

TOOLS OF TRADE

The Use of U.S. Generalized System of
Preferences to Promote Labor Rights for All



INTERNATIONAL CORPORATE
ACCOUNTABILITY ROUNDTABLE

ABOUT THE AUTHORS

INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE

The International Corporate Accountability Roundtable (ICAR) is a civil society organization that believes in the need for an economy that respects the rights of all people, not just powerful corporations. We harness the collective power of progressive organizations to push governments to create and enforce rules over corporations that promote human rights and reduce inequality.



ACKNOWLEDGEMENTS

This report is researched and drafted by Sophia Lin and Rutuja Pol, with research and editorial support from Sif Thorgeirsson, Heather Cohen, and Sarah McGrath. ICAR would like to thank all the individuals who provided feedback on this paper, particularly Elizabeth Baltzan, Eric Biel, Jeff Vogt, and Cassandra Waters.

SUMMARY

The U.S. Generalized System of Preferences (GSP), created under the Trade Act of 1974, provides leverage for the U.S. government to promote greater economic growth, political reform, and respect for labor rights in its 120 beneficiary developing countries. The program conditionally provides duty-free access for more than 3,500 goods from beneficiary countries to the United States. For sub-Saharan African countries, eligibility for GSP is especially crucial, as it is a pre-condition for participation in the regional trade preference program under the African Growth and Opportunity Act, which provides even broader U.S. market access.

Eligibility for the GSP hinges on a country's compliance with a number of U.S. priority policies. Specifically, with respect to labor rights, the recipient country must: (1) have taken or is taking steps to afford internationally recognized worker rights to workers in the country, and (2) implement its commitments to eliminate the worst forms of child labor.

While the GSP has led to some positive changes in labor rights in certain countries, overall, there has been weak enforcement of the labor rights eligibility criteria. As a result, countries with some of the worst labor rights records in the world have been provided duty-free access to U.S. markets. As such, they have gained an unfair advantage over other countries, including the United States. This undermines the effectiveness and credibility of the program.

The poor enforcement stems from a number of implementation gaps, including:

- The executive branch enjoys wide discretion to determine GSP eligibility irrespective of the country's labor rights conditions, stemming from the lack of minimum standards of compliance and the national economic interest waiver provided under the Trade Act.
- Lack of transparency over the review of country compliance petitions.
- No standards and timeline for a finding of non-compliance and the abuse of the "continuing review" process where countries are placed on an indefinite probation while they continue to enjoy preferential duty-free access under the GSP.
- Criteria for reinstating countries after the revocation of GSP eligibility are ineffective and subject to political consideration.

These gaps are not insurmountable and can be addressed through proactive and strong actions from the lead implementing agency, Office of the United States Trade Representative (USTR), and Congress. To strengthen GSP enforcement, USTR should increase transparency of the eligibility determination process, clarify standards and timelines for review, and ensure adequate follow through of benchmarks and targets set forth by the agency itself. Congress may also increase the effectiveness of the program by amending the Trade Act to strengthen the labor rights criteria and by monitoring USTR's implementation of the GSP more rigorously.

TABLE OF CONTENTS

4	I. INTRODUCTION
6	II. THE GSP PROGRAM
7	SCOPE OF THE GSP
8	LABOR RIGHTS IMPROVEMENT UNDER THE GSP
9	CURRENT GSP IMPLEMENTATION AND ITS GAPS
9	Decisions Subject to Wide Executive Discretion
10	Reluctance of the U.S. Government to Initiate Review of Beneficiary Countries
11	Lack of Transparency over Petition Review Process
11	No Standards and Timeline for a Formative Finding
12	Criteria for Reinstating Countries Are Ineffective
14	CASE STUDY: BANGLADESH
16	III. AFRICAN GROWTH AND OPPORTUNITY ACT
17	ADDITIONAL ELIGIBILITY CRITERIA UNDER AGOA
18	AGOA ENFORCEMENT
20	IV. CONCLUSION AND RECOMMENDATIONS
20	CONGRESS
21	EXECUTIVE BRANCH/UNITED STATES TRADE REPRESENTATIVE
23	V. ENDNOTES

I. INTRODUCTION



The United States is one of the world's major trading nations. The U.S. government has used the influence that stems from this position to promote greater economic growth, political reform, and respect for human rights, including labor rights, in developing countries within its trade policies. In fact, the Generalized System of Preferences (GSP) and other regional trade preference programs are specifically designed for these purposes.

These programs conditionally allow a number of goods from eligible developing countries to be imported into the United States duty-free. The goal of these programs is to assist developing countries to expand their exports and promote stable growth, while simultaneously lending support to U.S. foreign policy.¹ As such, eligibility for program participation hinges on a country's compliance with a number of U.S. priority policies, including intellectual property rights, counter-terrorism efforts, and international labor rights.²

Although country conditions vary and the GSP may never be the panacea for all legal and policy problems, especially given the already low U.S. tariffs on a wide variety of imports,³ the GSP provides a tool to affect positive change where such leverage may not be otherwise available. In the past, the GSP has led to improvements in labor conditions in certain countries. However, enforcement of the labor rights eligibility criteria has been weak overall. As a result, numerous countries with some of the worst labor rights records in the world have been provided duty-free access to U.S. markets. As such, they have gained an unfair advantage over other countries, including the United States. Continuing to provide trade preferences to these countries severely undermines both the objectives and credibility of the program. To ensure that the GSP can achieve its intended purposes, promoting economic development while raising standards through trade, the legal and enforcement gaps that plague it must be addressed.

