and Swaziland.

- maintain a functioning tripartite body that meets regularly to discuss labor laws, labor relations and social and economic policy generally, if such a structure exists, or otherwise ensure regular and meaningful social dialogue on these issues.
- ensure that no workers are excluded *de facto* or *de jure* from, and that all workers are protected equally by, national labor laws, regulations, and policies, including subcontracted workers, temporary workers, migrant workers, seasonal workers, part-time workers, project-based workers, informal sector workers, etc. Nothing in this criterion shall be construed as prohibiting positive affirmative measure to protect the rights of more vulnerable workers.

c. Duty-Free / Quota Free for Least Developed Countries

It has been proposed that Least Developed Countries (LDCs) should now receive duty free/quota free preferential tariff treatment. LDCs should also be required to meet the basic GSP criteria described herein; however, they should be given a somewhat longer transition period and more resources from a variety of sources should be marshaled to help LDCs meet these and other eligibility criteria. This arrangement would strike a balance between the lower level of development on one hand and the substantially greater market access afforded on the other.

2. A New Process

a. Institutions

Currently, worker rights country practice petitions are filed with the USTR and reviewed initially by the GSP Subcommittee of the TPSC, an inter-agency committee that includes USTR, Treasury, Agriculture, State, USAID, Commerce and Labor. The full TPSC includes, in addition, the Council of Economic Advisors, Council on Environmental Quality, Department of Defense, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Interior, Department of Justice, Department of Transportation, Environmental Protection Agency, National Economic Council, National Security Council, Office of Management and Budget and the U.S. International Trade Commission (non-voting member).

It is understandable that a wide range of agencies may have an interest in a decision regarding country eligibility to receive trade preferences. However, as to whether the petition 1) on its face alleges a violation of the worker rights criteria and should therefore be accepted and 2) whether, following an investigation, those claims have been substantiated by the evidence, it appears that those decisions are wholly within the competence of DOL, and specifically ILAB. Thus, as to the first two aforementioned questions, ILAB's findings and conclusions should be given substantial deference, if not be determinative. The ultimate issue, whether a country's benefits should therefore be suspended because of those violations, or what the scope of the suspension should be, could be a determination that requires input from a broader inter-agency committee – though the scope of their review should be circumscribed.

b. Procedures

1. Public Petitions

The USG should provide for the receipt of public petitions from any person at any time on labor rights matters under a new trade preference scheme. This could be accomplished either by establishing an open petition process or by maintaining a fixed annual review process, at which time petitions would be encouraged, but with the possibility of filing a petition out-of-cycle. Elements of a basic petition should include: name and contact information of petitioner (which should remain confidential if requested), a summary of the relevant facts, if possible the specific domestic laws or international labor rights alleged to have been violated and the relief sought. No additional information should be required at the initial stage.

The petition shall be accepted for review if the statements contained in the petition, if substantiated, would constitute a failure of the country to comply with the obligations or commitments under the preference program. ILAB should announce its determination within 30 days of the receipt of the petition. If the information provided is insufficient to make an initial determination, ILAB should notify the petitioner within 30 days of the receipt of the petition and request any information needed to make a determination. The petitioner should have 60 days from receipt of the notification to supply the requested additional information. ILAB shall have 30 days from the date the petitioner resubmits the petition in order to make its determination. If the petitioner does not supply the requested additional information within 60 days, or if the information is still insufficient, then the petition may be rejected.

If accepted, a notice should be published in the Federal Register within 5 days that a petition to review the eligibility of a beneficiary country has been accepted for review. Specific notice should be given to the foreign government and petitioner(s). The FR notice will start a process not to exceed 120 days. ILAB shall invite the public to submit supplemental written testimony in support of or in opposition to the petition within 30 days. Thereafter, ILAB and any other relevant agencies should conduct an investigation, including interviews with petitioners, government officials, employers or employer associations specifically named or in an industry identified in the complaint, as well as NGOs and other relevant stakeholders. As part of its investigatory process, a public hearing should also be held. The investigatory phase should close within 120 days from the filing of the petition.

Within 60 days from the close of the investigation, a written determination as to whether a violation or violations of the labor clause occurred, and the facts and evidence supporting that determination. [13]

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[13] The USG should develop a methodology setting forth clear and consistent procedures for the conduct of investigations, the criteria used to determine whether a violation of the labor clause has occurred, how such factors are weighed, and how a final determination is made. The methodology should also set forth procedures for drafting and implementing a remedial work plan, if applicable, and oversight of the implementation of such a plan. This proposed methodology should be published in the federal register for public comment.

2. Levels of Review

Unlike the existing petition process (in practice), petitioners should be able to request action taken at the country and/or industry level. Indeed, almost all past petitions have raised concerns at both levels, but the only remedy available in practice has been a complete suspension of preferences to an entire country. The availability of targeted remedies may provide the USG the flexibility to address the most critical problems directly.

For example, a situation could arise in which a petitioner alleges: 1) that the government has failed to enact laws consistent with the country's preference program obligations, has failed to maintain those laws, and/or in a systematic way has failed to enforce them; 2) alleges rampant violations in a specific industry, with illustrative cases with regard to specific firms that represent the worst actors within that industry. A petitioner should be able to request (and the U.S. government provide) action be taken at one or both levels. In cases where laws and regulations fall short of core labor standards, where there is a widespread failure in the administration of labor justice (ministry, inspectorate, courts), and/or where the government as employer is violating worker rights, the U.S. government should consider application of country-level remedies. Where worker rights violations are especially concentrated in a particular industry, the U.S. government should consider remedies that target the products of that industry.[14]

3. Remediation & Suspension

a. country level

The primary purpose of enforceable labor rights criteria is to improve working conditions, not to suspend tariff preferences for the sake of it. Thus, the approach taken to labor violations should be cooperative, at least initially. If ILAB were to determine based upon a petition or a biennial review (see below) that the beneficiary country is not in compliance with the labor eligibility criteria, then it should enter into consultations with the beneficiary country (with the participation of worker and employer representatives) to develop a work plan with clear benchmarks that, if met, would bring the country into compliance with the eligibility criteria. Such a work plan should usually be no longer than one year in duration, with a mid-point review.

If, after such consultations, a work plan cannot be developed, eligibility should be terminated. If such a plan is not fully implemented after the year, ILAB shall consider what progress has been made toward fulfilling the work plan. If the country has demonstrated sufficient political will and has taken substantial steps towards implementing that plan, the USG should extend the period for an additional period not to

[14] If the industry does not benefit from preferences, violations would have to be viewed in the context of a broader, country practice petition. However, this does not preclude the USG from developing a remediation plan that addresses concerns in that industry. The limitation would be in that benefits would have to be withdrawn for the entire country, rather than the specific industry.

exceed one year. If, however, the country has not demonstrated the requisite will or has made insufficient progress, the preferences shall be limited, suspended or withdrawn.

As noted above, the TPSC is responsible for making a recommendation to the President to limit, suspend or withdraw preferences. Although the statute gives the President the discretion to factor in other considerations, i.e. the national economic interest, it is clear that members of the TPSC are factoring in additional non-labor considerations at the time the recommendation is being formulated. Further, the TPSC does not now appear to be constrained by any timelines whatsoever in making their decision.

The TPSC should be constrained to make its recommendation to the President within 60 days from ILAB's recommendation. Further, TPSC may reject ILAB's determination and recommend no action be taken only on the basis of an affirmative, consensus opinion based on evidence that suspending the preferences would either cause serious harm to the U.S. economy or jeopardizes the national security of the United States. If the TPSC recommends limitation, suspension or withdrawal of preferences, the President should notify Congress of his (or her) intent to limit or suspend the country's eligibility for preferential trade treatment within 30 days (unless the president independently determines that suspending preferences would cause serious harm to the economy or jeopardizes the national security of the United States. The final decision, either in the affirmative or negative, must be in writing with a full explanation for the reasons supporting that decision.

b. industry-level

If a petition targets a particular industry or industries, or ILAB otherwise determines that violations described in a country practice petition are concentrated in a specific industry or in industries, it should develop a special work plan (or sub plan) with specific recommendations to address violations in the identified industry or industries. Of course, persistent worker rights violations in any industry are the responsibility of both the employers (who violate the law) and the government (which fails to enforce the law), so a sectoral approach will necessarily have to set forth specific benchmarks in a work plan that are directed to both the government and to the employers. As with the country-level work plan, government, employers and workers should all be engaged in developing that plan.

If the country and employers have demonstrated the will and have taken substantial steps towards implementing that plan, the president should extend the review period for an additional period not to exceed one year. If, however, the country has not demonstrated the requisite will or has made insufficient progress, and the violations are especially concentrated in an industry or industries, the president shall notify congress of intent to terminate the preferential treatment for the products in the identified industries.[15]

[15] In many cases, a firm or group of firms may be responsible for giving the entire sector a bad reputation. If an entire sector were under review, it would be advantageous for the better actors to put pressure on the bad actors to avoid having the relevant product losing preferential treatment. However, if a firm within an

4. Reinstatement of Eligibility

The President may reinstate the eligibility for preferential treatment of a country (or sector) whose eligibility has been terminated if it is determined that the qualified beneficiary country has fully implemented the work plan.

Countries seeking reinstatement should file a written request with USTR. Notice of the request shall be published in the Federal Register. Any interested party shall have 60 days to provide information in response to the notice as to whether the country has implemented its work plan and/or any new additional information post-suspension with regard to the country's compliance with the labor clause generally. A public hearing should be held within 30 days after comments are due. ILAB shall review the evidence and conduct such investigations as necessary and make a determination within 90 days whether the beneficiary country has complied with the work plan. The preferences shall remain limited or suspended unless ILAB makes a finding that the beneficiary has fully complied with the work plan (and has not engaged in subsequent violations that justify the continuation of the suspension). If so, it would make a recommendation of reinstatement to the TPSC. If not, preferences shall remain suspended until such time that the beneficiary country can demonstrate full compliance through the process described above.

There may be some cases where a country seeks reinstatement of eligibility after several years out of the program, at which point the work plan would not longer be relevant. In such cases, and new assessment would need to be undertaken to ascertain whether the country meets the relevant eligibility criteria.

5. Regular Biennial Monitoring

In conjunction with civil society partners with demonstrated expertise in labor rights matters and together with other relevant international organizations, USTR, DOL and State shall work together to assess compliance by beneficiary countries with core labor rights and acceptable conditions of work, in law and practice. Such assessments shall be based on information available from the annual IRWR reports required under 19 USC § 2464,[16] the International Labor Organization, other interested parties, country and worksite visits that include confidential worker and worker representative interviews, meetings with management, visits to workplaces, collection and review of relevant documents. The U.S. government would not be required to develop yet another report but rather to survey information already in hand or readily available, and any additional information provided by civil society organizations and collected in the course of ongoing information gathering from the labor attachés and labor reporting officers.

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industry continues to commit serious violations of worker rights, the USG should seek ways, where possible, to deny benefits to that firm or firms.

[16] This section would of course need to be amended to refer to the core labor rights assuming our recommendations herein are adopted.

In recognition of the limited resources, the U.S. government should be allowed to exercise discretion and self-initiate reviews of those countries that present the worst cases of non-compliance.

C. Capacity Building

Substantial funding will be required to make this program reach its desired goal. We will need to be creative in pursuing a consistent stream of funding. It is important, too, that we undertake a serious assessment of the efficacy of past labor capacity building programs. While some were well tailored to address properly diagnosed problems, others were not designed to address the most critical problems. Coordination among the several agencies at times seemed poor, with multiple projects receiving funds to do largely the same work. In other cases, organizations that received funding to carry out labor capacity building programs have had little expertise in labor relations and/or are unfamiliar with the region. In some cases the local partners designated by US-based organizations are unknown to or do not have the complete trust of labor organizations. Finally, there appears to be little accountability, particularly with regard to government institutions, that continue to receive funds for workshops, training and equipment year after year despite showing little will to actually improve the quality of their work.

Communications

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U.S. Preference Programs: Options for Reform

Tuesday, March 9, 2010

The Honorable Chairman Baucus, Ranking Member Grassley and distinguished members of the Senate Finance Committee,

On behalf of the AGOA Action Committee, I have the pleasure to submit these comments for the record of the Senate Finance Committee hearing on U.S. Preference Programs: Options for Reform, held on Tuesday, March 9, 2010.

The AGOA Action Committee, a 501(c)(6) non-profit organization, was established in 2003 to expand support for the African Growth and Opportunity Act (AGOA) in the U.S. Congress and ensure that a broad range of African affairs stay at the forefront of U.S. foreign, trade and investment policy discussions.

<u>We Must Preserve AGOA</u>

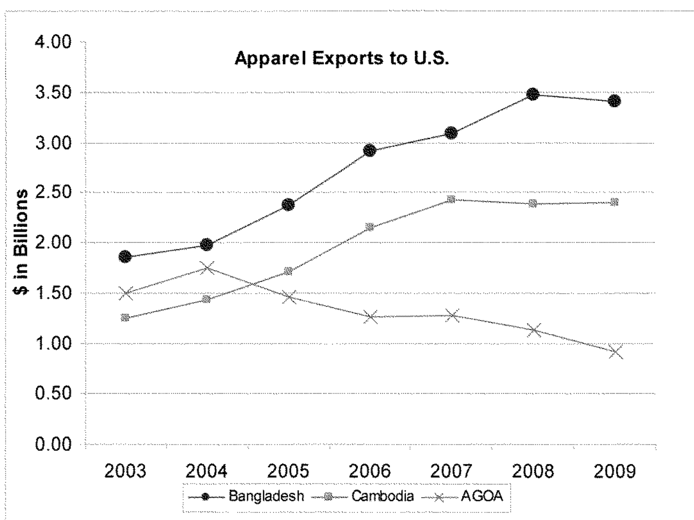
As Congress considers reforming U.S. trade preference programs, it must not undo the success realized in sub-Saharan Africa under AGOA and Haiti under the Hemispheric Opportunity through Partnership Encouragement (HOPE) Act. The desire to extend trade preferences to least developed countries (LDCs) is laudable, but some policy proposals currently before Congress are short sighted and would ultimately prove fatal to AGOA beneficiaries. Congress must also recognize that Africa is the only region of the world getting poorer, and diluting the benefits currently enjoyed under AGOA would prove disastrous.

Providing trade benefits to non-African LDCs is indeed an appropriate use of America's trade policy to help alleviate global poverty and promote development. However, we must not extend preferences to already competitive sectors in non-African LDCs. Already, Africa's clothing exporters, faced with the global recession as well as super-competitive, low-wage producers in Asia, are under severe stress. It is essential that

Congress recognize that industries, not countries, are competitive, and the structure of U.S. trade preference programs should reflect this reality.

Current proposals to extend trade preferences to Asian apparel giants like Bangladesh and Cambodia threaten to kill Africa's fragile apparel sector, and Africa has more to lose than any other region of the world from the rush to extend duty-free, quota-free benefits to all LDCs. Legislation currently pending in the House of Representatives, while attempting to provide a measure of protection to AGOA beneficiaries, does not take care of the problem.

In 2009, the value of apparel imports into the U.S. from all 48 sub-Saharan African (SSA) nations combined was a little over $900 million. By contrast, Bangladesh alone sold nearly $3.4 billion worth of apparel to the U.S., and Cambodia over $2 billion. As I understand it, Wal-Mart, a major U.S. apparel importer, sources more from Bangladesh than the total amount of apparel exports to the U.S., from all 48 sub-Saharan African nations, under AGOA. And with the contraction of the U.S. economy as a result of the global financial crisis, U.S. imports of African apparel decreased by over 10% in 2008, while imports from Bangladesh grew by more than 11%. Furthermore, since the end of the Multi-Fiber Arrangement (MFA) quota system in 2005, African apparel exports have contracted by nearly 50%, whereas Bangladesh and Cambodia have enjoyed 47% and 18% growth respectively. The table below illustrates this trend line. This trend will dramatically accelerate if apparel imports from these two Asian countries are given preferential access to U.S. markets.



AGOA is the Most Successful U.S. Trade Initiative in Terms of Return on Investment

AGOA is working for Africa and America. AGOA is without doubt the most successful trade initiative undertaken by the United States for the purposes of enhancing development in the world's poorest countries, illustrating that trade is far more effective at alleviating poverty than aid. According to the OECD, over the past 50 years the U.S. has spent well over $325 billion dollars in foreign aid to Africa – yet Africa remains the only region of the world getting poorer.

AGOA represents a modest investment, costing U.S. taxpayers a mere $18 million dollars per year, with a price tag of less than $300 million for the life of the program, which expires in 2016. Moreover, if we exclude lost tariff revenue from oil imports, AGOA costs approximately $2 million annually, representing an even more significant return on investment. The return on the AGOA investment has been astounding—more than 300,000 jobs created in Africa and more than $360 billion dollars in African exports to the US in nine years. AGOA's non-oil exports have increased by 340% and, before the recent economic crash, non-oil AGOA imports grew by an impressive 51% from 2007 to $5.1 billion in 2008. Behind these exports are African farmers, families and opportunities.

While there are certainly countries that have not yet been able to benefit significantly from AGOA, others have seen transformative gains. Lesotho, in pre-AGOA days, had no manufacturing sector to speak of. Now it has become the leading sub-Saharan African exporter of apparel to the U.S.. Kenya has become one of the top exporters of cut flowers to the U.S.. Mauritius is a leader in the prepared seafood sector and also exports apparel, sunglasses and jewelry to the U.S.. South Africa, which exports BMW 3 Series and C-class Mercedes Benz cars to the U.S. under AGOA, is now the seventh largest manufacturer of cars bound for the U.S., ahead of such well-known car-exporting countries as Sweden, Italy and France.

Many African nations are now working hard to put into place the same building blocks that lie at the foundation of other nations' success: improving energy and infrastructure to support labor-intensive manufacturing sectors, investing in tertiary and skills education and reforming the business environment.

AGOA is a tool that has more than adequately demonstrated its potential to support transformative change on the continent. It is critical, however, that we not only give it time to realize its full potential, but that we continually work to make it bigger, better and smarter.

We can strengthen AGOA

The current discussions concerning trade preference reforms as well as foreign assistance reforms provide a unique opportunity to enact substantial, long-term policies that would have measurable effects in Africa and help foster widespread economic growth. As Congress continues to consider how to reform U.S. trade preference programs to achieve economic development and alleviate poverty in the developing world, below are some key concepts that policy makers should keep in mind:

- **Industries are Competitive, Not Countries.**
  - Preferences should be targeted towards industries which are not yet globally competitive.
  - Congress must consider the impact trade policy changes have on other developing economies; they may do more harm than good.
  - Special benefits for countries like Bangladesh and Cambodia, whose apparel sectors are already globally competitive, would wipe out Africa's nascent apparel industry. These countries – even while paying tariffs – have become globally competitive exporters and dwarf Africa's combined exports.

- **Africa Faces Unique Challenges**
  - While there are many poor people around the world, Africa is the only broad economic region of the world getting poorer.
  - Sub-Saharan Africa (SSA) remains the most economically isolated region of the world and faces unique challenges in a variety of areas which affect trade, including health care, education, governance, and infrastructure.
  - Special treatment under AGOA is needed to help offset these challenges and attract investment.
  - AGOA beneficiaries face major supply-side trade capacity constraints; new assistance is needed to develop Africa's capacity to trade. Congress should consider matching trade preference benefits with a new trade capacity development initiative.
  - Congress should consider other ways to create incentives for trading with and investing in Africa, such as tax incentives.

In order to preserve and expand on the success enjoyed by AGOA and provide opportunities for increased economic development, there are a number of policy options that Congress should seriously consider. The AGOA Action Committee recommends that the following policy options be considered as part of any trade preference reform legislation:

1. **Make AGOA permanent** – Historically, when preference programs near their expiration, or are allowed to lapse, the vitality, value, and effectiveness of these programs is undermined. The non-permanent status of AGOA injects an element of uncertainty into the investment

climate. Investors are hesitant to go into markets where there is a lack of predictability and firms that would otherwise be attracted to Africa will not invest in, or source from, countries if the status of their preferences is in doubt. Therefore, in order to create a climate more favorable to long-term investment, AGOA must be made permanent.

