

DESCRIPTION OF THE CHAIRMAN’S MARK TO EXTEND THE AFRICAN GROWTH  
AND OPPORTUNITY ACT, THE GENERALIZED SYSTEMS OF PREFERENCES, AND  
THE PREFERENTIAL DUTY TREATMENT PROGRAM FOR HAITI

Scheduled for Markup

by the

Senate Committee on Finance

on April 22, 2015

I. Introduction

The Senate Committee on Finance has scheduled a markup of a proposal to extend the African Growth and Opportunity Act, the Generalized System of Preferences, and the preferential duty treatment program for Haiti. This document provides a description of the proposal.

II. Proposal

A. Extension of the African Growth and Opportunity Act (Title I).

**Present Law**

In 2000, Congress amended the Trade Act of 1974 to establish U.S. trade and investment preferences for Sub-Saharan Africa in the African Growth and Opportunity Act (“AGOA”). AGOA offers trade preferences to Sub-Saharan African countries that meet certain criteria, including progress towards rule of law, elimination of barriers to U.S. trade and investment, and protection of worker rights. AGOA includes a list of all Sub-Saharan African countries that are eligible to receive the trade preferences. At present, 39 countries are eligible for AGOA benefits.

Congress has amended AGOA five times since its initial enactment, including one overall extension in 2004, and technical modifications and extensions of time-limited provisions, such as third-country fabric provisions. Pursuant to its most recent extension in 2004, AGOA expires on September 30, 2015.

AGOA also provides duty-free treatment for certain apparel and textile products, and third-country yarn and fabric provisions for lesser-developed countries. Lesser-developed countries are defined in AGOA as those with a per capita gross national product of less than \$1,500 per year as measured by the World Bank. Botswana, Namibia, and Mauritius have been added to the list of lesser-developed countries by legislation, despite GNP per capita levels above the \$1500 per year threshold. In 2012, Congress extended the third-country yarn and fabric provisions through September 30, 2015.

**Description of Proposal**

The proposed legislation extends AGOA and the special rule of origin on third country fabric from September 30, 2015 to September 30, 2025.

The proposal amends section 506A(b)(2) of the Trade Act of 1974 to allow accumulation of the direct costs of processing operations performed in one or more beneficiary Sub-Saharan African countries or former beneficiary Sub-Saharan African countries in achieving the required minimum 35 percent local value content. The proposal clarifies that rules of origin for certain articles describes in section 503(a)(1) of the Trade Act of 1974 will apply to articles that are the growth, product, and manufacture of a Sub-Saharan beneficiary.

The proposal permits the President to make technical adjustments to the Harmonized Tariff Schedules of the United States to make clear that articles designated in section 503(a)(1) of the Trade Act of 1974 are also eligible for beneficial tariff treatment if they are the growth, product, and manufacture of a Sub-Saharan beneficiary.

The proposal amends 506A of the trade Act of 1974, requiring the President to notify and explain to Congress his intention to terminate the designation of a country as a beneficiary country at least 60 days before termination. The proposal permits the President to withdraw, suspend, or limit duty-free treatment for certain articles if he determines that such treatment would be more effective in promoting compliance with eligibility requirements than termination, and requires congressional notification. The proposal requires the President seek public comment, including a public hearing, in conducting annual monitoring and review of beneficiary countries and create a petition process for interested parties to file petitions with the United States Trade Representative regarding compliance of a beneficiary country.

In addition, the proposal authorizes the President to conduct out-of-cycle reviews of any beneficiary country to determine whether it is making continual progress in meeting the eligibility criteria. If the President determines that a beneficiary country is not adequately meeting the eligibility criteria, the President shall terminate the eligibility of that beneficiary country or withdraw, suspend, or limit application of duty-free treatment with respect to articles from that country. The proposal expresses a Sense of Congress that the President should initiate within 30 days of enactment an out-of-cycle review of South Africa, and if appropriate, other beneficiary countries.