This paper provides an overview of the GSP program and a related regional trade preference program for sub-Saharan African countries, identifies gaps in implementation, and proposes recommendations for Congress and the administration to enhance the legal structure and enforcement of the GSP with a view to improving human rights, including labor rights, globally. This re-examination is particularly timely in light of the current administration's statements on trade.⁴ For example, the 2017 annual report published by the Office of the United States Trade Representative (USTR) identifies, as one of USTR's primary trade policy objectives, addressing the use of forced labor in the production of U.S. imports by strictly enforcing U.S. trade laws. The report specifies that this includes "enforcing labor provisions in existing agreements and enforcing the prohibition against the importation and sale of goods made with forced labor."⁵ Furthermore, in June

2017, USTR announced that it is "committed to vigorously enforcing the eligibility criteria" of trade preference programs to "strengthen [U.S.] trade enforcement efforts and support U.S. manufacturing."⁶ In October 2017, USTR further launched a new triennial assessment process to conduct a comprehensive review of all GSP beneficiary countries' compliance with the eligibility criteria.⁷

Given the administration's emphasis on improving enforcement of the GSP program, it is a critical time to ensure that its efforts focus on strengthening human and labor rights protections and conditions on the ground among U.S. trading partners. An improvement in worldwide labor standards will create a fairer global playing field that will help both U.S. workers and those abroad, and prevent companies from gaining an unfair advantage by violating labor rights.

II. THE GSP PROGRAM

The GSP is codified under the Trade Act of 1974 (the Trade Act) and requires congressional approval for renewal, amendments, and additions.⁸ The current program expired on December 31, 2017 and for the benefits to continue, Congress must renew the program. Under the Trade Act, the President, drawing on advice from the USTR, is authorized to afford GSP eligibility to developing countries based on a number of mandatory and discretionary criteria.⁹

The President shall not designate any country a beneficiary developing country if the country does not comply with the mandatory criteria. This paper focuses on the two labor rights criteria. The first, also listed as a discretionary criterion, mandates a recipient country must “have taken or is taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).”¹⁰ “Internationally recognized worker rights” are defined to include the right of association; right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor; a minimum age for employment of children, and a prohibition on the worst forms of child labor; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety.¹¹

The second criterion requires a recipient country to “implement[] its commitments to eliminate the worst forms of child labor.”¹² This includes: “(A) all forms of slavery or practices similar to slavery...including forced or compulsory recruitment of children for use in armed conflict; (B) use, procuring or offering of a child for prostitution, for the production

of pornography or for pornographic purposes; (C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and (D) work which, by its nature or circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.”¹³

These labor rights criteria provide incentives for beneficiary countries to improve their labor conditions while pursuing economic development. They also prevent companies operating in these countries from “gain[ing] a competitive edge” by taking advantage of weak legal regimes and enforcement in relation to labor rights.¹⁴

Although the Trade Act mandates revocation of GSP eligibility in cases of non-compliance with the mandatory criteria, it allows the President to continue GSP benefits if (s)he should “determine that such designation will be in the national economic interest of the United States.”¹⁵ The President’s decision to withdraw, suspend, or limit the duty-free treatment under the GSP takes effect upon notification to Congress.¹⁶

SCOPE OF THE GSP

Since the GSP's launch,¹⁷ the program has provided trade benefits to a number of countries. As of January 1, 2017, there were 120 designated GSP beneficiary countries (BDCs), including 44 least-developed beneficiary developing countries (LDBDCs).¹⁸ The program provides preferential duty-free treatment to more than 3,500 products from the BDCs and an additional 1,500 products from LDBDCs.¹⁹

In general, all BDCs receive duty-free treatment on the entire list of 3,500 GSP eligible products subject to certain exceptions. One of the main exceptions is the Competitive Need Limitations (CNLs), which set the annual quantitative ceilings for each product from a BDC. A product from a BDC is considered "sufficiently competitive" and therefore loses duty-free treatment if its annual U.S. imports: (1) "account for 50 percent or more of the value of total U.S. imports of that product," or (2) "exceed a certain dollar value," which was set at \$180 million in 2017.²⁰ LDBDCs and countries that are also beneficiaries of the AGOA are exempted from the CNLs.²¹

Importers, or other "interested parties," may petition for a presidential CNL waiver of a specific product from a particular BDC.²² Under the Trade Act, in deciding whether to grant a CNL waiver, the President must "give great weight" to the extent to which the BDC: (1) "has assured the United States that [it] will provide equitable and reasonable access to the markets and basic commodity resources of such country," and (2) "provides adequate and effective protection of intellectual property rights."²³ Such a waiver, once granted, automatically applies to both the import percentage limit and the dollar limit.²⁴