2. **Duty-free/Quota-free access for all agricultural products from sub-Saharan Africa** – Despite the fact that more that 70% of Africans work in the agriculture sector, agricultural imports under AGOA are subject to various restrictions. Removing these restrictions would increase imports of agricultural products and further develop the agricultural sector in sub-Saharan Africa. Expanding these markets and lowering trade barriers would have an immediate, measurable impact.

3. **Keep anchor countries in Africa eligible for AGOA** - Given the unique challenges faced by industry in Africa, it is necessary for regional anchor economies to participate in AGOA in order to foster the efficient exchange of goods and services. Current proposals to remove trade benefits for non-least developed countries would have devastating effects on trade in Africa as the cost of doing business would rise dramatically.

4. **Make the third-country fabric rule permanent** – The third-country fabric sourcing provisions under AGOA are excellent examples of flexible rules of origin that have benefited African apparel producers. In addition to a decrease in apparel production, sub-Saharan Africa has witnessed a decrease in the supply of inputs as the cost of producing textiles is not competitive with Asian manufacturers. It is essential to allow African manufacturers the use of third-country fabric inputs in order to keep the existing apparel industry operational.

5. **Trade Development Assistance & Capacity Building** – These policies should be designed to meet the needs of the private sector and African governments as well as addressing specific capacity constraints. U.S. trade policy is largely divorced from its foreign assistance and other development policies; the discussions concerning reforming U.S. foreign assistance programs provides a unique opportunity to address trade policy, development policy, and infrastructure projects to combine and coordinate U.S. government policy more effectively.

6. **Tax incentives for U.S. companies to invest in Africa** - AGOA already includes substantial tariff savings for U.S. companies importing products from eligible sub-Saharan African countries, but no other types of tax incentives are provided under the Act. Congress should

consider policy options that would promote U.S. foreign direct investment in Africa, such as a tax benefit for U.S. companies operating in Africa, deferral benefits and adjustments to the Foreign Tax Credit.

7. **Enact an Earned Import Allowance Program** – Enacting an Earned Import Allowance Program (EIAP) modeled after similar programs in effect under CAFTA/DR and the Haiti Hope Act would promote greater sourcing of apparel from Africa. Under CAFTA/DR (19 USC 4112), the EIAP states that one credit shall be issued to an entity controlling production for every two square meter equivalents of qualifying fabric that the entity controlling production can demonstrate that it has purchased for the manufacture in an eligible country of articles like or similar to any article eligible for preferential treatment. In order to directly tie the success of African apparel to hyper-competitive non-African LDCs, a 3:1 ratio should be employed under AGOA. Items not eligible under the EIAP should include the top product categories from already competitive non-African LDCs which are of critical importance to AGOA. Non-competitive LDCs, including Haiti, would have unlimited access for apparel.

8. **Local Employment Criteria** – While the eligibility criteria for countries participating in AGOA are extensive, there is no local employment requirement. To protect against foreign workers being brought in to work in African factories, a new AGOA bill should require that a certain percentage of employees need to be citizens of the host country.

The AGOA Action Committee stands ready to assist the Senate Finance Committee in developing legislation that will preserve and protect benefits to AGOA beneficiaries and help ensure that the success of AGOA is not short-lived.

Sincerely,

Rosa Whitaker

Rosa Whitaker
Chairwoman
AGOA Action Committee

American Sugar Alliance

Submission to the Senate Finance Committee

Hearing on Preference Reform: Proposals for Duty-Free Quota Free Treatment

Submitted for the record March 8, 2010

The American Sugar Alliance (ASA) appreciates the opportunity to submit these comments for the record of the Senate Finance Committee's March 9, 2010 hearing on U.S. trade preference programs, specifically on proposals to extend duty-free, quota-free treatment (DFQF) to all imports, including sugar, from Least Developed Countries (LDC's) and certain other developing countries. The ASA is the national coalition of American sugar beet and sugarcane growers, processors, and refiners.

The ASA opposes any proposal to extend DFQF treatment to sugar. Such action would threaten the viability of U.S. sugar policy and of the U.S. industry.

The United States is the world's fifth largest producer and consumer of sugar and the second largest importer. The U.S. sugar-producing industry generates 146,000 American jobs in 19 states and $10 billion in annual economic activity. Sugar is a basic food ingredient found in approximately 70 percent of food products.

For the food security of our nation, it is critical to maintain a strong and healthy domestic sugar industry to ensure customer needs are met for a broad array of high quality products. Maintaining a domestic sugar policy is essential to sustaining a viable industry that faces unfair production and predatory trading practices by virtually every sugar exporter. In order to operate the current sugar policy at no cost to the taxpayer, as the Congress intended, supply and demand must be delicately balanced. DFQF treatment for sugar would pose a direct threat to the U.S. sugar policy and industry and would ultimately harm taxpayers and consumers.

As the result of commitments made in the WTO, NAFTA, and other Free Trade Agreements (FTA's), imports already account for a large share of U.S. sugar use. Over the past five years, this share has averaged 25 percent; in the just completed 2008/09 crop year the import share reached just under 30%. The 38 developing countries which currently enjoy access to the U.S. market under these agreements benefit from access to the U.S. market because prices here reflect the cost of producing sugar. Their alternative is to sell to the grossly distorted and depressed world market, where prices have tended to be well below the costs of production of nearly all developing countries.

Sugar (along with a number of other agricultural products) has been excluded from the various preference programs operated by the U.S. for the benefit of developing countries because the inclusion of sugar in these programs is incompatible with the sound operation of the domestic sugar program. As a result of the existing trade commitments referred to above, the U.S. market is likely to be oversupplied in many years, rendering operation increasingly difficult.

The potential oversupply situation is exacerbated by the complete opening of the U.S. market to Mexico as of January 2008 and the large degree of uncertainty that exists with respect to Mexican export capabilities and intentions –particularly since, under NAFTA rules, Mexico can, as they did in the 2008/09 crop year, import foreign sugar to meet their domestic needs and export the artificial surplus created to the U.S. In the 2008/09 crop year, USDA first forecast imports of sugar from Mexico at 500,000 metric tons but the eventual total for the year was two-and-one-half times that amount – over 1.27 million metric tons. Reflecting the likelihood of the "substitution" referred to above, USDA now projects that imports from Mexico will average 1.654 million metric tons over the next ten years.

Proposals to extend DFQF to sugar, which currently find their most concrete form in H.R. 4101 introduced by Congressman McDermott on November 18, 2009, would damage the U.S. sugar industry, result in increased and unnecessary government expenditures, and could, ultimately, jeopardize the viability of both the domestic sugar program and the U.S. sugar industry. Such an outcome, by erasing the value of the U.S. market to the many developing countries now supplying it, would also cause these countries substantial financial loss and imperil economic development in the many countries highly dependent on their sugar industries and on access to the U.S. market.

Damage to U.S. Sugar Industry

The countries officially designated as LDC's by the United Nations produce in total about 3.5 million metric tons of sugar and export over a million tons of sugar. As indicated in the attached table, these proposed beneficiary LDC's produce nearly 2.5 million tons of sugar and export over 700,000 tons. But some proposals, including the McDermott bill, would also extend DFQF for sugar to non-LDC African countries, including such major sugar producers as South Africa, Mauritius, Swaziland, and Kenya. Thus, in total, such proposals would extend DFQF to countries producing nearly 7 million tons of sugar and exporting nearly 3 million tons.

Even these figures do not fully indicate the magnitude of the potential threat to the U.S. sugar program. Beneficiary countries could use subsidized imported sugar to meet their own domestic consumption needs and, thus, free up their domestic production (meeting the rules of origin) for export to the United States; as noted above, Mexico is already doing so under a NAFTA substitution loophole.

Worse yet, transshipment of subsidized sugar from non-beneficiary countries through the long list of countries covered could occur. Unlike substitution, such practices would presumably be proscribed by any DFQF program but such illicit trade activity would be very difficult to monitor.

Both of these practices significantly inflate the volume of potential exports to the United States, and the potential danger.

Granting of DFQF for sugar would, therefore, likely result in the flooding of the U.S. market – a market, as noted above, already oversupplied in many years as a result of existing trade commitments. It would magnify the already high degree of uncertainty that USDA administrators of the domestic program face as a result of the unfettered access of Mexico to the U.S. market.

The result of the excessive oversupply generated by DFQF for sugar would be depressed U.S. sugar prices and large government expenditures for the conversion of surplus sugar into ethanol (as required by the 2008 Farm Bill). Ultimately, the granting of DFQF on top of existing trade commitments (and those contemplated in the Doha Round) could make operation of the domestic sugar program unmanageable and jeopardize the viability of the U.S. sugar industry.

DFQF for sugar would also damage developing countries

As noted earlier, some 38 developing countries already benefit greatly from their existing access to the U.S. market through the TRQ's established under the WTO or the access granted through NAFTA or other FTA's. Most of these suppliers recognize the adverse effects on their own interests that the oversupply generated by DFQF would cause.

In separate submissions in March 2007, two large groups of developing countries, 29 countries in all, expressed to the U.S. government their opposition to including sugar in a DFQF program:

- The CBI Sugar Group: Barbados, Belize, the Dominican Republic, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Trinidad and Tobago; plus Mauritius and the Philippines.
- Comesa (Common Market for Eastern and Southern Africa): Burundi, Comoros, D.R. Congo, Djibouti, Eritrea, Egypt, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe.

Comesa reiterated its opposition to inclusion of sugar in any DFQF scheme at the November 17, 2009, hearing on preference reform. Comments in opposition to sugar's inclusion were also submitted at that time, and will, we understand, be submitted to the Senate Finance Committee by:

- The International Sugar Trade Coalition, a large group of developing-country sugar producers that also have shares of the U.S. sugar import quota. The ISTC includes Barbados, Belize, the Dominican Republic, Fiji, Guyana, Haiti, Jamaica, Mauritius, Panama, the Philippines, Saint Kitts and Nevis, , Trinidad and Tobago, and Zimbabwe.
- The Sugar Alliance of the Philippines, a national coalition of sugarcane planters, millers, refiners, and traders.

The African Coalition for Trade (ACT) will, we understand, also be submitting a statement to the Committee that, inter alia, opposes including sugar in any DFQF scheme. ACT's members are from the private sector in Botswana, Kenya, Lesotho, Madagascar, Malawi, Mauritius, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

Other Concerns

We believe the existing, long-standing rules of origin and procedures used for the Generalized System of Preferences (GSP) and other preferential programs are quite adequate and that new rules of origin and procedures –as some have proposed -- are unnecessary. Furthermore, it is critical that the primary consideration in making any changes to rules of origin or procedures for designations should continue to be whether additional imports would cause, or threaten to cause, material harm to domestic producers.

Doha Round Considerations

At the 2005 WTO Ministerial in Hong Kong, the U.S. committed to the granting of DFQF treatment to LDC's for 97% of tariff lines. This limited commitment clearly reflected, among other concerns, U.S. negotiators' recognition of the adverse impact such access could have on the U.S. sugar program and market – as attested in numerous statements by then-USTR Rob Portman and then-Agriculture Secretary Mike Johanns to private sector advisors, Congressional staff, and the press.

Moreover, the 2005 limited commitment was only to be put into effect as part of the successful completion on the Doha Round. Congress needs to consider carefully the effects of the unilateral granting of DFQF, and the expansion of its application beyond LDC's (to countries such as South Africa), on the willingness of DFQF beneficiary countries to negotiate constructively in subsequent Doha negotiations.

Sugar-Producing Countries Included in McDermott Bill (HR 4101): Duty-Free Quota-Free Access to U.S. Sugar Market

(Thousand metric tons, three-year average, 2007/08-09/10)

	Production	Imports	Consumption	Exports	Net Exports
Least Developed					
Angola*	30	270	305		
Bangladesh	125	1,067	1,219		
Benin*	11	43	39	9	
Burkina Faso*	32	36	68		
Burundi*	20		20		
Chad*	34	18	50		
Congo (Dem. Rep. of)*	75	73	137	10	
Ethiopia*	307	127	443	17	
Guinea*	28	75	95	20	
Haiti	1	185	185		
Madagascar*	25	150	172		
Malawi*	297	1	180	137	136
Mali*	37	40	75		
Mozambique*	297	169	175	296	127
Nepal	150	17	150	10	
Niger*	15	50	65		
Sierra Leone*	62	15	34	41	26
Somalia	22	70	93		
Tanzania*	278	185	457	17	
Togo*	5	40	45		
Uganda*	285	15	250	15	
Zambia*	320	1	157	155	154
LDC Subtotal	**2,456**	**2,648**	**4,413**	**727**	**443**
Other Countries					
Congo (Brazzaville)*	58	15	34	41	26
Kenya*	529	234	724	45	
Mauritius*	482	41	42	477	437
Nigeria*	53	1,295	1,150	150	
Senegal*	100	75	170	7	
South Africa*	2,363	180	1,638	1,018	838
Swaziland*	657		306	350	350
Other Subtotal	**4,243**	**1,840**	**4,064**	**2,088**	**1,651**
GRAND TOTAL	**6,698**	**4,488**	**8,477**	**2,815**	**2,093**

* Countries included in the African Growth and Opportunity Act (AGOA)

Source: USDA, Foreign Agricultural Service, 11/19/09.

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Written Statement of the

Coalition for GSP

To the United States Senate Committee on Finance

Regarding

"U.S. Preference Programs: Options for Reform"

Submitted by

Laura M. Baughman
Executive Director
Coalition for GSP

March 9, 2010

Introduction

The Coalition for GSP is pleased to have the opportunity to provide the following views to the Committee on Finance on the operation of U.S. preference programs. In particular, we intend to focus our comments on the importance of preference programs to American competitiveness, and on ways in which U.S. preference programs can be improved so that their contribution to American competitiveness is maximized.

The Coalition for GSP is an ad hoc group of U.S. companies and trade associations that use the Generalized System of Preferences (GSP) program to improve their competitiveness, as farmers, manufacturers, and suppliers of consumer goods to American families. Over the years, GSP has become an integral part of our businesses. Our members import a wide range of goods under GSP, from auto parts to jewelry to plywood to batteries to spices. We therefore have first-hand knowledge about how preference programs works – and don't work – in U.S. company raw material and finished good sourcing plans.

Preference Programs Matter – to Americans

When thinking about whether or not U.S. preference programs "work," one's focus tends to be on whether they work for the beneficiary countries. This of course is appropriate as preference programs are designed to promote poverty-eradicating development in poor countries.

Less common is a related consideration: how do they work for the American farmers, manufacturers, retailers and other importers who also use them? Preference programs succeed in their primary goal – promoting growth in developing countries through trade – only if U.S. companies find them attractive to incorporate into their sourcing and investment/production plans. U.S. companies will do so only if the benefits of the preference programs contribute positively to their "bottom lines," if the programs can be relied upon, and if the rules and regulations associated with claiming program benefits are not so complicated as to be more trouble than the benefits are worth.

Preference Programs Reduce Costs

U.S. preference programs extend duty-free treatment to imports of selected products from selected beneficiary countries. Although on average U.S. most-favored-nation duty rates are among the lowest in the world, for many individual products they can be quite high (see Table 1[1]). The U.S. market is very competitive, so any program that saves U.S. farmers, manufacturers, retailers and other importers money – even pennies – can be highly attractive. GSP alone saved U.S. importers more than $580

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[1] The list of products in Table 1 is by no means exhaustive, nor does it always show the highest tariff rate in a given product grouping.

million in duties in 2009.[2] The motivation to source from a preference-eligible country can therefore be strong.

Table 1
U.S. Tariff Rates for Selected GSP-Eligible Products

Certain household porcelain/china tableware/kitchenware	26.0%
Porcelain/china napkin rings	20.8
Certain nuts and seeds	17.9
Certain artificial flowers	17.0
Certain grated cheeses	15.0
Cotton hammocks	14.0
Railway cars	14.0
Certain silver jewelry	13.5
Ceramic roofing tiles	13.5
Flashlights	12.5
Screws made of iron/steel, for wood	12.5
Wood blinds, shutters	10.7
Wrenches	9.0
Metal drilling tools	8.4
Umbrellas	8.2
Machine tool parts	8.0
Christmas tree lights	8.0
Glass paving blocks	8.0
Certain transmission belts	8.0
Certain plywood	8.0
Paint rollers	7.5
Steam turbines and parts	6.7
Optical fibers	6.7
Aluminum alloy sheets/plates	6.5
Various chemicals and mixtures	6.5
Polyvinyl chloride	6.5
Average U.S. tariff	4.6

Source: Harmonized Tariff System of the United States, 2010; U.S. Census Bureau.

[2] See http://tradepartnership.com/pdf_files/2010_GSP_Update.pdf. p. 12.

Preference Programs Improve U.S. Competitiveness and Support U.S. Jobs

A study conducted by The Trade Partnership for the U.S. Chamber of Commerce found that the impact of GSP on a variety of sectors of the U.S. economy is significant.[3] It concluded:

- GSP keeps American manufacturers and their suppliers competitive. In 2005, three quarters of U.S. imports using GSP were raw materials, parts and components, or machinery and equipment used by U.S. companies to manufacture goods in the United States for domestic consumption or for export. Electrical equipment and parts, and transportation vehicle parts are significant imports under GSP.
- American families also benefit from GSP. Finished consumer goods typically sold by retailers accounted for 25 percent of GSP imports in 2005. Jewelry sold at lower price points was the most significant item.
- GSP is particularly important to U.S. small businesses, many of which rely on the program's duty savings to compete with much larger companies.
- Annual sectoral benefits to consumers of GSP products range up to $273 million.
- GSP imports support U.S. jobs. Direct and indirect jobs associated with moving aggregate GSP imports from the docks to farmers, manufacturers and ultimately to retail shelves totaled nearly 82,000 in 2005.

RECOMMENDATION: In addition to thinking hard about ways in which U.S. preference programs might be changed to achieve certain policy goals, U.S. policy makers need to consider closely the impacts of changes on American companies and their workers. While some thought in 2006 that it would be beneficial to narrow the focus of preference programs to the least developed countries or to eliminate benefits extended to imports of certain products (like auto parts from Brazil or jewelry from India or Thailand), these changes have had an adverse effect on U.S. manufacturers and retailers, who now face higher tariffs at the same time as increasing raw material costs and sagging domestic demand.

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[3] The Trade Partnership, "Estimated Impacts of the U.S. Generalized System of Preferences on U.S. Industry and Consumers," prepared for the U.S. Chamber of Commerce, November 1, 2006, http://www.tradepartnership.com/pdf_files/2006NOV_GSP_Impacts.pdf.

Preference Programs Can Be Improved

As key as duty savings can be, however, our preference programs suffer from some important flaws that can lessen the enthusiasm for their use, and consequently limit their effectiveness in contributing to U.S. competitiveness and in promoting development that ultimately opens new markets for U.S. exports and investment. These include their stop-and-start nature, their inapplicability to many of the products made by developing countries, and their complicated nature.

The Frequent Expirations of Preference Programs Discourage Importers and Investors from Using Them

American companies' ability to use the duty-free benefits available under U.S. preference programs is most effective when they know those benefits will be available by the time they need to import the products of interest to them. While the time from design to order to importation varies for each company, for some it can be quite long. For example, some products take as long as one year from design to importation. For others, the products are advertised in catalogues with a shelf life of at least six months. In all cases, U.S. importers need to know what the duty-status will be for the imported product at the very beginning of that process.