The proposal encourages beneficiary countries to develop and publish biennial AGOA Utilization Strategies that the United States trade capacity building agencies should take into account when providing resources. The proposal requires the President to submit a biennial report to Congress on the trade and investment relationship, including a detailed analysis of whether a beneficiary country is continuing to meet AGOA eligibility requirements, between the United States and Sub-Saharan Africa. The proposal also requires the President to submit to Congress every five years a report evaluating each beneficiary's progress toward becoming a trade agreement partner and establishing a plan for negotiating and concluding such agreements.

### **Effective Date**

The effective dates of amendments made by this Title take effect 30 days after implementation of this act.

## B. Extension of Generalized System of Preferences (Title II)

### **Present Law**

In the Trade Act of 1974, Congress established the Generalized System of Preferences (“GSP”), which provides non-reciprocal, duty-free treatment to certain articles imported from countries designated as beneficiaries. Since 1974, the program has been periodically renewed by Congress. The GSP program provides duty-free entry for over 3,500 products from 122 beneficiary developing countries, and duty-free status to an additional 1,500 products from 43 GSP beneficiaries that are designated as least-developed beneficiary developing countries. The most recent renewal expired on July 31, 2013.

The President has the authority, within certain limitations, to designate countries as beneficiaries under GSP, provided the country meets the program criteria. The eligibility criteria includes requirements that a beneficiary country has not provided preferential treatment to another country in a manner that affects U.S. commerce; nationalized or expropriated the property of U.S. citizens, including intellectual property; failed to abide by arbitral awards; and has met requirements regarding worker rights and child labor. Additional factors in country designation include the country’s interest in participating in the program, the level of economic development, and the extent to which the country has limited trade-distorting investment policies.

The President may withdraw, suspend or limit a country’s benefits under the GSP program for failure to meet the criteria. In June 2013, the President suspended benefits for Bangladesh after determining the country was insufficiently protecting worker rights, health and safety. The President may also remove benefits if a country is determined to be sufficiently competitive or developed. In October 2014, the President graduated Russia from the program after determining the country had become sufficiently developed. Finally, the GSP program mandates the President graduate countries designated "high income country" as defined by official World Bank statistics.

### **Description of Proposal**

The proposal amends Section 505 of the Trade Act of 1974 to extend the GSP program until December 31, 2017, and retroactively applies benefits to articles imported on or after July 31, 2013 that would have been eligible for duty-free treatment under the GSP program as of the date of enactment.

The proposal amends Section 503(b) of the Trade Act of 1974 to authorize the President to designate certain cotton articles as eligible articles for countries designated as least-developed beneficiary developing countries.

Finally, the proposal permits additional time for the year 2014 for the President to conduct reviews with regards to products subject to a competitive need limitation.

## C. Extension of Preferential Duty Treatment for Haiti (Title III)

## **Present Law**

In 1983, Congress created a regional preference program called the Caribbean Basin Economic Recovery Act (“CBERA”). In 2006, implementation of the Central America-United States Free Trade Agreement, which included several CBERA beneficiaries, left Haiti, one of the poorest economies in the Western Hemisphere, at a disadvantage in exporting to the United States. In response, Congress amended CBERA under the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (“HOPE I”) to create uniquely generous and flexible unilateral preferences for Haiti. Congress further enhanced and extended benefits under the HOPE II Act of 2008, and again by the Haiti Economic Lift Program (“HELP”) Act of 2010.

The program’s eligibility criteria is based on GSP provisions, with an additional monitoring requirement of Haitian firms to ensure that they conform to internationally recognized worker rights.

The HOPE Act allows for duty-free treatment for Haitian apparel exports made from limited amounts of lower-cost third-country fabrics and other inputs from countries outside the region or not part of a trade agreement with the United States. HOPE II established a trade preference level (TPL) for certain woven and knit items and provided duty free access for a limited number of other items wholly assembled in Haiti regardless of the fabric content. All benefits expire September 30, 2020, though the flexibilities provided in the program for Haiti to use third-country fabrics begin to decrease in December 2015.

## **Description of Proposal**

The proposal would extend benefits provided under the Haiti programs through September 30, 2025.

D. Offsets

[Reserved]