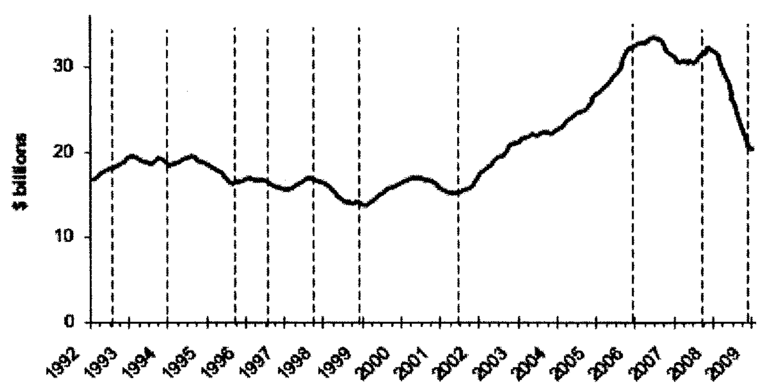
If American companies can count on receiving duty savings under a preference program, they can incorporate those important cost savings into their pricing. But if the program expires mid-stream in the order-to-delivery process, importers can be caught with a serious financial burden. They cannot always adjust prices to customers to pass on the unexpected duties. So American companies have to evaluate the risk of losing the preferences mid-stream against the benefits of the duty savings. If the program is likely to expire, they often cannot incorporate the duty savings into their sourcing plans, and prices to customers will need to be higher to offset the risk.

The damage frequent program expiration causes to investment decisions can be just as great, if not greater. Needless to say, the pay-back from a foreign investment – e.g., opening a new factory, ensuring that there is adequate infrastructure to support it, training workers – can take several years to happen. U.S. companies would thus be reluctant to begin new sourcing relationships that require such investment if they are predicated on the need for duty-free benefits under a preference program that may expire.

With those planning constraints in mind, it is not surprising that the short-term renewals of GSP in the 1990s, compared to the long-term period from 2001-2006, affected usage of that program. From July 1993 through September 2001, Congress renewed GSP in fits and starts (largely due to the need to meet "pay-go" constraints). Planning sourcing using GSP was difficult if not impossible. Over this period, from 1994 to 2001, U.S. imports under GSP actually declined an average 2.2 percent annually. But in 2001 Congress renewed GSP for six years, and as a result, imports from GSP beneficiary countries to the United States increased by an average of 13.2 percent annually. Since 2006, Congress has renewed GSP on three occasions, each time for just one or two years (although thankfully before the program expired). Short renewal periods, talks about eliminating or scaling back benefits for major BDCs, and the 2008/2009 recession have all contributed to growing uncertainty for users of the GSP program, so it is no surprise that imports under GSP have fallen dramatically from their 2006 peak of approximately $32 billion.

A long term for any preference program (the ideal of course would be permanence) is therefore important in encouraging sourcing from countries that do not yet have the infrastructure or production capability to be competitive suppliers of preference-eligible products. The Chart below shows how the long-term renewal of GSP increased interest in sourcing from beneficiary countries. To the extent that some of Coalition members are interested in investing in new overseas production relationships, they need time to grow these suppliers. Short-term renewals of the program do not encourage this, and keep them focused on existing sources, whether they are GSP beneficiaries or not.

U.S. Imports under GSP



*Vertical lines mark GSP expirations and renewals

RECOMMMENDATION: Make U.S. preference programs permanent.

The Inapplicability of Preference Programs to Important Products Made by Poor Countries Encourages Sourcing from More-Competitive Suppliers in Asia

One of the greatest frustrations for both developing country producers and U.S. purchasers is that the longest-lived and biggest U.S. preference program – GSP – does not cover imports of products best produced by labor-intensive developing countries. Most notably, these products include apparel and footwear.

Bangladesh and Cambodia – "least-developed countries" by any measure -- offer the best examples. U.S. GSP benefits applied to just 0.6 percent of Bangladesh's total exports to the United States in 2009, while 90 percent of Bangladesh's total exports to the United States are dutiable apparel products. Similarly, only 0.4 percent of Cambodia's total exports received GSP duty-free treatment, with 97 percent of the total exports to the United States being dutiable apparel products. Despite their classification as least-developed beneficiary countries, Bangladesh and Cambodia face trade-weighted tariffs averaging 15 and 17 percent, respectively, compared to an average of 0.6 percent on imports from the United Kingdom. As a result of these high tariff rates, the United States collected more duties on imports from Bangladesh ($563 million) and Cambodia ($318 million) in 2009 than it did on imports from the United Kingdom ($285 million) or France ($281 million).

The benefits of extending preferences to products developing countries are best positioned to make are demonstrated by the impact of the African Growth and Opportunity Act (AGOA). AGOA provides U.S. duty-free treatment (under stringent conditions, see below) to apparel imported from beneficiary countries. AGOA is widely viewed as responsible for the development of tens of thousands of jobs in apparel production in Lesotho, for example. The 2007 U.S. Trade Representative report on the operation of AGOA listed five new textile or apparel-related investments motivated by AGOA benefits, in Lesotho, Malawi, Mali, Swaziland, and Uganda.[4]

From the U.S. perspective, Members of the Committee should consider that an importer considering whether to source apparel with duties applied will evaluate the costs and benefits offered by Bangladesh, for example, compared to China or Vietnam, for example. For many apparel products, China or Vietnam offer cost, quality and/or delivery advantages Bangladesh cannot replicate. A savings of the 15 percent average duty on imports from Bangladesh therefore would be meaningful, increasing the incentive to source from Bangladesh rather than China or Vietnam.

RECOMMENDATION: Extend permanent preference benefits to all products made by developing countries.

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[4] Office of the U.S. Trade Representative, "2007 Comprehensive Report on U.S. Trade and Investment Policy Toward Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act," May 2007, p. 27.

Complicated Rules of Origin Frustrate the Use of Preferences

Another problem with U.S. preference programs is the variety of rules of origin, some of which can be quite complicated, particularly for new-to-export foreign producers. The simplest of all rules of origin is GSP's 35 percent value added rule. To qualify for benefits, a product must be the growth, product or manufacture of a beneficiary country and the sum of the cost or value of materials produced in the beneficiary country plus the direct costs of processing must equal at least 35 percent of the appraised value of the good.

But the rules get much more complicated for apparel imported under AGOA or the Caribbean Basin Trade Partnership Act (CBTPA) preference program. (Remember that apparel generally is not eligible for GSP benefits.) Under AGOA, for example, U.S. importers must ensure that apparel meets *11 separate detailed requirements.*[5] Because these rules of origin are so restrictive, a special – but limited -- more liberal rule of origin had to be established (the so-called "third country fabric" rule). It is that rule that has promoted the development of apparel sourcing in sub-Saharan Africa.

The documentary evidence required by the various rules of origin requirements can be burdensome. It is not uncommon for U.S. importers to conclude that the paperwork involved in ensuring that a product complies with the preference program's rules of origin represents a "cost" – and a risk if U.S. Customs finds the evidence insufficient – that is not worth the effort. When the whole cost package is evaluated – purchasing from a preference country with duty savings but risk associated with demonstrating that the rules of origin have been met, versus purchasing from a non-preference country that offers less risk, higher cost (from duties) but better quality or delivery certainty -- the latter supplier often wins the order.

RECOMMENDATION: Simplify the rules of origin used to qualify for preferences.

Conclusion

GSP is a preference program that generally works. It works for very poor countries and it works for American farmers, manufacturers and consumers. There are changes the Committee could enact to make preference programs work better, for beneficiary countries *and* for their U.S. customers. In evaluating those changes, Members should consider their impacts not only on beneficiary countries but also on U.S. companies and workers.

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5 For the excruciating details, see http://www.customs.gov/linkhandler/cgov/import/international_agreements/special_trade_programs/agoa_african_growth/2002agoa.ctt/2002agoa.pdf.

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U.S. Preference Programs: Options for Reform

Tuesday, March 9, 2010

The Honourable Chairman Baucus, Ranking Member Grassley and distinguished members of the Senate Finance Committee,

On behalf of the Embassy of the Kingdom of Lesotho, I have the pleasure to submit these comments for the record of Senate Finance Committee hearing on U.S. Preference Programs: Options for Reform, held on Tuesday, March 9, 2010:

Introduction

The Embassy of Lesotho is pleased to present its comments for this important hearing on the operation, impact, and future of US trade preference programs. The government and the people of Lesotho are major beneficiaries of the US African Growth and Opportunity Act (AGOA) and remain deeply grateful for the United States' commitment to expanding US and sub-Saharan African economic relations. As Congress considers reforming US preference programs, the Government of Lesotho stands ready to assist in providing clarification on our own experiences with AGOA and recommendations on how other developing country partners may benefit from US trade preference schemes.

Lesotho's Experience with AGOA

From the perspective of Lesotho and the rest of Africa, any review of US trade preference programs must begin with AGOA, which has been the foundation of U.S. trade and economic policy concerning Africa for the past decade. AGOA has been perhaps the United States' most successful trade preference program, and this can be well illustrated with the case of Lesotho.

Following its qualification under AGOA in 2001, Lesotho's garment industry grew by leaps and bounds. By 2004, Lesotho's apparel exports to the United States had grown to US$ 456 million, and the apparel industry workforce had grown to 53,000, making it the largest formal sector employer in the nation. In fact, the textile and garment sectors in Lesotho account for 50% of total national employment. Some 85% of the workers in Lesotho's apparel industry are women, many of whom are the sole-breadwinners of their household. Lesotho has also developed strong labor unions and labor enforcement institutions, and boasts higher wages for apparel workers than in most major apparel exporting countries, ensuring that the prosperity of the apparel industry impacts the lives of Basotho workers. These positive developments were echoed throughout Africa, with apparel exports to the US almost tripling and more than 300,000 new jobs created, supporting an estimated 3 million people across the continent.

Lesotho's experiences with US preferences center on special benefits under AGOA relating to the apparel sector known as AGOA's 'special rule for least developed countries' or the 'third country fabric rule'. Thanks to AGOA's simple rules of origin and generous tariff line access, Lesotho was able to attract foreign investment into its small existing textile and apparel sectors, including a US$120 million denim fabric mill. However, despite significant foreign investment with an aim towards creating vertically integrated textile and apparel export industry, Lesotho remains dependent on AGOA's generous rules of origin for the majority of its exports to the US. Because of this 'special rule', the apparel sector grew to become the largest formal sector employer in Lesotho, with the majority of production aimed at export to the US market. The sector currently employs approximately 39,000 individuals, down from the 2004 peak of 53,000. Despite this decline, without AGOA's special rule for African LDCs, this private sector development would not have been possible in the first place.

In addition to direct employment through the textile and apparel sectors, the apparel industry has spurred economic development in related industries, including packaging, shipping, and apparel inputs. These sectors represent additional employment above and beyond strict apparel sector employment. Lesotho has also benefited from preferential trading arrangements with the EU dating to as early as 1995, but AGOA remains the most successful preferential trading arrangement with respect to both job creation and export response.

Sectoral Challenges

Despite such generous treatment from our major trading partners, these tremendous gains were short-lived, as the expiration of the Multi-Fibre Arrangement (MFA) or Agreement on Textiles and Clothing (ATC) in 2005 for the first time exposed the infant garment industry in Lesotho and across Africa to unfettered competition from long-established, super- efficient - and often state-subsidized - Asian apparel giants, including China, Bangladesh, Cambodia and Vietnam. Since 2005, U.S. apparel imports from Asia have skyrocketed, while those from Africa have fallen sharply. For example, since 2005 U.S. apparel imports from Bangladesh are up over 50% and from Cambodia imports have increased nearly 40%, while imports from Lesotho are down over 38% and from all AGOA countries down more than 40% over the same period. Apparel sector employment in Lesotho has fallen to 39,000, a drop of 26%. Across Africa, it is estimated that more than 100,000 jobs have been lost, a decline of fully one-third from the employment level in 2005. In short, Africa's apparel industry is under serious threat, and the economic lifeline created by AGOA is in jeopardy.

Extension of AGOA-like preferences to already-competitive Asian apparel powerhouses like Bangladesh and Cambodia as part of a preference reform initiative will only accelerate the decline of the African apparel industry and will be the final nail in the coffin of AGOA. Development in Lesotho's apparel sector remains a constant challenge as our producers face fierce competition from these very well established producers. Additionally, vertical integration of Lesotho's textile and apparel sectors has remained slow due to the lack of regional capacity, the competitiveness of vertically integrated operations in sub-Saharan Africa, and the slowdown in the global economy. The lack of vertical integration in these sectors means that Lesotho remains almost entirely dependent on AGOA's third country fabric provisions for export to the US market. Without this provision, Lesotho's exporters cannot compete with other established global exporters.

While accounting for Lesotho's dependence on AGOA for export to the US market, another significant challenge facing Lesotho's apparel sector relates to a development beyond the scope of AGOA and other preferential trading arrangements. Lesotho's apparel industry has not yet recovered from the 2005 expiration of WTO Multi-Fibre Arrangement (MFA) apparel quotas. Lesotho's apparel exports to the US peaked in 2004 at over $455 million, declining sharply to $390 million in 2005 upon expiration of the MFA. Exports have declined each year since, with sharp declines from 2007 to 2008, and even more substantial losses thus far in 2009 (see figure 1 below). Competition in the global apparel sector remains fierce, with the greatest competition coming from Asia. In fact, since 2005, a number of countries in Asia, including China, Bangladesh, Cambodia, and Vietnam, have all witnessed substantial increases in their share of the US apparel market, while Sub-Saharan Africa's apparel exports have declined.

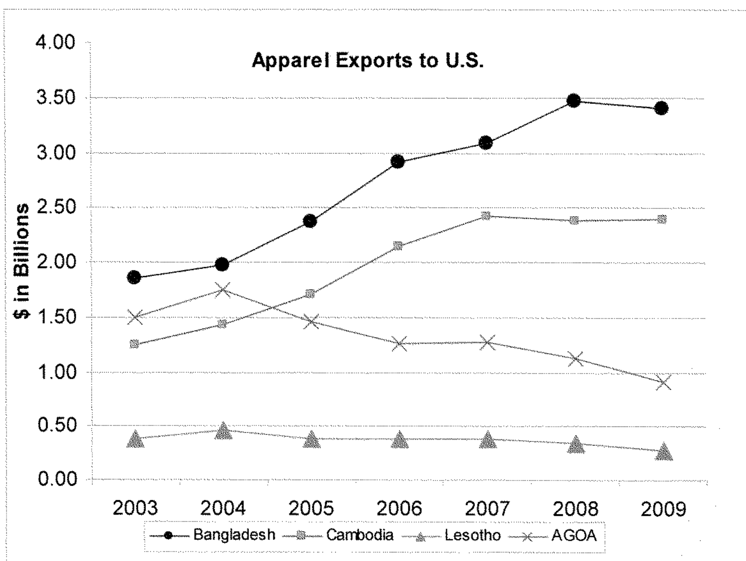

Figure 1

AGOA as a Model for Reform

Despite these challenges AGOA remains a successful model. AGOA's annual review process has spurred important reforms across sub-Saharan Africa, and the annual AGOA Forum has proved a successful model for advancing implementation issues and broader trade facilitation agreements between the U.S. and Africa. While the temporary nature and stunted extension of AGOA benefits has limited the investment response achieved under AGOA, Lesotho does remain a case study in how simple, generous, and targeted trade benefits may spur industrial development in even the most remote and underdeveloped regions. Additionally, it is important to note that the Government of Lesotho (GoL) has pursued a variety of additional efforts to support development of the textile and apparel sectors, including the development of industrial infrastructure, discounted rates on factory rent, and a variety of labor development and tax incentive programs. These programs have been critical to ensuring investment response from abroad and necessary in terms of facilitating export from small and large producers alike.

Adding EIAP to the US Preference Toolkit

While granting direct apparel benefits to super-competitive industries in Asia would devastate African industry, a means exists to reinforce AGOA while at the same time offering limited preferences to Bangladesh and Cambodia. Fashioned after the "Earned Import Allowance Programs" (EIAP) already in effect under CAFTA/DR and the Hope for Haiti program, the proposed AGOA EIAP program would allow U.S. apparel importers to earn the right to import apparel duty-free from Bangladesh and Cambodia by continuing to import apparel from Africa under AGOA.

Under the proposed AGOA EIAP, qualified U.S. apparel importers would earn credits authorizing the duty-free importation of a corresponding square meter equivalent (SME) volume of apparel from Bangladesh and Cambodia by first importing apparel from Africa under AGOA. For apparel imported from Africa made with third-country fabric, the corresponding duty credit would be one-for-one. In order to encourage vertical integration in the African textile-apparel sector, which will enhance the competitiveness of the industry, the duty credit would be two-for-one for apparel made in Africa using regional yarn/fabric.

This EIAP proposal creates a win-win for Africa and Bangladesh/Cambodia. It rewards U.S. apparel buyers who continue to source in Africa, while at the same time providing a corresponding preference for Bangladesh and Cambodia. In addition, the EIAP provides an incentive for investment in the upstream textile sector in Africa, which in time will enhance Africa's ability to compete with already-competitive Bangladesh and Cambodia.

Recommendations for US Policies and Programs

As Congress considers changes to trade preference programs, the Government of Lesotho provides the following key messages for consideration:

- As a prerequisite for reform, Congress should move in the near term to extend certain key aspects of the current framework of US preferences, including programs such as AGOA, and critical portions of AGOA, such as the special rule for least developed countries, or 'third country fabric'. This will provide the policy consistency needed to provide for a stable investment environment. By contrast, allowing AGOA to expire in 2015 sends exactly the wrong message to investors and buyers and will only exacerbate the closure of factories in Africa. The third country fabric sourcing provisions under AGOA are excellent examples of flexible rules of origin that have benefited African apparel producers. Sub-Saharan Africa has witnessed a decrease in the number of apparel operations as well as a decrease in the supply of materials as the cost is not competitive with Asian manufacturers. It is essential to allow manufacturers the use of third country materials in order to keep the existing industry operational.

- Congress should work to focus benefits more broadly on least developed countries, and specifically on job-creating industries which require assistance in these countries. This is the path to real poverty reduction, as Africa has witnessed to an extent under AGOA.

- Congress should account for the fact that expanding the US trade preference scheme will impact current preference program beneficiaries, and work to limit any negative impacts. Congress should account for the industrial competitiveness of beneficiary countries which are added to any new preference scheme, and ensure that preference benefits are focused on industries which require relief in order to gain foothold in the US market. This point is particularly important as Congress considers, as some have already proposed, granting apparel preference to the extremely competitive industries of least developed countries such as Bangladesh and Cambodia. Should the US confer any new apparel related trade benefits to these already super-competitive countries, sub-Saharan Africa and other regions around the world will lose market share – in some cases entirely – directly to these new trade preference program beneficiaries, resulting in the loss of hundreds of thousands of jobs in both LDC and non-LDC countries.

- In order to create new incentives for trade with all LDCs, without undermining the position of AGOA beneficiaries, Congress should consider the above outlined AGOA EIAP program to allow U.S. apparel importers to earn the right to import apparel duty-free from Bangladesh and Cambodia by continuing to import apparel from Africa under AGOA.

- Congress should work to couple trade preference to trade capacity assistance and enact new investment incentives to encourage vertical integration of the textile and apparel industries in LDC AGOA beneficiary countries.

- Congress should consider enacting new funding for industrial infrastructure related to textile and apparel production and support additional financing mechanisms for private sector investments in the water, power, and transportation infrastructure sectors. The global financial crisis has exacerbated the cost of capital for these already capital intensive projects, making government intervention or special partnership mechanisms all the more necessary.

Conclusion

If urgent measures are not taken to address the above challenges, there is a very serious likelihood that in only a few years, sub-Saharan African developing and least developed countries like Lesotho will face economic collapse in their nascent textile and apparel industries. This would mean the loss of thousands of jobs in the world's poorest region and the unraveling of much of the progress achieved by AGOA and other preferential trade programs aimed at encouraging development through trade in Africa. We remain hopeful that Congress will not introduce changes that will negate achievements attained under preference programs like AGOA.

The GoL welcomes the continued engagement and support from the US to facilitate trade development in Africa, and the opportunity to work with investors and our other international partners in trade to facilitate investment in Lesotho's textile and apparel sectors.

I again thank the Senate Finance Committee for the opportunity to express the views of the Kingdom of Lesotho and contribute to this important hearing.

Yours sincerely,

David Mohlomi Rantekoa

Ambassador of the Kingdom of Lesotho to the United States of America

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Lesotho
Textile Exporters
Association

AGOA Must Be Reinforced To Continue Its Success

Statement for the Record of the Senate Finance Committee
Hearing on U.S. Trade Preference Programs
March 9, 2010

The Lesotho Textile Exporters Association (LTEA) is pleased to submit these comments to the Senate Finance Committee in connection with its March 9, 2010 hearing on reform of U.S. trade preference programs.

The LTEA is the trade association of the textile and apparel manufacturers and exporters of Lesotho. The LTEA's membership consists of 23 companies, employing some 39,000 workers engaged in manufacturing textiles and apparel products for export to the United States under the African Growth and Opportunity Act (AGOA).

AGOA was a huge success during its first five years in effect, 2000-2004. U.S. apparel imports from Africa nearly tripled, and as a result, more than 300,000 new jobs were created in 15 African countries. In Lesotho, textile and apparel industry jobs grew from 16,000 in 2000, when AGOA was enacted, to 53,000 by 2004. Over 85% of these workers are women, many of whom are the sole breadwinner for their families. The textile and apparel industry is by far the largest private sector employer in Lesotho. Apparel exports under AGOA constitute virtually the only exports from Lesotho to the United States.

The success of the AGOA textile and apparel program was completely dependent upon the duty-free preference for the AGOA LDCs, which makes apparel produced in AGOA countries cost-competitive with Asian countries like Bangladesh, Cambodia, and Vietnam. This duty preference, approximately 16% on cotton apparel, offsets the higher costs of production in AGOA LDCs due to geographic disadvantages, poor infrastructure, longer lead time, more expensive transportation costs, and higher labor costs as compared to Asian LDCs like Bangladesh.

But AGOA's success changed in 2005 when, pursuant to the Uruguay Round Agreements, the Multi-Fiber Arrangement (MFA) system of quotas expired, exposing AGOA's infant apparel industry to unfettered competition from super-efficient Asian apparel giants, including China, Bangladesh, Cambodia, and Vietnam. Since 2005, U.S. apparel imports from Asia have skyrocketed, while those from Africa have fallen sharply. In Lesotho, textile and apparel employment has fallen from 53,000 to 39,000. Lesotho currently has unemployment of 40%. It is unlikely that any workers laid off from their textile and apparel jobs will be able to find alternative employment.

Imports from Various Regions

Before and After the End of the MFA
2000 vs. 2004 vs. 2009

Region	2000 msme	2004 msme	2009 msme	% Growth 2004-2009
World	16,035.349	19,950.996	21,317.080	6.9%
China	929.159	2,972.523	8,623.185	190.1%
Vietnam	29.991	777.055	1,612.189	107.5%
Haiti	124.784	153.573	237.716	54.8%
India	399.232	609.338	907.368	48.9%
Bangladesh	966.612	941.685	1,383.547	46.9%
Pakistan	330.206	519.282	638.103	22.9%
Cambodia	253.682	634.683	750.693	18.3%
CBI (non-CAFTA)	274.233	228.231	240.456	5.4%
CAFTA	3,376.667	3,790.834	2,593.293	-31.6%
Sub Saharan Africa	**164.161**	**440.300**	**238.506**	**-45.8%**
Andean Region	159.199	252.745	117.401	-53.6%

The trend lines are clear. If nothing is done to maintain the African apparel industry, in a few years it will disappear. If this is allowed to happen, AGOA, the cornerstone of U.S. economic policy concerning Africa for the past decade, will become just another failed experiment. And worse yet, if AGOA-style trade preferences are extended to already-competitive Asian LDCs like Bangladesh and Cambodia, the demise of the African textile and apparel sector will only be accelerated.

A bedrock principle of any reform of U.S. trade preference programs, therefore, must be to do no more harm to AGOA. The conventional response to this conundrum is to exclude textile and apparel products from any new preferences to be extended to already competitive LDCs, especially Bangladesh and Cambodia. But it is possible to provide trade preferences to textiles and apparel products from Bangladesh and Cambodia without harming – and indeed actually further reinforcing – the AOGA textile and apparel sector.

Patterned after the "Earned Import Allowance Programs" (EIAP) already in effect under CAFTA-DR and the HOPE Act for Haiti,[1] this new AGOA EIAP proposal

[1] *See, e.g.*, Harmonized Tariff Schedule (HTS) of the United States, Section XXII, Chapter 98, Subchapter XXII, U.S. Note 27 and Subheading 9822.06.05; Presidential Proclamation 8323, 73 Fed. Reg. 72677 (November 28, 2008); Department of Commerce Interim Regulations, 74 Fed. Reg. 3563 (January 21, 2009).

would allow U.S. apparel importers to earn the right to import apparel duty-free from non-African least developed countries (LDCs)[2] by importing apparel from Africa under AGOA. This "more than duty-free" incentive for continuing to source apparel from Africa will provide the additional encouragement necessary for the AGOA apparel program to survive the unprecedented competition from Asian apparel giants.

A handful of product categories are of critical importance to AGOA, representing 95% of U.S. apparel imports from Africa: knit shirts (Categories 338, 339, 638, 639), trousers (347, 348, 647, 648), woven shirts (340, 341, 640, 641), coats (333, 334, 335, 633, 634, 635, 643, 644), and sweaters (345, 445, 446, 645, 646). These key products would be subject to the EIAP that would be applicable to already-competitive LDCs Bangladesh and Cambodia. All other apparel products could be imported duty-free and without limit from all LDCs, including already-competitive LDCs. And non-competitive, non-AGOA LDCs (such as Haiti) would have unlimited duty-free access for all apparel products.

As an alternative to the proposed EIAP for AGOA, a tariff rate quota (TRQ) could be imposed on key apparel products (knit shirts, trousers, woven shirts, coats and sweaters) from already-competitive LDCs. The TRQ would be set at the level of actual imports of such products under AGOA. The TRQ would increase in the future only if, and to the extent that, imports of such products under AGOA increase. This linkage between duty-free imports from AGOA and from Bangladesh and Cambodia will provide duty-free benefits to the latter without unduly foreclosing business opportunities from the former. Imports from noncompetitive LDCs, including Haiti, would not be subject to the TRQ and would be 100% duty free.

In order to maximize the incentives for continued imports under AGOA, which likewise maximizes duty-free access for Bangladesh and Cambodia, it is essential to ensure that the benefits of DFQF apparel imports from Bangladesh and Cambodia flow primarily to the companies that import from Africa (*i.e.*, "no free riders"). To achieve this goal, the U.S. Department of Commerce's Committee on the Implementation of Textile Agreements (CITA) could issue certificates of quota eligibility (CQEs) to companies that have imported apparel under AGOA. The CQE would give that company the right to import duty-free the same volume of apparel from Bangladesh and/or Cambodia under the TRQ.

Equally important, in order to provide access under the TRQ for companies that have not been sourcing from Africa, the CQEs could be tradeable. In other words, companies not sourcing from Africa could buy CQEs from companies sourcing from Africa. Such tradeable CQEs would provide a "better than duty-free" benefit for companies sourcing apparel from Africa as the revenue earned from selling CQEs would reduce their cost of importing from Africa. This should be a significant incentive to continue to source in Africa.

Other important changes to AGOA that would help retain U.S. orders in the African textile and apparel sectors would be to extend both the overall AGOA authorization and the third-country fabric provision beyond their current expirations in

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[2] Non-African LDCs eligible to participate in the AGOA EIAP would be those meeting the United Nations definition of LDCs.

2015 and 2012, respectively. LTEA proposes these provisions should be made permanent. Such an extension should help provide stability and continuity in the AGOA apparel sector.

The LTEA appreciates the Committee's consideration of its suggestions on these important issues, which are critical to the continued success of AGOA. The LTEA will be happy to provide any additional information requested by the Committee.

Respectfully submitted,

Lin Chin Yi

Mr. Chin Yi Lin
President
Lesotho Textile Exporters Association

National Retail Federation®
The Voice of Retail Worldwide

March 9, 2010

The Honorable Max Baucus
Chairman
United States Senate Committee on Finance
219 Dirksen Building
Washington, DC 20510

RE: Hearing on U.S. Preference Programs Options for Reform

Dear Chairman Baucus:

On behalf of its members in the U.S. retail industry, the National Retail Federation (NRF) welcomes the opportunity to submit these comments to the Senate Finance Committee regarding the U.S. trade preference programs and options for reform, including how U.S. preference programs fit into retailers' sourcing strategies.

The **National Retail Federation** is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet, independent stores, chain restaurants, drug stores and grocery stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.6 million U.S. retail establishments, more than 24 million employees - about one in five American workers - and 2009 sales of $4.1 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations.

Introduction

The retail industry has strongly supported U.S. trade preference programs for developing countries, such as the Generalized System of Preferences (GSP), the African Growth and Opportunity Act (AGOA), the Caribbean Basin Initiative/Caribbean Basin Trade Preferences Act (CBI/CBTPA), the Andean Trade Preferences and Drug Eradication Act (ATPDEA), and the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act. U.S. retailers have used the preference programs to import a variety of consumer goods. In the process, they have provided needed export markets for poor countries, jobs and economic opportunity for people in those countries, particularly women, and greater value to U.S. consumers, particularly lower-income Americans, on products they need and want.

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Importance of Preference Programs to U.S. Retailers

Retailers source the globe for the consumer products they sell to their customers. Retailers are also experiencing the most challenging time for their businesses in decades as U.S. consumers become increasingly price-conscious due to the adverse impact the current economic climate has had on jobs, housing prices, and incomes.

For better or for worse, U.S. government policies, rules, and programs play an important role in retail sourcing decisions and strategies. While the weight of each factor varies with the retailer, in general, retailers look at a number of criteria in deciding who will supply the products they sell – ability to meet product quality and quantity specifications within a target price point, reliability in meeting order deadlines, compliance with codes of conduct, and (landed-duty (i.e., overall) cost. While cost is not usually the only factor driving sourcing decisions, it is an increasingly important consideration as competition for the consumer dollar among retailers has become more intense. In addition, U.S. tariffs are quite high for many consumer goods sold by retailers, notably apparel (15.8 percent trade-weighted average non-preferential tariffs), glassware (14.2 percent), footwear (10.4 percent) and bicycles (9.8 percent), to name a few. Preference programs can contribute significantly to lowering some portion of the overall cost by eliminating the tariffs, particularly as many high-tariff consumer goods are typically those that developing countries are most able to produce.

Retailers make use of every U.S. preference program offered, however, the industry's enthusiasm for these programs varies depending on how "business friendly" and easy to use the program is. From a retail/importer perspective, GSP has a very workable rule of origin and applies to most developing countries. However, GSP does not cover products of major importance to retailers, including apparel and footwear. AGOA, CBTPA, and ATPDEA cover apparel and footwear; however, these programs have much more complicated rules of origin that are more difficult to administer and raise compliance costs, thereby discouraging many retailers from using them. Each of these programs also expires periodically, which creates unpredictability for sourcing plans, which is costly to retailers who must maintain complicated supply chains and make long-range business decisions in a just-in-time environment.

While Congress approved a two-year extension of the CBTPA and HOPE preference programs as part of the 2008 farm bill, GSP and the ATPDEA expire on December 31, 2009, after a short-term extension. NRF and the retail industry have consistently advocated long-term renewals of these programs, and, most immediately, for renewal before the expiration date. In addition, based upon our long experience with these programs, we would like to suggest ways they all could be improved.

How to Make Preference Programs Better

Notwithstanding their benefits, the preference programs have several flaws that prevent them from fully achieving their goal of assisting developing countries to integrate and engage more successfully in the world economy. Therefore, we endorse efforts in Congress to ensure that our trade preferences operate more effectively for both beneficiary countries and U.S. users of the programs, who are an essential component to their success.

First, the preference programs share one major problem that we have frequently discussed regarding the free trade agreements. There are simply too many programs with too many separate, and in some instances, complicated rules. In addition, these programs are temporary and require periodic reauthorization with the recurring challenge of securing sufficient offsets under Congressional budget rules. These problems create inefficiencies, added costs, and unpredictability that can become significant disincentives to using the programs.

To correct this problem, the current programs need to be consolidated into one permanent program with one set of simple and easily-administered origin rules. To this end, we recommend adoption of the current GSP rules that determine origin based on substantial transformation plus 35 percent value added.

Another problem with the preference programs is that many of the poorest countries lack the ability to take full advantage of the benefits they have been provided due, in part, to inadequate infrastructure, inability to obtain investment capital, limited access to raw materials and other inputs, and a low-skilled and poorly-trained workforce. In many instances, the duty preferences are simply not enough to overcome these substantial hurdles, which impose sizable costs on U.S. companies seeking to do business in those countries. Therefore, capacity building and trade financing are essential elements in any successful effort to assist developing countries and allow them to take advantage of the benefits they have been provided.

We caution, however, that reducing or eliminating preferences for certain more advanced developing countries, such as India and Brazil, will not result in any significant shift in preferential trade to the least developed countries. Instead, that trade will move either to China or other more advanced developing countries, such as Turkey. In addition, such action would be very disruptive and costly to the business operations of U.S. companies that have relied on program.

Finally, it is essential to expand product coverage, particularly on products such as apparel and footwear, that developing countries are most capable of making, but are still subject to substantial U.S. tariffs.[1] In most instances, these products are

[1] Some of the largest trade barriers imposed by the United States are on consumer goods imported from least developed countries. For example, three high-tariff products that are produced mainly in LDCs – footwear, textiles and apparel – account for only 7 percent of U.S. trade, but fully one half of all duties collected by customs. Not only do these trade barriers hurt the economies and workers in some of the poorest countries in the world, but the assessed duties are highly regressive, falling most heavily on poor Americans.

already imported to a significant degree, and the largest supplier is China. Making these products eligible for duty-free treatment would assist developing countries to gain a stronger foothold in the U.S. market and compete more effectively for business in the global economy. Continuing to exclude these products will not protect U.S. manufacturers from import competition, will limit retail sourcing options beyond China, and will hinder achieving the development goals of our preferences regime.

We have learned much, both good and bad, from the many preference programs the United States has extended to developing countries since 1974. In contemplating how U.S. preference programs could be revised, we should aim to keep the good and jettison the bad.

Among the "good" lessons, we know that many U.S. duties present significant cost hurdles to importing products from any country, but particularly least developed countries, and programs that eliminate those duties do encourage trade with the beneficiary countries. We know that those costs savings, creating business for poor countries, also get passed down to the final prices of the goods retailers sell.

The "bad" lessons include restrictions inserted into the preference programs, typically to appease the protectionist objectives of some domestic industry that feels threatened by import competition. These restrictions make sourcing from developing countries under a preference program difficult for importers as well as developing country exporters, as they require a sophisticated technical knowledge of the rules of origin that many do not have, and the risk of exposure to legal and financial penalties for even small mistakes. Examples include the "yarn forward" rule of origin in the original version of AGOA that made sourcing apparel from sub-Saharan Africa nearly impossible and necessitated the addition of exceptions to that rule to ensure that this initiative could actually promote trade in these products.

Other, more sweeping restrictions include the exclusion from GSP benefits of broad categories of products that just happen to be those goods that least developed countries are most competitive at making. Apparel and footwear are two significant examples. The conclusion is that the value and commercial viability of market access is directly dependent on what the rules are – bad rules that are overly complicated and restrictive kill trade; good rules that are consistent with how companies actually conduct business and manage their supply chains will promote trade and investment.

Another significant problem associated with current trade preference programs is their temporary nature. Congress must pass legislation authorizing these programs, which typically has an expiration date. Lead-times for retailers from the time a product is ordered to the time it arrives on a store shelf are typically six to nine months. Therefore, as a preference program expiration date approaches and the ability of Congress to pass a timely extension becomes questionable, retailers and others are forced to make alternative sourcing plans. This disruption becomes yet another disincentive to using these programs.

Thus, the chief goal of preference programs – poverty reduction through increased trade – is frustrated by product restrictions and narrow rules of origin in current U.S. preference programs, and by their temporary nature. We should not make the same mistakes with any changes Congress contemplates to our preference programs.

NRF appreciates the opportunity to comment on U.S. preference programs and looks forward to working with the Committee on any legislative initiatives it may take to improve the operation of these programs. Should you have any questions please contact me at (202) 626-8104 or by e-mail at autore@nrf.com.

Sincerely,

Erik O. Autor

Erik O. Autor
Vice President, Int'l Trade Counsel

cc: The Honorable Charles Grassley (R-IA), Ranking Member
The Honorable John D. Rockefeller IV (D-WV)
The Honorable Kent Conrad (D-ND)
The Honorable Jeff Bingaman (D-NM)
The Honorable John F. Kerry (D-MA)
The Honorable Blanche L. Lincoln (D-AR)
The Honorable Ron Wyden (D-OR)
The Honorable Charles E. Schumer (D-NY)
The Honorable Debbie Stabenow (D-MI)
The Honorable Maria Cantwell (D-WA)
The Honorable Bill Nelson (D-FL)
The Honorable Robert Menendez (D-NJ)
The Honorable Thomas R. Carper (D-DE)
The Honorable Orrin G. Hatch (R-UT)
The Honorable Olympia J. Snowe (R-ME)
The Honorable Jon Kyl (R-AZ)
The Honorable Jim Bunning (R-KY)
The Honorable Mike Crapo (R-ID)
The Honorable Pat Roberts (R-KS)
The Honorable John Ensign (R-NV)
The Honorable Michael B. Enzi (R-WY)
The Honorable John Cornyn (R-TX)

Embassy of the Republic of Mauritius

MEW/ECO/1/2010/I **8 March 2010**

Dear Honourable Baucus,

Submission of Mauritius
to the Senate Finance Committee Hearing on
US Preference Programs: Options for Reform
Tuesday, March 9, 2010 at 10:00 am

I would like to forward herewith a submission by Mauritius for the record of the Senate Finance Committee hearing on US Preference Programs: Options for Reform scheduled to be held on Tuesday 9 March 2010.

We sincerely hope that our views would be given due consideration during the course of the very important work being done by the Committee on this issue.

Please accept, Honourable Baucus, the assurances of my highest consideration.

Yours sincerely,

J. Nayeck
Chargé d'Affaires, a.i.

Hon. Max Baucus
Chairman
Senate Finance Committee
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SUBMISSION OF MAURITIUS

TO THE SENATE FINANCE COMMITTEE HEARING

ON U.S. PREFERENCE PROGRAMS: OPTIONS FOR REFORM

TUESDAY, MARCH 9, 2010 AT 10:00 AM

For the past decade, AGOA has proved to be a successful US Policy towards Sub Saharan Africa (SSA) and has facilitated the integration of one of the poorest regions of the world into the global economy. Its full potential has yet to be fully unleashed, which, it is believed will happen once supply capacity is developed, in particular through FDI.

AGOA has been a serious shock absorber in the aftermath of the Multifibre arrangement. It has again proved its usefulness during the financial and economic crisis. Without AGOA, the garment industry in SSA would have collapsed already. Another challenge is now looming in the form of the intended reform of the US preference program which may put the SSA garment industry on the same footing as that of some of the most competitive suppliers in the world. It has proved difficult to compete with these suppliers even with a relatively high margin of preference. Closing that margin of preference through the preference reform program may ring the death toll for the SSA garment industry.

African countries have been exposed to fierce competition from bigger developing countries in Asia with lower-cost labour and already well-developed textile and apparel sectors. Exports of apparel from AGOA countries to the US have declined by 41% (value) and 47% in volume between 2004 and 2009. Incidentally, exports of apparel items from significant non-AGOA LDC apparel producers have increased by some 55% for the same time period. This has happened even without the same duty-free benefits enjoyed by SAA countries. It is a clear testimony that these non-AGOA, LDC countries have been the biggest beneficiaries of the MFA phase-out, while the SAA countries have been the biggest losers.

Moreover exports from the SSA region to the US remain largely undiversified despite the vast market access opportunities brought by AGOA. Numerous reasons account for this, among others poor infrastructure, lack of buyer-seller information, strict requirements for agricultural exports as well as stringent rules of origin requirements in certain cases.

In this perspective Mauritius fully supports providing development assistance to non-AGOA LDCs, however, the price of such assistance should not be borne by the AGOA beneficiaries through diminished opportunities of their exports. Accordingly, it is imperative for any preference reform proposal by the US Congress to include improvements to the existing AGOA legislation so as to enable beneficiary countries to continue to develop and integrate their economies, and at the same time, preference reform legislation must not directly undermine existing AGOA preferences.

Consequently, the Preference Reform Program should take into consideration the following crucial elements:

(I) Make AGOA permanent with a view to providing greater predictability to investors.
The lack of predictability and stability created by the expiration of AGOA will drive investors/buyers away from Africa. Moreover, the uncertainty over whether AGOA beneficiaries will have apparel benefits after 2015 will drive buyers to other competitive LDCs outside Africa. In the event that different programs are applicable to LDCs and non-LDCs within Africa, regional integration will be undermined on the African continent. Accordingly, the distinction between LDC and non-LDC beneficiaries under AGOA should be eliminated, and all AGOA countries should be considered LDCs.

(II) Renewal of the third country fabric provision till AGOA countries becomes competitive enough in textile production.

(III) Exclude from the Preference Reform Proposals for non-AGOA LDCs those apparel categories which are very sensitive for Sub Saharan African countries, namely knit tops, woven shirts, sweaters and trousers.

These products account for 95% of Sub Saharan African countries exports to the US. Alternatives to the exclusion of these sensitive products could be the adoption of measures to encourage continued apparel sourcing in Africa while at the same time providing limited benefits to already-competitive non-AGOA LDCs, such as:

(a) an Earned Import Allowance Program (EIAP) whereby every garment made in AGOA countries and sourced by US importers would give them the right to import an equivalent amount of apparel from the LDCs not part of AGOA. A higher ratio in favour of AGOA regional fabric would give an incentive to garment producers in Sub Saharan Africa and would also ensure that they do not deviate from the vertical integration process.

(b) a tariff rate quota (TRQ) on sensitive apparel products from non-AGOA LDCs that would be set at the level of actual apparel imports from AGOA countries.

(IV) Relax rules of origin for canned tuna.
At present, the 35% value addition requirement coupled with the criteria of wholly obtained for the fish is too restrictive for AGOA countries which do not have a national fleet. We propose lowering the value addition to some 10% or to consider a change in tariff heading as originating criteria. Consideration could also be given to allow use of third country tuna in the production of canned tuna for some specified volume (e.g., 30,000 tons) for AGOA beneficiaries.

(V) Exclude sugar from preference reform.
Some preference reform proposals would extend duty-free, quota-free (DFQF) treatment to sugar from LDCs. Experience under the EU's everything but Arms (EBA) initiative has demonstrated that providing DFQF treatment for sugar from LDCs would risk destabilizing the U.S. sugar market, leading to reduced export revenues by those developing countries that are traditional sugar exporters.

(VI) Expand trade-related technical assistance to encourage product diversification.

March 2010

Embassy of the Republic of Mauritius

1709 N Street, N.W.,

Washington, D.C. 20036

SUBMISSION FOR THE RECORD

The Honourable Mariano Browne
Minister of Trade and Industry
Government of Trinidad and Tobago

Submitted to the

Senate Finance Committee

Hearings on
U.S. Preference Programs: Options for Reform

23 March 2010

Chairman Baucus, Senator Grassley, and distinguished Members of the Committee distinguished Members of the Committee, the Republic of Trinidad and Tobago welcomes this opportunity to share with you our views on the operation of the Caribbean Basin Initiative (CBI), a program launched in 1983 to facilitate the economic development and export diversification of the Caribbean Basin economies.

Introduction

Before addressing the operation of the program, let me begin by stating how proud we were to host the Fifth Summit of the Americas in April 2009 and the Heads of State and Government of the Commonwealth in November 2009. Several Members from the Ways and Means Committee were part of the Congressional delegation that attended the Summit, led by Chairman Rangel and Chairman Engel of the House Foreign Affairs Subcommittee on the Western Hemisphere. For us, it was a historic event. President Obama set a tone of openness and goodwill that heralds the beginning of a new era in inter-American relations.

This message could not come at a better time given the negative economic and social consequences of the current global crisis. After several years of steady, albeit modest, growth, total U.S. merchandise imports from the Caribbean Basin countries have declined sharply -- by 25 percent.[1] As Prime Minister Manning stressed at the Summit, given the enormity of the crisis, "Unilateral action alone will likely be ineffective. There is a need for even greater economic and commercial ties among the countries of the Americas." Renewal and rejuvenation of the CBI program can play an important role in helping to arrest this abrupt decline in CBI imports and in continuing to strengthen bilateral trade, as well as regional trade among the countries of the Caribbean Basin.

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[1] Given the changing composition of CBI beneficiaries during the years of CAFTA's rolling entry-into-force, this statement includes both current and former CBI beneficiaries. Total U.S. imports grew every year between 2005 and 2008, for a compound annual growth rate of 3 percent. Jan.-July 2009 data are latest available.

My submission will focus on four areas. First, I would like to highlight Trinidad and Tobago's recent performance with regard to CBI eligibility criteria. Second, I want to emphasize the importance of timely program extension and of retaining those program aspects that have done well. Third, I want to stress the need to reinvigorate the program in light of CAFTA-DR's entry into force. *In particular, the Government of Trinidad and Tobago is advancing a specific proposal that we respectfully ask be included in any preference program extension that might take place later this year or next.* Finally, I will explain briefly how our proposal would benefit Trinidad and Tobago, our Caribbean neighbors, and the United States of America.

I. Eligibility Criteria

First, with respect to our recent performance, Trinidad and Tobago has met all the CBI eligibility criteria and more. *Our government already has the "Triple Crown" of a double taxation agreement, a bilateral investment treaty and an intellectual property rights agreement with the United States.* In November 2008, we took another quantum leap forward in providing TRIPS-plus intellectual property protection by acceding to the WIPO Internet Treaties, which update our TRIPS obligations to protect online digital content.

In making the transition from an oil-based economy to one based on natural gas, we also have become an even more important source of energy security for the Americas and are now the *largest supplier of liquefied natural gas (LNG) to the United States*. We worked closely with the United States in developing the energy conservation, renewal and security themes that had such a prominent role at the 5th Summit of the Americas this spring, and we have advocated for a similar agenda when we hosted the Commonwealth Heads of Government Meeting in November 2009.

II. Essential Program Elements

The Caribbean Basin Initiative is a broad program aimed at promoting the diversification of beneficiary Latin American and Caribbean economies and expanding their exports. The CBI program is comprised of two parts, namely:

a) the Caribbean Basin Economic Recovery Act (CBERA) which offers duty-free entry to the United States on a permanent basis for a broad range of items from CBI beneficiary countries; and,

b) the U.S.-Caribbean Basin Trade Partnership Act (CBTPA). The CBTPA is the most recent piece of CBI legislation and provides preferential, but temporary, access to the U.S. market similar to Mexico's under the North American Free Trade Agreement (NAFTA).

CBTPA became effective on October 1, 2000, and is scheduled to expire after September 30, 2010. It has two key features: 1) it allows specific textile and apparel articles to enter the United States free of duty or restrictions on quantity, provided certain conditions are met; and 2) it extends NAFTA parity to non-textile articles that were previously excluded from duty-free treatment under CBERA.[2]

Program Participation and Extension -- Between 5-13 percent[3] of our exports benefit from duty-free treatment under CBERA. While permanent in U.S. legislation, we are very grateful that the Obama Administration recently secured a needed WTO waiver until end-2014. CBERA benefits will be even more important to Trinidad and Tobago in the future, as Trinidad and Tobago is slated to graduate from the GSP program effective January 1, 2010.

Even more important in our case, however, are CBTPA's benefits, as CBTPA extends duty-free treatment to our exports of petroleum and petroleum products. Were CBTPA to expire in September 2010 as provided in existing legislation, it could have a tremendous negative impact on Trinidad and Tobago's exports because *almost one-quarter* of all our exports to the United States would be subjected to higher tariffs.

For all these reasons, it is critical for Trinidad and Tobago to continue to be among CBI's beneficiary countries and for CBTPA be extended in a timely manner prior to its scheduled expiration. Expiration of CBTPA would be disadvantageous to the United States as well, since without CBTPA the export sales of U.S. textile manufacturers to the Caribbean would fall; the cost of many oil-based products would rise; and U.S. consumers would no longer benefit from a source of low-cost imports for products that otherwise carry some of the highest U.S. tariff rates.

Ethanol -- Trinidad and Tobago is the fourth major supplier[4] of ethyl alcohol to the United States. Under current U.S. policy, ethanol imported into the United States is subject to two customs duties: an ad valorem tariff rate of 2.5 percent and a secondary tariff of 54 cents per gallon. However, u*nder the Caribbean Basin Initiative, ethanol may be imported duty free.*[5] CBI governments and ethanol producers have worked for years in a bipartisan manner to maintain and support the duty free ethanol preference provisions in CBI and to ensure that Congress understands the important and complementary role played by CBI ethanol in U.S. renewable energy initiatives. These CBI duty exclusions have provided opportunities to develop an environmentally friendly industry in the Caribbean which contributes to fuel efficiency and less fossil fuel pollution in the United States.

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[2] These products are enumerated under Section 211 of the CBTPA. They include imported footwear, canned tuna, petroleum and petroleum products, watches and watch pans. handbags, luggage. flat goals, work gloves and leather wearing apparel, when qualifying as CBTPA originating goods. A third feature of CBTPA provides duty-free treatment to certain beverages made with Caribbean rum.

[3] Five percent is based on trade statistics compiled by the Ministry of Trade and Industry. The *Seventh Report to Congress on the Operation of CBERA*, prepared by USTR on the basis of U.S. trade data, suggests CBERA imports may be as large as 13 percent of U.S. imports from Trinidad and Tobago.

[4] After Brazil. Jamaica and El Salvador, and ahead of Costa Rica, South Africa and Canada.

[5] If produced from at least 50 percent local feedstock (e.g., ethanol produced from sugarcane grown in the CBI beneficiary countries.) Up to 7 percent of the U.S. market may be supplied duty-free by CBI ethanol containing no local feedstock (i.e., ethanol from other countries can be shipped to a dehydration plant in a CBI country for reprocessing).

Given the importance of Trinidad and Tobago to the energy security of the United States, the Government of Trinidad and Tobago recommends that the CBI ethanol duty-free regime be maintained unchanged so as not to further disrupt our current relationship in energy trade, especially as the value of our ethanol exports to the United States already has plummeted by almost 70 percent so far this year. This important benefit can assist our own recovery once U.S. demand for ethanol returns as the U.S. economy rebounds.

Merchandise Processing Fee -- *Finally, it is imperative that the CBI program retain its current exemption from Custom and Border Protection's merchandise processing fee (MPF).*[6] All of the U.S. free trade agreements currently operating in the Americas (NAFTA, Chile, CAFTA-DR, Peru) have this exemption. Without it, duty-free imports from CBI countries would be at, roughly a 5 percent price disadvantage to similar goods from FTA countries.

III. Creative Thinking for the Next Phase

The United States is Trinidad and Tobago's largest trading partner, absorbing approximately 60 percent of our exports and providing 25 percent of our import needs. The Government of Trinidad and Tobago is seeking to diversify its economy in order to reduce our economy's dependence on the energy sector and to achieve self-sustaining growth. In this regard, the Ministry of Trade and Industry is leading efforts to develop seven sectors which have the potential for significant employment generation and revenue earnings.[7] As part of its diversification drive, Trinidad and Tobago is seeking to exploit the production and export potential in the downstream energy industries. One of these sectors -- printing and packaging -- would use our natural gas resources to diversify inter alia into products derived from local polypropylene and polyethylene.

Regrettably, we are seeing these plans dashed. While we applaud the CAFTA-DR's economic reforms and opening to the United States, the ability of these six counties to declare CAFTA origination for their production has robbed the operation of the CBI program of critical energy.[8] If one looks at just duty free U.S. imports from the current (remaining)19 CBERA beneficiary countries, along with preferential U.S. imports from the eight CBTPA beneficiaries, the growth of U.S. imports under the CBI program has been flat since the passage of CAFTA-DR in 2005. CBI imports were $3.45 million in 2005 and an almost identical $3.47 in 2008. Even more alarming, CBI imports are down 56 percent so far this year, more than twice the rate I mentioned at the beginning of my submission for *total* imports from Caribbean Basin countries.[9] It stands to reason that as former CBI beneficiaries have more and better options for claiming preferential access to the market for their production there is less opportunity for those remaining

[6] The merchandise processing fee (MPF) is 0.21 percent ad valorem on formally-entered imported merchandise, subject to a minimum fee of $25 per entry and a maximum fee of $485 per entry.

[7] Selected by the Standing Committee on Business Development (SCBD), a public-private advisory committee to the Cabinet, the seven sectors include: yachting; fish and fish processing; merchant marine; music and entertainment; film; food and beverage; and *printing and packaging*.

[8] For purposes of determining the value-added requirement §27030)(1)(13) the term "beneficiary country" includes "former beneficiary countries" but the merchandise must have been produced in a current beneficiary country, i.e., substantially transformed into a new or different article of commerce in a current beneficiary country.

[9] U.S. CBI imports during Jan-July 2008 were $2.2 billion, and only $1.3 billion during the comparable 2009 period.

to make use of the CBI program for its intended purpose -- "to facilitate the economic development and export diversification of the Caribbean Basin economies."[10]

Only a few years ago, Trinidad and Tobago could have packaged goods for retail sale that had been substantially transformed in the CAFTA-DR countries and the article would still have qualified as a CBI originating good if it could meet the CBI value-added rule. There would have been no concept of transshipment between Central America/the DR and the other CBI beneficiaries.[11] Most importantly, while the packaging operation itself would not have conveyed CBI origin, it would not have ruled out CBI origin either. Indeed, the packaging materials (if of CBI origin) would have counted toward the CBI value content rule just as the CAFTA-DR inputs would.[12] That is no longer the case. §2703(a)(2)(a) specifically states that "mere" packaging operations in CBI beneficiaries are not sufficient to establish duty-free treatment under CBI. Thus, rather than a potential pool of $13 billion of goods to package for retail sale and still claim the CBI duty preference, Trinidad and Tobago is limited to what is left in the current CBI beneficiaries' qualifying pool of merchandise, or only $3.5 billion.[13]

<u>Legislative proposal</u> -- *We believe this unintended situation,* which drastically curtails Trinidad and Tobago's development opportunities, *needs to be addressed as soon as possible.* Proposed draft language appears in an attachment, and we would be happy to work with the Congress and USTR to refine it. But *the fundamental idea is simple -- production that occurs in the six CAFTA-DR countries that would otherwise qualify as originating under CAFTA-DR can be shipped to a CBI country and count as CBI originating content if the good is packaged in the Caribbean using local material.*

Moreover, there are precedents for this approach involving Haiti and the Dominican Republic in the sensitive area of textile and apparel exports.[14] Both of these precedents are a way around a special trade regime's prohibition against transshipment, including performing packaging operations in another country.

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[10] USTR Website, http://www.ustr.gov/trade-topics/trade-development/prefernce- programs/caribbean-basin

[11] CAFTA's transshipment prohibition precludes packaging CAFTA-originating goods in Trinidad and Tobago because such goods lose their CAFTA-origin. CAFTA states that originating goods that subsequently undergo any operation outside of the territories of the Parties to the FTA other than unloading, reloading, or other processes necessary to preserve the condition of the good will lose their originating status. CBP has long held that under this provision packaging for retail sale deprives otherwise eligible goods of their originating status.

[12] Generally 35 percent for items eligible under CBERA and CBTPA's NAFTA parity articles, with a maximum of 15 percent of the appraised value produced in the customs territory of the United States.

[13] In 2008, goods claiming a CAFTA-DR preference were valued at $9.4 billion, while goods claiming a CBI preference were $3.5 billion.

[14] The first exception is an amendment to CBTPA contained in Public Law 109-53, the CAFTA-DR Implementation Act. The intent of the provision is to honor a CAFTA side letter that allows articles that were eligible for CBTPA treatment prior to CAFTA, and that are co-produced by enterprises in a CAFTA Party and a CBTPA beneficiary country, to continue to be eligible for CBTPA benefits after CAFTA's entry into force, even though the CAFTA Party would no longer be a CBTPA beneficiary. (The actual drafting of the provision limited its application to situations involving Haiti and the Dominican Republic.) The second exception also is an amendment to CBTPA, this time in the "Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2008" (HOPE II). HOPE II permits certain textile and apparel articles to be "imported directly from Haiti *or the Dominican Republic*", regardless of which country completed the step that conferred origin.

Applying this experience to Trinidad and Tobago's packaging goals, we would propose amending Section 2703 of the Caribbean Basin Economic Recovery Act to permit duty-free treatment to apply to any article that undergoes production in a *former* beneficiary country and packaging for retail sale in a *current* beneficiary country if (1) the article produced in the former beneficiary country would otherwise be eligible for duty-free treatment under CAFTA-DR; (2) the packaging materials and containers originate in a CBI country; and (3) the product is imported directly into the customs territory of the United States from the CBI country that performs the packaging.

We believe our legislative proposal is consistent with the past Congressional finding that "The Caribbean Basin Economic Recovery Act ... represents a permanent commitment by the United States to encourage the development of strong democratic governments and revitalized economies in neighboring countries in the Caribbean Basin" and the policy of the United States is to "seek the participation of Caribbean Basin beneficiary countries in ... [a] free trade agreement at the earliest possible date." (Both from the "United States - Caribbean Basin Trade Partnership Act" at 19 USC 2701.). Further, the term "former beneficiary country" has the benefit of already being defined in the statute at 19 U.S.C. 2702.

Importantly, our proposal would *just restore the status quo ante*. Prior to CAFTA's entry into force, an article produced in Central America would not have lost its CBI eligibility by virtue of being packaged in Trinidad and Tobago. *As such, the Government of Trinidad and Tobago respectfully requests that this correction be included in any bill to extend U.S. preference programs that might occur later this year. Some urgency applies as the Caribbean is being negatively affected by the global financial crisis.* Real GDP fell sharply in 2008 from 3.4 percent in 2007 to 1.5 percent in 2008, and the IMF projects a further contraction (-0.2 percent) in 2009 before the Caribbean stages a modest recovery in 2010 (1.5 percent).[15] Trinidad and Tobago has also been severaly impacted by these developments -. *In fact, real GDP growth for Trinidad and Tobago has already dropped precipitously from 13.3 percent in 2006 to 3.4 percent in 2008 and the IMF expects it to fall further to 0.5 percent in 2009. We therefore need economic alternatives to help counter these disruptive impacts.*

IV. Benefits of Legislative Proposal for the Region

Our proposal can lead to a deepening of local industry, a greater share of value accruing to the Caribbean, and more product diversification in the CBI program. Moreover, Trinidad & Tobago is committed to playing a leadership role in combating new threats to the stability, rule of law, and democratic process in the Caribbean.

Direct Benefits for Trinidad and Tobago -- The Printing and Packaging Sector is one of severlal that have been selected for further development by Trinidad and Tobago in keeping with its diversification thrust T&T's printing and packaging industry will get a shot in the arm based

[15] The 2007-2008 Caribbean averages are from the recent ECLAC publication, "América Latina y el Caribe: Series históricas de estadísticas económicas, 1950-2008", found at http://www.cepal.org/deype/cuaderno37/datos/4.1.2.xls. Projections are from the International Monetary Fund, *World Economic Outlook, Crisis and Recovery*, April 2009, p. 90, and include Haiti and the Dominican Republic. Both sources provide the same data for Trinidad and Tobago.

on plans[16] to establish a plastics industry through complexes for the production of ethylene, polyethylene, propylene and polypropylene. Important downstream polyethylene and polypropylene manufacturing opportunities include film sheeting, containers, bottles and caps, bags, bowls and cups, future locally-produced inputs for an expanding packaging industry.

Direct Benefits for the Caribbean -- Trinidad and Tobago has fully implemented the obligations of the CARICOM Single Market and Economy (CSME)[17] which provides for the free movement of goods produced in the region, the free movement of accredited skilled personnel and the provision of services provided through a locally established company.

Both CBI rules and the Single Market encourage other Caribbean countries to participate in this benefit. They may do so in a number of ways. First, they can send their own products to T&T for more sophisticated packaging, producing a more competitive product of better quality, price and consumer appeal. Second, they can package CAFTA items locally using T&T materials or other materials produced in the Caribbean, e.g., baskets woven from plant reeds. Third, university graduates of any Single Market country can take advantage of the increased employment opportunities in Trinidad and Tobago for operators, supervisors and apprentices within the local printing and packaging industry, as well as for design artists, advertising and marketing specialists. Finally, Caribbean countries may form strategic alliances within the printing and packaging industry, with its key linkages to many other sectors.

Trinidad and Tobago also has active programs that could assist its CARICOM partners to take advantage of this new opportunity. The main component of the CARICOM Trade Support (CTS) program is a US $16+ million fund established by the Government of Trinidad and Tobago, which is to be disbursed as a loan on an interest free basis to firms in other CARICOM countries to procure technical assistance for business development projects. The Packaging and Printing Industry (PPI) Strategic Plan also calls for enhanced training. For example, last year the world renowned Graphic Arts Technical Foundation (GATF) of the United States designed a two-day training program focused on Caribbean printers and graduates to help fill the technical expertise and skilled manpower that are critically needed in this sector.

Indirect Benefits for the Caribbean and the United States -- The strategic and geographic importance of Trinidad and Tobago within the Caribbean and CARICOM cannot be overstated. Trinidad and Tobago has taken a leadership role in advocating for stronger economic integration and security measures within CARICOM. Our strong economic relationship with CARICOM helps curb illegal immigration to the United States in search of better opportunities. Our stable and democratic government provides a role model for other countries.

Further, Trinidad and Tobago cooperates with the United States on a full range of issues from drug interdiction and health issues to counterterrorism and security affairs:

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[16] See, for example, the world-scale Lurgi/Bassell Gas to Polypropylene Complex which is under evaluation.

[17] All of the 13 member states of the CSME except Suriname are also CBERA-eligible beneficiaries. CBERA beneficiary countries that are not members of the CSME include Aruba, Bahamas, British Virgin Islands, Haiti, Netherland Antilles and Panama.

- The Caribbean is the midway point between illicit drug producers in the South and consumers in the North, with profits from the drug trade often dwarfing the legal economies of CARICOM countries. In 2008, the U.S. Drug Enforcement Agency and its local counterparts seized over 10 tons of cocaine transiting into or through Trinidadian waters.[18] To assist in securing the country's coastline, in 2009 the Government upgraded the Coast Guard HQ in Chaguaramas; two new marine interceptors will form the back bone of a revamped Police Marine Unit, while four more are scheduled; and Trinidad's Coast Guard is expected to receive three of an anticipated six Austal built 30 meter patrol boats (go fast boats).

- With drug trade comes guns and violent crime. Trinidad and Tobago is heavily invested in regional security to help address the fact that the Caribbean now has one of the highest per capita murder rates in the world.[19] To deal with this surge, in May 2009, Trinidad and Tobago signed an "etrace" Memorandum of Understanding with the U.S., an innovative program that uses the Internet to help combat illicit trafficking in firearms.

- As a demonstration of Trinidad's commitment to the region, the CARICOM Implementation Agency for Crime and Security is now headquartered in Port-of-Spain, and our Prime Minister has portfolio responsibility in the CARICOM "Cabinet" for Crime and Security.

- As the largest U.S. supplier of liquefied natural gas (LNG), Trinidad and Tobago plays an important role in Caribbean energy security. Recognizing this, a team of USG experts carried out a vulnerability assessment in 2008 and prepared a report with recommendations on critical infrastructure protection efforts.

- In July 2008, Trinidad and Tobago enacted the "Immigration (Advance Passenger Information) Act, 2008." Further, the Government established the Trinidad and Tobago Immigration Document Examination Laboratory to counter the fraudulent use of travel and identity documents.

- The Government of Trinidad and Tobago cooperates in U.S. extradition proceedings. Notably, in June 2008, the Government approved the extradition of two Guyanese and one Trinidadian accused of plotting to blow up New York's JFK International Airport.

Conclusion

The Caribbean Basin Initiative continues to be of tremendous importance to Trinidad and Tobago. Nonetheless, the advent of CAFTA has left the CBI program as less than the sum of its

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[18] *Fact Sheet on Counternarcotics and Law Enforcement Country Program: Trinidad & Tobago*, U.S. Department of State, January 20, 2009, can be found at http://www.state.gov/p/inl/rls/fs113700.htm

[19] H. Res. 865, introduced by Rep. Yvette Clarke (NY-D) in 2007, calls on the United States to work with Caribbean countries to address crime and violence in the region. The Resolution was highlighted in the House Committee of Foreign Affair's work on the Merida (Third Border) Initiative.

previous parts. We have advanced one thus far one, legislative "fix" to this problem that would support the Government of Trinidad and Tobago's efforts to diversify its economy and increase opportunities to generate employment and new business ventures throughout the region. Given the number of U.S. preference programs that are about to expire, it is inevitable that there will need to be a bill to renew them. We hope the Ways and Means Subcommittee will give our proposal careful consideration and seize the opportunity to restore key aspects of the CBI program. We undertake to add to this dialogue in the coming weeks as we seek to partner with the United States Congress in strengthening the commercial relationship between the United States and the Caribbean.

Thank you for this opportunity to provide our views.

Attachment

ATTACHMENT: PROPOSED LEGISLATIVE CHANGES TO 19 U.S.C. 2703

Amend §2703(a) to add:

(7) Notwithstanding paragraphs I and 2. the duty-free treatment provided under (a) **shall apply** to any article that would otherwise be eligible for duty-free treatment under CAFTA-DR if —

(A) Such article is packaged for retail sale in a beneficiary country using packaging containers and material that originate under (a); and

(B) The article is imported directly from a beneficiary country into the customs territory of the United States.

Amend §2703(b)(5) to add:

(I) Articles that undergo production in a former CBTPA beneficiary **country and packaging in a CBTPA beneficiary country**

(i) Notwithstanding subparagraph (a)(2)(A), duty-free treatment shall apply to any article referred to in subparagraphs (A) through (F) of paragraph (1) that would otherwise be eligible for duty-free treatment under CAFTA-DR if —

(A) such article is packaged for retail sale in a beneficiary country using packaging containers and material that originate under (a): and

(B) the article is imported directly from a beneficiary country into the customs territory of the United States.

United States Senate
Committee on Finance
Hearing on "U.S. Preference Programs: Options for Reform"
Tuesday, March 9, 2010

Written comments for the record by the
Retail Industry Leaders Association (RILA)

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit written comments for today's hearing on U.S. preference programs. RILA strongly supports Congressional action to enhance, simplify, harmonize, and add long-term predictability to the U.S. trade preference regime.

By way of background, RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry – retailers, product manufacturers, and service suppliers – which together account for more than $1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

The retail sector, along with the suppliers and customers that it serves, is an essential part of the U.S. economy. Retailers meet the needs of U.S. consumers, and in doing so are essential drivers of the U.S. economy. We also serve the global market for consumer goods and bring U.S. products to the foreign markets where they operate. Retailers provide quality jobs at all employment levels with good benefits. The industry also offers a variety of rewarding professional careers, as well as opportunities for entry-level employment, part-time work, jobs for non-skilled workers, and management training.

Trade preference programs, including the Generalized System of Preferences (GSP), Andean Trade Preferences Act (ATPA, African Growth and Opportunity Act (AGOA), Caribbean Basin Trade Partnership Act (CBTPA) and other initiatives are important development tools. Reducing tariffs and establishing dependable sourcing options are also essential for successful retail supply chains. Retailers rely on these programs as part of their sourcing strategies, and RILA is committed to promoting flexible, meaningful and simple-to-use preference programs that will assist development in the world's poorest countries and offer American families the opportunity to purchase a variety of high-quality products at affordable prices.

RILA has been working closely with an informal coalition of importers and development NGOs to support trade preference reform. RILA supports the consensus recommendations put forward by that group.

RILA also provides these further clarifications as Congress considers changes to the U.S. trade preference regime.

Trade Preferences for all Least Developed Countries

Congress should provide duty-free benefits to all least developed countries on all continents. The current patchwork of preference programs discriminates against some of the world's poorest countries. Congress should provide all of the poorest people with the opportunity to create a better future for themselves through trade and development. In particular, Congress should provide more trade preference benefits to Bangladesh and Cambodia. Poverty levels in Bangladesh and Cambodia are similar to those in Africa, and are worse by some indicators. Consider the following measures of poverty provided by the World Bank:

	Bangladesh	**Cambodia**	**Sub-Saharan Africa**
GNI per capita	$470	$540	$952
% of malnourished children under 5	27	39	28
Literacy (% of population over 15)	47	74	59
Life expectancy at birth	64	59	51

Harmonized Preference Rules

The requirements, scope of product coverage, and rules of origin in the current patchwork of U.S. trade preference programs should be harmonized to promote consistency and integration. The current patchwork of preference programs makes it difficult for importers to utilize all the different programs. Some retailers don't have the resources to understand and follow a multitude of different rules to ensure compliance. The result is that these programs are under-utilized, particularly for smaller suppliers where complicated rules are a barrier to entry for investors looking for new suppliers. Importers will sometimes decide that it is safer and easier to stay with sourcing rules they already understand rather than attempt to decipher new rules that apply only to a particular small supplier market especially when the benefits are only short-term. Congress should harmonize the rules across programs so that they are simpler to use and are understood by both importers and beneficiary countries.

Simplified Rule of Origin

RILA believes that there should be one simple and straightforward 35% value-added rule of origin for all products, including textiles and apparel. There are numerous examples of uncertainty and unpredictability created by complicated rules of origin and their varying interpretations by U.S. Customs and Border Protection. To eliminate this uncertainty and unpredictability, RILA believes everyone would benefit from a simple 35 percent value-added rule of origin. For textiles and apparel, RILA believes that Congress should clarify in the statute that the traditional interpretation of value-added would apply, which means that the value of fabric would qualify if it is cut and sewn (or knit to shape) in an eligible country (regardless of where the fabric was made).

Broader Product Coverage

Preference programs should have broader product coverage to include those products that are most commonly produced in poor countries. U.S. tariff rates are often regressive, and poor countries pay more in duty costs than their more developed counterparts. This is because typical products made in poor countries (such as textiles, apparel, footwear and agricultural products) face higher tariffs than the typical products made in advanced countries (such as high-tech products and heavy manufactured products, which are often duty-free).

As Ed Gresser with the Democratic Leadership Council has documented repeatedly, least developed countries such as Cambodia or Bangladesh face tariffs that are 15 times higher than those applied to wealthy nations and oil exporters. For example, according to Mr. Gresser, Bangladesh, Cambodia and Pakistan together send approximately $9 billion a year in clothing and towels exports to the United States--and pay $1.3 billion in tariffs on those shipments. Meanwhile, Britain and France ship more than ten times that amount--$100 billion a year--to the United States in airplanes, wines, medicines, and information technologies, and pay approximately $750 million in tariffs on those shipments. This disparity in tariff treatment on products typically made by poor countries underscores the need to expand the product coverage of U.S. preference programs.

Predictable Rules That Encourage Investment

RILA believes that there should be a clear and predictable standard and process to determine eligibility for countries and products. RILA recognizes that U.S. trade preference programs include eligibility for both countries and products to ensure that beneficiaries and the programs are meeting certain policy goals. These eligibility criteria are important, and it is equally important that predictability be built into the decision-making process so that users of these programs, such as retailers, can expect and plan for any changes to product or country coverage.

Congress should also enact a long-term extension of preference programs to foster longer-term investments and sustainable development. In recent years, Congress has provided short-term, last-minute renewals of preference programs. For example, the GSP, Andean and Caribbean Basin trade programs expire this year, and key provisions of the AGOA and HOPE programs are scheduled to be phased out in a few years. Such short-term durations and last minute extensions are disruptive, and the risk that benefits may expire or be withdrawn discourages long-term investment that developing countries desperately need to be able to benefit from the preference programs.

Creating a Bridge to Two-Way Trade—Trade Development Agreements

As Congress seeks to focus more trade preference benefits on LDCs, there should also be a strategic view to address country and product "graduations" that encourages additional bilateral and multilateral trade between and among the United States and developing countries, rather than eliminating duty-free treatment after certain thresholds are met.

Advanced developing countries are significant users of U.S. trade preference programs—and that is a positive development that should be encouraged. Rather than attempting to limit duty-free benefits for advanced developing countries, policymakers should seek to expand our trading relationships with those countries and encourage more bilateral and multilateral trade.

For example, RILA believes that there should be a new trade policy tool to encourage sustainable two-way trade with developing countries as they become more economically advanced. Trade preferences have been beneficial by introducing developing countries to the benefits of international trade, but those benefits are limited due to their inherent one-way structure, restrictive rules of origin and restrictive rules. Moreover, as countries become more developed, our trade preference programs discourage further growth by cutting off access to the U.S. market, rather than encourage further trade and development. RILA believes that Congress and the Administration should consider modifying our trade preference programs to provide clear incentives and timetables for trading partners that become more economically advanced to open their markets to U.S. goods, thereby creating opportunities for U.S. exporters and providing foreign consumers and businesses with high quality U.S. goods and services at competitive prices. This new trade policy tool could be called trade development agreements (TDAs) and would be a bridge to carry trading relationships from traditional one-way preference programs to long term and sustainable two-way trading relationships.

Whether this new trade tool is called a TDA or something else, it should provide significant benefits through trade liberalization in goods and services, transparency in regulatory trade practices, intellectual property protection, and other reductions in tariffs and non-tariff barriers. All of these areas will help to create dependable sourcing and export growth opportunities for retailers. To provide the most benefit, these trade tools should ultimately be comprehensive and commercially meaningful. TDAs should include: tariff eliminations, services trade liberalization, trade facilitation measures, strong intellectual property rights protections and flexible rules of origin.

New Preferences for Pakistan and Afghanistan

RILA supports meaningful trade preferences for Afghanistan and Pakistan to help create jobs and counter the recruitment efforts of the al Qaeda and Taliban. We urge Congress and the Administration to act expeditiously to enact Reconstruction Opportunity Zones (ROZ) legislation (S. 496, introduced by Senator Cantwell), and to expand and revise it in several areas, including expanding product and geographical coverage, limiting disclosure requirements, and finding a bipartisan and workable solution on labor conditions. The ROZ program represents an important opportunity for the United States to foster economic development, advance social stability, further security in the region and to make good on the promises of a closer economic relationship with Pakistan and Afghanistan.

For the ROZ initiative to be effective, duty-free treatment should be extended to all textile and apparel products, and especially to cotton trousers and shorts and cotton knit tops. These products are most likely to generate employment opportunities. Cotton knit shirts and cotton trousers are vitally important to Pakistan, yet these products face U.S. duties that average around 17 percent. Configuring the ROZ program to include these items will give Pakistan a fighting chance in this competitive industry.

We also urge Congress to revisit the limited areas in Pakistan that are eligible to use the ROZ program. Limiting ROZ investment to extremely remote areas that are experiencing intense conflict and are not yet mature for industrial growth would only delay job creation. Therefore, we encourage you to consider expanding the geographic areas in Pakistan to include areas that are currently capable of production. All of Pakistan, not just the tribal areas on the Northwest Frontier, is being targeted by extremists.

RILA also notes that controversial and unworkable labor provisions included in the House-passed ROZ legislation has caused momentum for ROZ legislation to come to a screeching halt. RILA encourages policymakers to work with stakeholders to find a bipartisan solution for workable labor conditions, based on longstanding criteria in U.S. trade preference programs, including the Generalized System of Preference (GSP) and the African Growth and Opportunity Act (AGOA). RILA believes that S. 496 is a good basis to start considerations on any labor provisions included in the final ROZ legislation.

Expanded Trade Preferences for Haiti

RILA believes that Congress should act quickly to enhance trade benefits for Haiti under the HOPE program. After the devastating earthquake in Haiti in January 2010, RILA applauds Congress and the Administration for working together to try to enhance trade benefits for Haiti to aid the country in resuming apparel operations and encourage long-term rebuilding and investment. RILA welcomes the Administration's Plus One initiative for Haiti to encourage apparel importers to source from Haiti. To make this initiative a reality, RILA believes the Haitian Hemispheric Opportunity though Partnership Encouragement Act of 2008 (HOPE II) should be expanded by increasing trade preference level (TPL) limits for knit and woven apparel, removing existing exemptions under the TPLs, fixing the interpretation of the value-added rule of origin, and extending all the provisions of the HOPE program until 2020. The Caribbean Basin Trade Partnership Act (CBTPA) should also be renewed and extended until 2020.

Conclusion

RILA appreciates the opportunity to provide these comments, and we look forward to working with the Committee to promote, expand, and simplify trade preference programs to benefit the United States' poorest trading partners as well as American businesses and families that rely on competitively priced imports. If you have any additional questions, please contact me by phone at (703) 600-2046, or by email at stephanie.lester@rila.org.

Sincerely,

Stephanie Lester

Stephanie Lester
Vice President, International Trade

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Statement for the Record

U.S. Preference Programs: Options for Reform
Tuesday, March 9, 2010

Small Farmers in a Poor Country Will be Harmed if U.S. Sugar Prices Fall

The Sugar Alliance of the Philippines (the Alliance) respectfully submits this statement for the record of the March 9, 2010 hearing by the Senate Finance Committee on U.S. trade preference programs. *The Alliance asks that sugar not be accorded duty-free, quota-free treatment in any reform of U.S. trade preferences.*

The Sugar Alliance of the Philippines is an umbrella group of national and regional associations of Philippine sugarcane planters, millers, refiners, and traders. The Alliance is a member of the International Sugar Trade Coalition (ISTC), which has separately submitted comments to the Subcommittee for the record. The Alliance endorses those comments.

The Philippines holds the third-largest share, after Brazil and the Dominican Republic, of the U.S. tariff-rate quota for raw cane sugar. The Philippine share of the minimum quota, which the U.S. is committed to provide under agreements negotiated in the World Trade Organization, is about 142,500 metric tons per year, valued in most years at around $60 million. Exports to the United States account for about six percent of Philippine sugar production.

The World Bank calls the Philippines a low-middle-income country, with a 2008 population of about 89 million and a per capita income under $1,900 per year. Per capita income is lower than that of one least-developed country (LDC), Angola, and below that of a number of African countries—Republic of Congo, Mauritius, South Africa, and Swaziland—that would receive duty-free, quota-free treatment under the provisions of HR 4101 and other proposals. The sugar industry is one of the country's largest

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employers, providing about 500,000 jobs (most of them seasonal) in the fields and another 100,000 jobs in mills and refineries, or in the trade.

The plantation image that many people have of sugar in the Philippines is false. Land reform put an end to the reign of the sugar barons. Almost all sugarcane farms in the country are small, and many are tiny. There are about 61,000 sugar farms in the Philippines. More than three fourths (47,000) are five hectares (about 12.5 acres) or less; these account for about 20 percent of production. At the other end of the scale, less than one percent of the farms have more than 100 hectares, and these also account for about 20 percent of production. Employment is high (1.3 workers per hectare) because productivity is low. Small scale pushes up costs, as does the relatively high cost of fertilizer. Nevertheless, the industry assesses producers a fee on each bag of sugar to fund social programs through the Sugar Industry Foundation (www.sifi.org.ph).

The comments from ISTC explained that the world market price is almost always below the average global cost of production. That condition can persist because sugar markets are deeply distorted by trade barriers, subsidies, taxes, and other policies maintained by many producing countries to protect rural employment, farm income, and food security, or to serve other social and economic purposes. For the Philippines as for many other producing countries, the world market is a residual market, used only after domestic markets and premium-price export markets have been fully supplied. Even though Philippine production costs are below global averages, they are not low enough to make sales to the world market profitable in normal times.

The Sugar Alliance of the Philippines is concerned that, as ISTC explained, granting additional suppliers unrestricted access to the U.S. sugar market will erode the system of supply management on which the premium U.S. price depends. Without a premium price, the U.S. market holds little or no value for the Philippines, or for most developing-country sugar exporters. Without a premium price, the U.S. sugar market will also hold little or no value for sugar producers in the countries that may receive duty-free, quota-free treatment under preference-reform legislation, which is why the African Coalition for Trade opposes an expansion of duty-free, quota-free treatment to sugar.

For these reasons, the Sugar Alliance of the Philippines asks that sugar not be accorded duty-free, quota-free treatment in any reform of U.S. trade preferences.

Respectfully submitted,

Harry W. Kopp
Washington Representative

SUBMITTED BY THE TRADE, AID AND SECURITY COALITION (TASC)

Consensus Recommendations for U.S. Preference Program Improvements

This consensus proposal for U.S. preference program improvements is supported by a broad range of stakeholders who use preference programs or work closely with those who do. The group includes non-governmental organizations working to reduce poverty in developing countries, U.S. companies sourcing goods from developing countries for sale in the United States, and individuals and research organizations focused on trade and development policy.

We agree that the goals of the various existing U.S. trade preference programs could be better achieved if they were components of a single, comprehensive trade preference program that increases opportunities for *all* developing countries, and in particular, LDCs to benefit as much as possible from global trade while, at the same time, creating certainty for exporters, importers, investors and workers. We believe this proposal addresses the concerns different stakeholders have with the ways in which current U.S. preference programs operate and the constraints on their success in promoting development through trade.

This brief paper does not seek to limit reform to the issues contained herein. Many of the organizations that support these recommendations also support more detailed reforms in particular areas, and we continue to discuss and develop consensus on these issues that should also be considered in comprehensive trade preference reform.

GENERAL PRINCIPLES and BENEFITS

Issue

The primary goal of a U.S. preference program should be to promote sustainable economic development in developing countries through expanded job-creating trade with the United States. To achieve this goal, a successful preference program must meet the needs of two constituencies: those who grow, make, and export goods in the beneficiary developing country (BDC), and their customers in the United States. These constituencies require a preference program that is:

- Certain, reliable, predictable and long-term;
- Simple to use;
- Promotes sustainable development and stimulates value-added production opportunities in the beneficiary countries, covering all products that beneficiary countries are capable of producing,
- Sensitive to beneficiaries' differing or unique development needs; and
- Wherever possible, linked to targeted policies and programs to build capacity to participate in markets and take full advantage of preferential market access.

Currently, U.S. preference programs fall short of these requirements. The family of U.S. preference programs, which includes as many as six separate programs,[1] is characterized by short duration periods and a multiplicity of rules of origin, eligibility requirements, and product "graduation" procedures. Further, these programs do not cover all products of key interest to BDCs,[2] and they may be sensitive to the economic challenges of some beneficiaries while not meeting the needs of others.

Recommendation

We recommend that the United States maintain a single preference program that extends duty-free treatment for imports of eligible articles from BDCs, and that provides permanent, 100 percent duty-free and quota-free (DFQF) benefits to imports from eligible lesser-developed countries.

ELIGIBLE BENEFICIARY DEVELOPING COUNTRIES

Issue

U.S. preference programs have differing eligibility criteria, some of which are more restrictive than others and many of which are similar but differently worded. These differences create confusion and uncertainty for producers in BDCs and their customers in the United States about whether a BDC will qualify for benefits. In short, the eligibility criteria for U.S. preference programs need to be updated and harmonized.

Recommendation

The new single preference program should have one set of clear, commercially meaningful and achievable set of eligibility criteria. The goal is to have as many beneficiary developing countries achieve and retain eligibility as possible, and, ideally the eligibility criteria should work to promote progress in different areas rather than blocking access to the U.S. market. The purpose of the eligibility criteria is to provide incentives for BDCs to adopt policies and practices that will have the greatest positive impact on their sustainable development. Whenever possible, progress towards meeting eligibility criteria shall be encouraged and supported, including through targeted

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1 The six programs are the Generalized System of Preferences (GSP), the African Growth and Opportunity Act (AGOA), the Caribbean Basin Economic Recovery Act (CBERA, including the Caribbean Basin Trade Partnership Act, CBTPA, and the Caribbean Basin Initiative, CBI), the Andean Trade Preferences Act/Andean Trade Preferences and Drug Eradication Act (ATPA/ATPDEA), the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act, and West Bank/Gaza Strip Qualifying Industrial Zones preferences (QIZs).

2 From the development perspective of BDCs, the product exclusions mean that the perverse situation exists that, for example, the United States provides Bangladesh and Cambodia $161 million in foreign aid in FY 2008 with one hand, and then takes it and more back with the other hand by collecting nearly six times as much ($981 million in 2007) in duties on imports from those impoverished countries.

capacity building assistance. The new process requirements described below will help ensure that the eligibility criteria are used to the fullest extent possible, and priority will be placed on maintaining benefits if countries work to make progress in meeting the eligibility criteria within a reasonable period of time

We recommend two types of eligibility criteria, which are detailed in Attachment A. The first is a group of statistical and other objective criteria relating to levels of development and trade competitiveness. It includes a definition of developing countries contained in the U.S. Generalized System of Preferences program and a new definition of a "lesser developed country" (LDC) that is designed to be objective, measurable and sensitive to the special needs of BDCs in Sub-Saharan Africa.

The second group of criteria requires a Presidential assessment of a developing country's trade, business, labor and other practices. It covers the major criteria currently included in other existing U.S. preference programs, including conditions relating to civil rights/ democracy, corruption, market access, intellectual property rights, investment, labor/human rights, and national security/terrorism/narcotics.

RULE OF ORIGIN

Issue

Generally, U.S. preference programs contain a 35 percent value added rule of origin for non-apparel goods that BDC producers must meet in order to qualify for benefits. For apparel products, the various U.S. preference programs include a number of differing rules of origin. Past legislative efforts to encourage commercial sourcing decisions have frequently had unintended negative consequences and have often ultimately resulted in different and complex rules that have created confusion and uncertainty for U.S. customers and an enormously burdensome paperwork requirement for BDC exporters. Compliance and enforcement problems are inevitable under the current system. Often, the hurdles involved in meeting these complicated rules cost exporters and importers more than the tariff savings afforded by the preference program. In addition, the opportunities to meet the rules of origin by using inputs from other BDCs are limited, and cumulation is not possible at all with respect to U.S. free trade agreement (FTA) partners, undermining economic opportunities.

Recommendation

We recommend that the preference program contain a single simple rule of origin for all products, with a clear opportunity to cumulate inputs from other BDC and FTA countries. The rule should be substantial transformation plus at least 35 percent of the appraised value of the article, with the sum of the cost or value of the materials produced in the BDC or any one or more such BDCs, the United States, [or a U.S. FTA partner] plus the direct costs of processing operations performed in the BDC or other BDCs/[FTA partners] counting towards that 35 percent.[3]

We recommend that the preference program continue to require that eligible products be imported directly from an eligible BDC and be wholly the growth, product, or manufacture of a beneficiary developing country, or be a new or different article of commerce which has been grown, produced, or manufactured in one or more beneficiary developing countries or U.S. free trade agreement countries.

Trade preference reform should be undertaken in such a way to ensure that the poorest beneficiary countries, particularly LDCs, are not disadvantaged through extension of preferences to new regions and countries. We are developing separate specific recommendations for a comprehensive trade and development strategy for Sub-Saharan Africa that we intend to issue in a related paper.

COUNTRY/PRODUCT "GRADUATION"

Issue

Under all existing U.S. preference programs, a BDC may lose benefits (permanently or temporarily) if the President determines that it no longer meets one or more of the eligibility criteria. The process leading to such a determination can be inconsistent and unpredictable, stretching over many years, or informed more by political than objective rationales. In all cases, the process has lacked transparency.

Individual products can lose benefits (permanently or temporarily) only under the GSP program when trade in those products exceeds "competitive need limits" (CNLs) or as the result of action on a petition from a U.S. producer. The CNLs are artificial measures of "competitiveness," and the annual review process is confusing to both exporters and importers. Deadlines for the implementation of the loss of benefits are unreasonable, and the reasons for determinations are often obscure.

Recommendation

Bearing in mind that the goal is to retain preference benefits for the greatest number of products imported from the greatest number of eligible developing countries based on objective criteria, we recommend that the current country and product "graduation" procedures, particularly those under the GSP program, be significantly changed. In particular, we recommend that clear and reasonable deadlines for action be maintained, and that the President publish, publicly, the reasons for decisions. We recommend that the President work with BDCs, using capacity building if necessary, to assist BDCs in

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[3] This means, for apparel, that if fabric from any source is cut and sewn in a BDC, the full value of the fabric counts toward the 35 percent requirement. The rule of origin would be similar to that in HR 4101.

meeting the eligibility criteria or in overcoming any deficiencies in continuing to meet eligibility criteria.

We also recommend that the preference program contain no *a priori* product exclusions, but that, for non-LDC beneficiaries, extension of preference benefits for products currently excluded from GSP be evaluated on a case-by-case basis during a pre-implementation "transition period" described in Attachment B. During this transition period and annually afterward, we recommend a clear and objective process for removing products from eligibility when imported from non-LDCs. We further recommend a policy approach that enables countries that exceed certain development thresholds (such as income levels) to enter into more mature trading relationships, rather than lose trade benefits. The details of our recommendations are provided in Attachment C.

CAPACITY BUILDING

Issue

The United States extends billions of dollars ($2.3 billion in FY2008) in trade capacity building assistance (TCBA) to developing countries. Unfortunately, this spending is not as successful as it should be in generating sustainable development and increasing value-added production opportunities in many developing countries. The reasons are several. Over 15 U.S. government agencies report devoting some funds to TCBA, with little effective coordination among them or with other donor governments, international institutions, businesses and non-governmental organizations engaged in TCBA efforts. In addition, TCBA is not systematically used to help BDCs take full advantage of U.S. preference programs. There is no formal, comprehensive assessment of what individual BDCs need to enable them to fully participate in markets and make full and effective use of U.S. preference programs, including meeting eligibility requirements and other requirements, e.g. sanitary and phytosanitary standards.

Recommendation

We recommend that the President designate a new senior official for sustainable/market-led development within the Executive Office of the President who, among other responsibilities, will oversee implementation by the TPSC of the improved preference program and ensure that TCBA efforts spread throughout the government are coordinated and targeted at initiatives that will help BDCs meet the eligibility criteria of the preference program and fully participate in markets, including taking full advantage of the preferences available, with a particular focus on connecting women, smallholder farmers and other small business to market.

We recommend that the President undertake a development review with input from every agency with TCBA programs in place, coordinated by the senior official for sustainable/market-led development, and including input from multilateral lending banks, foundations, NGOs, beneficiary country governments, U.S. consumers (U.S. importers), local businesses and workers and their organizations, and other private sector organizations regarding the effectiveness of current TCBA initiatives and suggesting ways to improve them to target specific products and sectors with the greatest long-term promise for development, including ways to encourage and support building local and regional markets and capacity, especially in Sub-Saharan Africa. The review must include recommendations for adjusting TCBA so that it is effective in enabling beneficiary countries, especially those in Sub-Saharan Africa and other least developed countries, to make full use of the preference program. The President must report to Congress on progress made.

Annually thereafter, we recommend that the President seek input from governments of preference beneficiaries and affected communities, including local business groups, NGOs, worker organizations and others to assess what is working and what is not, and develop capacity building initiatives that are most appropriate for ensuring that beneficiaries are able to use the preference program. The review shall include recommendations for fully utilizing preferences. Again, the President must report to Congress on progress made.

Additional recommendations on (1) specific areas of focus for trade capacity building programs and (2) an integrated "whole of government" approach to support building local and regional capacity in Sub-Saharan Africa will be released separately.

TERM

Issue

To encourage sustainable development and investment, preferences need to be in effect for as long a period of time possible. With the exception of CBI and the QIZs, U.S. preference programs only remain in effect for short periods of time, discouraging U.S. investors and customers from relying on them for stable production or sourcing programs. While a permanent preference program would be the ideal solution, we recognize the concern on the part of some that this could lead some BDCs to be less than enthusiastic supporters of moving the WTO's Doha Development Round or other trade liberalization efforts to a successful conclusion.

Recommendation

Our consensus recommendation is that the term of the preference program be permanent upon enactment for LDCs and extend for five years to all other BDCs, with automatic renewal for another five years if the President certifies to Congress that BDCs are contributing positively (from the multilateral perspective) to a successful outcome of WTO Doha Development Round trade negotiations. (We note here the distinction between a permanent preference program and the permanency of preference benefits. The latter continue only as long as the BDC meets the programs eligibility criteria.) If the President determines that only a small number of countries are not contributing positively to the successful outcome of the WTO Doha Round, the program would expire only for those countries. Upon implementation of a Doha agreement, preferences for non-LDC BDCs would be automatically extended for 10 years.

We further recommend that existing U.S. preference programs continue until their scheduled expiration dates. Renewal of those preference programs, including African Growth and Opportunity Act, should be considered if beneficiaries believe continuation would be beneficial and seek renewal.

Submitted by
(as of 3/4/2010)

American Apparel & Footwear Association (AAFA)

Bread for the World

Business Council for Global Development

Caterpillar, Inc. (Peoria, IL)

Charming Shoppes, Inc. (Bensalem, PA)

Coalition for GSP

Kimberly A. Elliott, Senior Fellow, Center for Global Development

Ed Gresser, Director, Trade and Global Markets, Democratic Leadership Council
(affiliation for purposes of identification only)

International Labor Rights Forum

Initiative for Global Development

Katrin Kuhlmann, Resident Fellow, German Marshall Fund of the United States

William C. Lane, Member, HELP Commission

National Retail Federation

Oxfam America

Piremag Corporation (Middletown, NJ)

Retail Industry Leaders Association

Trade, Aid and Security Coalition (TASC)

U.S. Association of Importers of Textiles and Apparel (USA-ITA)

U.S.-Bangladesh Advisory Council

Wal-Mart Stores, Inc. (Bentonville, AR)

Women Thrive Worldwide

Attachment A
Beneficiary Eligibility Criteria

1. Threshold Criteria

Level of development: Beneficiary Developing Countries (BDCs) must have per capita income in U.S. dollars of no more than the World Bank's level defining a "high income" country over three consecutive years.

Lesser-developed countries (LDCs) are defined as those countries meeting one of the following two criteria:

- Determination by the United Nations that a country is a least developed country;
- Determination by the President that a BDC is a least developed country for the purposes of the African Growth and Opportunity Act.

No members of the European Union are eligible for any benefits.

No BDC can account for more than 5 percent of total U.S. merchandise imports.

BDCs cannot be a member of a commodity cartel that withholds supplies from trade that thus raises the price of the commodity to an unreasonable level and causes serious disruption to the world economy.

2. Evaluative Criteria

Civil rights/"democracy". The BDC should have established or be making continual progress toward establishing the rule of law, political pluralism and the right to due process, a fair trial and equal protection under the law.

Corruption. The BDC should have in place a system, or be taking steps to have in place a system, to fight bribery and corruption.

Market access. The BDC should provide the United States access to its resources, goods and services markets and be encouraging increased goods and services trade and investment inflows, particularly from the United States and countries in the region; the BDC should not provide preferential treatment to other developed countries that it does not also provide the United States if it causes a "significant adverse effect" on the United States.

Intellectual Property Rights (IPR). The BDC should adequately and effectively protect and enforce IPR.

Investment. The BDC should reduce trade-distorting investment practices and policies and provide adequate compensation for nationalized, expropriated or otherwise seized U.S. property, including patents, copyrights and trademarks.

Labor/human rights. As an initial determination, a BDC should afford or be making continuous progress toward adopting and effectively enforcing laws consistent with the core labor rights listed in the 1998 ILO Declaration on Fundamental Rights at Work and of laws that govern acceptable conditions at work, and should have or be making continuous progress toward creating fair, equitable and transparent tribunals for this purpose. The BDC should not engage in activities that constitute gross violations of internationally recognized human rights.

National security/terrorism. The BDC should not engage in activities that undermine US national security, or aid or otherwise support international terrorism, or support or otherwise perpetuate the supply of illegal narcotics into international markets.

Attachment B

Process for Start-Up Transition Period for Country Product Eligibility

A short (one-two year) transition period is required to allow a smooth transition from existing preference programs to the new preference program. All expiring preference programs must therefore be extended to remain in effect for this transition period and apply to imports from their respective BDCs.

During the transition period,

- The President shall issue regulations for the new preference program.

- The President will determine which BDCs meet the eligibility criteria for preferences, and which BDCs require capacity building assistance to be in a position to meet the eligibility criteria by the end of the transition period.

- Product eligibility for preferences when imported from non-LDC BDCs shall be determined by a "negative list" evaluation conducted by U.S. International Trade Commission at the 8-digit HTS product level of detail, with advice to the President to suspend duty-free treatment for products imported from BDCs other than LDCs. The ITC will focus on the list of all HTS items currently excluded from GSP (either statutorily or because they have exceeded competitive need limits).

After both determinations are made, duty-free benefits under the new preference program go into effect.

Attachment C
Country/Product Change Process

1. **Country Changes** (applies to *all* BDCs, including LDCs):

The President shall make determinations of each BDC's continued eligibility for preferences through an automatic annual review. Within a reasonable period after the program's effective date, this review will place particular focus on whether countries have both implemented and are enforcing conditions contained in the eligibility criteria. Wherever possible, capacity building resources will be utilized to assist BDCs in meeting the eligibility criteria. In addition, the President shall accept petitions on an annual basis to initiate case-by-case reviews of an individual BDC's compliance with eligibility criteria, and the decision to initiate or not initiate a review will be published within 30 days with explanations for the reasons for the decision. An out-of-cycle review would be possible in the event of an egregious violation of eligibility criteria that arises after the regular review cycle has begun. Input from all interested stakeholders will be solicited, public hearings held. In deciding whether to suspend or revoke beneficiary status in whole or in part, the President will consider whether the BDC's ability to meet the eligibility criteria could be assisted with greater or more specific capacity building assistance. The President will publish his/her decision in the Federal Register, with a detailed explanation of the reasons behind the decision, within one year of the decision to accept the petition for review. The President may decide to postpone suspension or terminate benefits in whole or in part if he/she believes additional capacity building assistance will be effective in assisting the BDC in meeting the eligibility criteria within a reasonable period of time. Further, if a country is approaching the per capita income threshold eligibility criteria limit, the President may decide to continue to extend benefits to the BDC if the BDC agrees to undertake/implement (on an MFN basis) new trade liberalization policies or trade preferences for LDCs. If instead the recommendation is to proceed with the suspension or termination of benefits, in whole or in part, that change in duty-free status will not become effective before 12 months from publication in the Federal Register.

Countries that have benefits suspended or revoked in whole or in part can ask to have them restored if they can show they have subsequently made the changes necessary to meet the eligibility criteria. The process for reinstatement of benefits shall be initiated by petition on an annual basis, provide for input from all interested stakeholders, allow for a public hearing, and result in a decision that is published within one year in the Federal Register and includes details of the reasons for the decision.

2. **Product Changes** (applies to BDCS that are *not* LDCS):

Annually, the President shall accept petitions to suspend or terminate the extension of preferences for a specific product (at the 8-digit HTS level) from a specific BDC. The petition must provide information that shows that imports of the product from the BDC are having a significant adverse impact on producers/workers in the United States of a like or directly competitive product. The decision to begin or not begin a review of the petition will be published within 30 days in the Federal Register with reasons for the decision. Input from interested stakeholders will be accepted, in writing and at a public hearing. In addition to the impact on U.S. producers/workers of the continuation of preferences for a specified product, the President will also consider the likely impacts of suspension or termination of preferences, in whole or in part, on the BDC, other BDCs, LDCs, or non-beneficiary countries; and on U.S. consumers. Any agency reports prepared to advise the President will be detailed and public. The President shall publish his/her decisions, with the detailed reasons for the decisions, in the Federal Register within 12 months of acceptance of the petition for review, with an effective date of loss of preferences 12 months from the date of publication in the Federal Register.

The President may restore duty-free treatment to products that have lost that treatment if interested stakeholders can show that restoration will no longer adversely affect U.S. producers or workers and will benefit the BDC's overall economic development and the U.S. national economic interest. The process for reinstatement of benefits shall be initiated by petition on an annual basis, provide for input from all interested stakeholders, allow for a public hearing, and result in a decision that is published within one year of the beginning of the investigation in the Federal Register and includes details of the reasons for the decision.

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White Paper on Trade and Development Policy with Sub-Saharan Africa

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Executive Summary- White Paper on Trade and Development Policy with Sub-Saharan Africa

Sub-Saharan Africa continues to be a region in deep economic distress. However, the right combination of trade, aid and investment policies could encourage broad-based economic growth, greater African regional integration, enhanced food security and expanded trade and market opportunities, to the benefit of African and U.S. families and producers. The current focus on reform of U.S. trade preference programs and foreign assistance, alongside the development of a comprehensive food security initiative, present an immediate and substantial opportunity for an integrated approach to generate sustainable, widespread economic growth.

The recommendations below, jointly developed by a group of businesses and NGOs, offer a framework for promoting broad-based economic growth and trade with and within sub-Saharan Africa by aligning U.S. trade, investment and assistance policies. These proposals are outlined in more detail in the pages that follow.

- **Make Critical Improvements to Trade Policies, Including Preference Programs, to Encourage Trade With and Within sub-Saharan Africa**: The benefits of our main trade program with sub-Saharan Africa, the African Growth and Opportunity Act (AGOA), have been concentrated in a few countries and sectors. This is due to limited access for key agricultural products, program expirations, and significant capacity, infrastructure and supply-side constraints that impede Africa's regional and international trade. Preserving the opportunities created under AGOA while addressing these issues simultaneously, on a permanent basis and region-wide could have a significant, sustainable impact.

- **Establish a Mechanism for Coordinating Trade and Development Policies:** Too often, trade and development policies operate on separate tracks, and this lack of a systematic approach has limited the effectiveness of both policy tools to reduce poverty, enhance regional integration and increase economic opportunities across sectors and among vulnerable groups. A mechanism for better coordination among U.S. and international agencies and stakeholders would help policies achieve these goals.

- **Use Targeted Capacity Building and Development Assistance to Increase Africa's Capacity to Trade, Improve Regional Markets and Enhance Economic Opportunities:** Underlying conditions – supply-side constraints, weak capacity and underdeveloped regional markets and institutions – prevent sub-Saharan Africa from trading more internally and with the rest of the world. Development assistance should target priority areas identified by stakeholders, such as supporting, aligning and deepening regional development through regional economic institutions and development corridors and building capacity to ensure that countries can take advantage of enhanced preferential market access, *e.g.,* increasing compliance with food safety standards necessary for increased agricultural trade.

- **Use a U.S. "Whole of Government" Approach That Integrates Trade, Foreign Aid and Investment Policies**: Coordinating the activities of various government agencies with different expertise through a "whole of government" approach could greatly enhance the U.S. government's ability to respond to specific needs and priorities of the private sector, African governments, producers and workers. Many elements of this approach already exist and could be combined, coordinated and enhanced as appropriate.

Recommendations for an Integrated Trade, Development and Investment Approach for Sub-Saharan Africa

Background

- One of the most sustainable ways to increase incomes and spur broad-based economic growth is to encourage increased private sector participation, including by small and medium-sized producers, in robust, diverse local, regional and international markets.

- In Sub-Saharan Africa, however, this potential has been limited by a number of factors, including national and international policies that curtail rather than encourage diverse, equitable economic opportunities, supply-side constraints and lack of capacity, and inadequate infrastructure and underdeveloped markets and supply chains—including distribution, storage, transportation and telecommunications—particularly at the regional level.

- Weak market links between sub-Saharan African producers and regional and international markets prevent supply of goods and services from reaching demand, limit economic opportunities, constrain productivity, and impede economies of scale. These challenges are exacerbated by the number of small and landlocked countries in sub-Saharan Africa that lack access to viable markets.

- These are not only significant factors limiting economic growth and diversification, but they are critical to addressing other pressing challenges in the region including food insecurity and political instability.

- Despite the importance of broad-based economic growth, better-functioning markets and improved investment climates to both African and U.S. businesses and workers, policies that address these aspects of sustainable development have not received the focus they require.

- In order for sub-Saharan Africa to grow sustainably and diversify economically, develop more robust intra-regional trade and become a full participant in the global economy, current trade, investment, and economic development assistance need to be given greater priority.[1]

- Economic development assistance should not be sacrificed in the face of budget crises, but it should be made more effective by redesigning programs to address pressing needs and priorities on the ground in a more coordinated and comprehensive manner.

- Increasing capacity and building sound, market-led infrastructure networks and supply chains would encourage development across sectors and within countries and regions. Improving infrastructure and supply chains, including main and rural roads, rail systems and ports, communications/IT and transport and warehousing will help all sectors develop. In

[1] This paper urges coordination and integration of trade policies, investment policies, and relevant development assistance, including projects using economic growth funding, trade capacity building assistance and other policies targeted at infrastructure development and building market-related institutional capacity within African national and regional institutions.

addition, enhanced agricultural processing and cold storage are two particular elements critical to development of the agricultural sector.

- The United States should work collaboratively with African governments and regional institutions, non-governmental organizations and businesses, as well as other countries and international institutions, to design policies and programs that address Africa's priorities. This includes strengthening the Regional Economic Communities (RECs) and supporting the Development Corridors, which build on existing trade and transport corridors that link mines to ports in order to create a robust regional network that connects smallholder farmers and other businesses to markets, and other relevant institutions, *e.g.* water and power commissions.

Recommendations

(1) Make Critical Improvements to Trade Policies, Including Preference Programs, to Increase Trade With and Within Africa

International trade policies should contribute to establishing the conditions necessary for sustainable economic development, including diverse economic opportunities in all sectors, from manufacturing to agriculture. Existing U.S. preference programs, including AGOA, when improved as outlined below and combined with targeted capacity building and development assistance, discussed in detail in the following sections, could better promote broad economic opportunities and development of regional markets.

Changes to trade policies and programs that would help stimulate diverse economic development and regional integration include the following:

- Preserve the opportunities created under AGOA, and expand duty-free quota-free preferential product coverage to all products from sub-Saharan Africa, including all agricultural products.[2]
- Eliminate the distinction between least developed countries (LDCs) and non-LDCs in sub-Saharan Africa within all trade programs and policies, here, abroad and multilaterally. Treat sub-Saharan Africa as a single inter-connected region and maintain the same rules for all countries in order to encourage regional integration, building on AGOA's approach.[3]
- Under preference programs, allow for cumulation across programs, countries and sectors in determining origin for purposes of qualifying for preferential benefits. Ensure that Africa-origin inputs (*e.g.*, yarn and fabric) are eligible for use in apparel products from other countries that receive preferences.
- Make preferential benefits permanent for sub-Saharan Africa in order to encourage investment in all sectors.

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[2] Agricultural policies, including domestic support policies and programs, should also be modified to better support agricultural development.

[3] This approach is not without legal precedent. WTO jurisprudence does recognize that "similarly situated" countries should receive the same preferential treatment. Further, recent WTO policy recognized regional economic communities (RECs) in which LDCs comprise 50 percent of members. AGOA, which treats least developed and lesser developed African countries the same, has received a WTO waiver approved by the WTO General Council.

- Use most effective mechanisms and additional tools to address deficiencies in meeting eligibility criteria, targeting the tool to the specific problem and using revocation of preferential benefits only as a last resort.
- Establish a single point of information for exporters and importers on various U.S. import requirements (consider the model of the European Union's export help desk for developing countries).

(2) Establish a Mechanism for Coordinating Trade and Development Policies

Trade and development policies must be better coordinated in order to ensure that preferential trade programs have the greatest impact possible. A comprehensive strategy for sustainable, widespread economic growth should also successfully address challenges of poverty reduction, increased food security and the creation of sustainable opportunities throughout sub-Saharan Africa for businesses of all sizes, including for women and smallholder farmers. Similarly, development policies should support efforts to promote African regional integration.

Enhanced coordination could help ensure that trade and aid policies reinforce rather than undermine each other. Through better coordination, specific needs and opportunities and the barriers that stand in their way could be addressed through targeted projects and policies.

Enhanced coordination should include the following elements:

- A mechanism for effectively coordinating trade, foreign assistance and investment policies and programs through a whole-of-government approach that allows agencies to combine and coordinate their relative strengths to effectively achieve sustainable, market-led development.
- Working with this mechanism, conduct an annual review process, established by the President with reporting to Congress, on how well trade capacity building and economic growth initiatives are being used and coordinated, with the goal of identifying both innovative models of success and shortcomings.
- Regular consultation and incorporation of input from multilateral lending banks, foundations, NGOs, beneficiary country governments and regional bodies, U.S. consumers and importers, local businesses and workers (and their organizations) and other private and public sector organizations.
- As part of this process, better alignment of the numerous agencies that design and implement capacity building and development assistance programs, in particular USAID and the Millennium Challenge Corporation (MCC).
- Expanded use of innovative practices, including by extending these practices to regional programs instead of just single country programs. For example, build on USAID's expertise and experience working on every element of economic development within countries and add a regional component to enhance the MCC's unique value in supporting infrastructure projects, using all-grant funding, supporting recipient country ownership and implementation and applying indicators for measurable results, including governance indicators.
- Increased coordination, not only within the U.S. government, but also between the United States and other donors. This should include coordination with other

developed countries, multilateral institutions and large developing countries, *e.g.*, incorporate foreign assistance coordination into the United States' Special Economic Dialogue with China.

(3) Use Capacity Building and Development Assistance to Increase the Capacity to Trade, Improve Markets and Enhance Economic Opportunities

Development assistance, especially trade capacity building assistance and economic growth funding, should be designed and targeted to address the needs and priorities of African producers, governments and the broader private sector. Particular attention should be paid to addressing key sectors, *e.g.* agriculture, and vulnerable groups, including small producers, building regional markets, enhancing the capacity to trade and improving the investment climate. Targeted capacity building should address the specific capacity and supply-side constraints that have limited countries' ability to participate more fully in trade, as well as include tools that are more generally necessary to operate a well-functioning market economy, such as training in bank supervision or law enforcement and development of necessary infrastructure and value chains.

Specific suggestions for targeted capacity building, which should be tailored in support of stakeholder priorities, include the following:

- Place priority on training in sanitary and phytosanitary (SPS) standards, needed to facilitate agricultural trade.
- Target customs policies and practices that will increase the ability to trade and improve conditions for regional investment.
- Identify specific economic opportunities, *i.e.* products with market potential, and barriers standing in the way of these opportunities, and design targeted assistance interventions to facilitate these opportunities and remove restrictive barriers to trade and development.
- Coordinate local and regional infrastructure investments, including along the Development Corridors, to improve land, sea and air transportation, power generation, water supply and IT/communications, and promote better coordination across multilateral and bilateral agencies and their work with local governments, RECs, and the private sector, including local farmers and businesses.
- Build capacity within countries and the African Union and RECs to enhance institutional capacity, support deeper coordination and amalgamation among entities, and reduce intra-country and intra-African barriers to sustainable, diverse trade.
- Focus on commercially sustainable, scalable and cost- effective ways to improve supply chains, including rural access to centralized agricultural processing facilities, cold storage, warehousing and market information.
- Ensure that infrastructure projects, capacity building programs and other development assistance projects are designed to reach women and smallholder farmers.
- Promote education and technical training programs to help build the human capacity to take advantage of new trade and investment opportunities.
- Work with the private sector whenever possible, cross-leveraging resources, applying best practices, drawing on models to build capacity in different sectors and

building on innovative models (*e.g.* to integrate small businesses and women producers, particularly smallholder farmers, into commercial systems).

(4) Enhance and Use a U.S. "Whole of Government" Approach That Integrates Trade, Foreign Aid and Investment Policies:

Adopt a "whole of government" approach to sub-Saharan Africa that integrates trade, foreign assistance and investment policies, with enhanced, coordinated interagency collaboration. Listed below are examples of tools U.S. agencies already have at their disposal that could be more systematically used. In some cases, as noted, enhancing existing authority or expanding current functions could significantly improve the ability to use these tools. Elements of this approach could be combined and coordinated as appropriate to best address the needs of U.S. and African businesses, including small- and medium-sized producers, as well as workers and other economic stakeholders.

Elements of a whole-of-government approach to improving countries' ability to trade, that fully uses and builds on the particular expertise of each agency, include the following:

- *U.S. Agency for International Development (USAID)*: (a) Expand regional focus, including increased support for regional trade hubs and the African Global Competitiveness Initiative (AGCI); (b) Increase the number and duration of public-private partnerships (PPPs) under the Global Development Alliance; and (c) Undertake a full review with the African Union, RECs and other regional entities of how existing programs could better encourage regional integration, in coordination with other agencies. These activities fall within USAID's current mandate but may require additional financial resources.

- *Office of the U.S. Trade Representative (USTR)*: (a) Use arrangements that promote greater productive trade and investment and broad-based economic growth with and within sub-Saharan Africa, including Trade and Investment Framework Agreements (TIFAs); (b) Use TIFAs as country- and region-led participatory processes and tools for coordinating trade, investment and development assistance policies and programs (dialogues under the TIFAs are already in place with several countries and regions); and (c) In ongoing WTO negotiations, apply duty-free quota-free treatment to non-LDC and LDC sub-Saharan African countries and take capacity of RECs into account when negotiating implementation of new WTO commitments. These actions, including increasing use and support of TIFAs through increased interagency participation, could be undertaken within existing agency mandates.

- *Department of State*: (a) Better utilize bilateral consultations with inter-agency representation on both sides; and (b) Engage the U.S. diplomatic corps. Neither of these actions would require new legal authority and could be accomplished consistent with the Department of State's current mandate.

- *Millennium Challenge Corporation (MCC)*: (a) Increase compact flexibility to allow grants to the private/non-governmental sector where appropriate; (b) Allow for compacts longer than five years in duration; and (c) Allow investments in cross-border, regional investments. These changes would likely require new legal authority.

- *Department of Commerce*: (a) Support broad use of the ITA e-learning tool for training developing countries how to best make use of trade preference programs and other trade policies; and (b) Expand use of trade missions and the Commercial Law Development Program's capacity building for legal reform. This activity falls within the Department of Commerce's current mandate but may require additional financial resources.

- *U.S. Department of Agriculture (USDA)* and *Food and Drug Administration (FDA)*: Increase technical assistance for helping beneficiary countries meet U.S. SPS standards, ensuring that training is accessible to small producers and facilitate a clear understanding of requirements imposed by various US food safety agencies in the following ways: (a) Improve presentation of information on U.S. import approval requirements and consider ways to create a "one-stop shop" for beneficiary countries interested in understanding import requirements of different U.S. food safety agencies; (b) Short of establishing a single U.S. food safety authority, where possible, consider streamlining APHIS, FSIS and FDA approval procedures; (c) Consider giving priority to processing import approval requests from beneficiary countries; and (d) Work with the private sector whenever possible. Some of these changes may require additional legal authority and additional financial resources but could largely be accomplished within USDA's and FDA's existing mandate.

- *Department of Treasury*: Increase cooperation with multilateral institutions, including the African Development Bank and World Bank and other donors where needed, including supporting African regional integration and coordinating use of technical assistance programs in areas such as strengthening banking sectors, modernizing fiscal practices, controlling money laundering and improving financial management. This activity falls within the Department of Treasury's current mandate but may require additional financial resources.

- *Department of Labor/Bureau of International Labor Affairs (ILAB)*: (a) Enhance capacity building role, both for developing institutional/government capacity and to ensure that broad-based development benefits extend to workers across sectors. This activity falls within the current agency mandate but may require additional financial resources; and (b) Increase cooperation with the International Labor Organization (ILO), particularly in developing programs specific to Africa that will promote improvements in labor standards and conditions.

- *Department of Homeland Security - Customs and Border Protection*: (a) Enhance capacity building on customs rules and compliance; and (b) Expand technical assistance and capacity building to help African exporters comply with U.S. trade security requirements, *e.g.*, Customs-Trade Partnership Against Terrorism (CTPAT), Container Security Initiative (CSI), and 10+2 program. This activity falls within the current agency mandate but may require additional financial resources.

- *Development Finance Agencies:* In addition to the recommendations specific to each agency below, and in cooperation with agencies above, particularly USAID and MCC, create one-stop shop for U.S. investors.

    - *Overseas Private Investment Corporation (OPIC)*: (a) Reevaluate current restrictions on loan guarantees to support projects in sub-Saharan Africa that would not significantly affect U.S. industry; (b) Provide the authority to allow guarantees for funding for small businesses in sub-Saharan Africa; and (c) Use OPIC tools to support regional infrastructure, including along the Development Corridors, in coordination with other donors and multilateral institutions. OPIC support for regional infrastructure could be done within the agency's current mandate, while other changes would likely require new legal authority.

    - *U.S. Export-Import Bank (Ex-Im)*: (a) Increase lending opportunities and guarantees; (b) Support and target small and medium-sized businesses; and (c) Replicate the insurance and guarantee facility used in Nigeria. These changes would likely require new legal authority.

    - *U.S. Trade and Development Agency (TDA)*: Expand use of feasibility studies and technical assistance, utilizing models to develop infrastructure and improve the business climate, *e.g.* customs and trade facilitation, port, airport, and power plant development, etc. This activity falls within TDA's current mandate but may require additional financial resources.

- *U.S. Congress*: Coordinate approach across Committees and Subcommittees. Specifically, House Ways and Means and Senate Finance Committees with jurisdiction on trade, including trade preference programs, should coordinate with the House Foreign Relations and Senate Foreign Affairs Committees, as well as each chamber's relevant Appropriations Committee, on economic growth and related development programs. Coordination is also necessary with the House Financial Services Committees and Senate Committee on Banking, Housing and Urban Affairs on Ex-Im, OPIC and TDA issues and with the House Energy and Commerce Committee and the Senate Committee on Commerce, Science and Transportation to increase opportunities for U.S. exports to sub-Saharan Africa and investment in the region.

This document is endorsed by the following groups and individuals:

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National Foreign Trade Council

National Retail Federation

NEPAD Business Foundation

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Retail Industry Leaders Association

Trade, Aid & Security Coalition (GlobalWorks Foundation)

TransFarm Africa

United States Association of Importers of Textiles and Apparel (USA-ITA)

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Women Thrive Worldwide