Additionally, the Trade Act specifically excludes certain items, known as "import sensitive" products, from preferential treatment under the GSP.²⁵ These are generally products for which the United States retains

or retained significant manufacturing capacity, and includes most textile and apparel products, watches, most footwear, and glassware. In 2015, Congress amended the Trade Act to remove "travel goods" including luggage, handbags, backpacks, and pocket goods, from the import sensitive list. In June 2016, these products were added to the GSP program for LDBDCs and African countries. A year later, the Trump administration further extended GSP access for these goods to all BDCs.²⁶

While the import sensitive products may seem like a significant carve out to the GSP, they do not affect the application of the labor rights eligibility criteria, as compliance is reviewed on a country-wide basis and not limited to items eligible for the GSP. For example, the President can terminate a BDC's eligibility based on the lack of labor protections for workers in the apparel sector even though most apparel products are deemed import sensitive.

The GSP model of expanding trade relations with eligible developing countries set an important precedent for the subsequent development of regionally focused trade preference programs for Africa,²⁷ the Caribbean,²⁸ and the Andean region.²⁹ A country-specific trade preference program was established for Haiti in 2006, providing duty-free treatment for apparel and textile products.³⁰ These programs share principles and legal structures similar to the GSP, but provide duty-free access to a number of additional products. These trade preference programs have increased imports from the 120 countries currently eligible for participation. In 2016, imports benefitting from preferential access under these trade programs totaled 29 billion USD.³¹ The value of imports brought into the United States under the GSP in 2016 was 18.07 billion USD,³² which amounts to 0.8 percent of all U.S. goods imported and 9.2 percent of goods imported from beneficiary countries.³³

LABOR RIGHTS IMPROVEMENT UNDER THE GSP

The labor rights criteria were added to the GSP legal framework in 1984.³⁴ The statutory inclusion of the labor rights criteria created an important precedent for linking international trade with labor rights, and was followed by a number of global bilateral, regional, and multilateral actions to promote labor rights within the international trade and investment forum. For example, in the United States, a labor rights clause was included in 1985 as a condition for Overseas Private Investment Corporation (OPIC) insurance. A labor rights amendment was also added to Section 301 of the Trade Act of 1988, which defines unfair trade practices to include worker rights violations.³⁵

A similar trend occurred at the regional and multi-lateral levels, such as the labor side agreement to the North American Free Trade Agreement (NAFTA), the labor provisions in subsequent U.S. trade agreements after 2007, as well as initiatives to incorporate labor rights into the agenda of the World Bank, International Monetary Fund (IMF), and Organization for Economic Cooperation and Development (OECD).³⁶

In addition, the GSP has incentivized a number of countries to undertake labor reform to obtain, maintain, or regain preferential access to the U.S. market, although these efforts tend to be piecemeal rather than spurring broad-based reforms with lasting impacts.³⁷ For instance, between 1994 and 1999, after losing its GSP status, Mauritania amended its labor code, and conducted legal reforms to recognize trade unions.³⁸ Its progress led the United States to restore Mauritania's GSP status in June 1999. However, the regression of labor conditions in the country, particularly in regards to forced labor, led the AFL-CIO to file a petition in 2017 for compliance review under the African Growth and Opportunity Act

(AGOA), which established a regional trade preference program for sub-Saharan African countries.³⁹ Similarly, in 2005, a petition regarding Uganda's compliance with labor rights criteria under the GSP and AGOA led USTR to initiate a review of Uganda's country practices. As a result of its concern at losing its GSP status, Uganda enacted new legislation that, among other things, facilitated union organization and employed additional labor inspectors in conformity with the changes sought by the U.S. government.⁴⁰

CURRENT GSP IMPLEMENTATION AND ITS GAPS

Despite the positive achievements, enforcement of the eligibility criteria under the current legal framework, especially with regards to labor rights, has generally been weak. Many countries with extremely poor labor rights records remain eligible for the GSP. For example, the Global Slavery Index found that 58 percent of people living in slavery worldwide are located in five countries.⁴¹ Three of these countries, India, Pakistan, and Uzbekistan, are GSP beneficiaries, with India ranking as the number one importer under the program. Egypt, the Philippines, Kazakhstan, and Turkey, all BDCs, are among the “the ten worst countries for workers” according to the International Trade Union Confederation’s (ITUC’s) Global Rights Index for 2017.⁴²

In 2017, as the biggest travel goods importer to the United States among BDCs, the Philippines particularly benefited from the GSP program despite its poor labor and human rights record. Since the Trump administration extended GSP access for travel goods to all BDCs, the import of these products from the Philippines has dramatically increased, almost doubling from 2016.⁴³

The U.S. government’s own data also highlights the lack of enforcement on grounds of child labor and human trafficking. According to the U.S. Department of Labor (DOL), only ten percent of GSP eligible countries are classified as having made significant advances in eliminating the worst forms of child labor—56 percent have made moderate advances, 29 percent have made minimal advances, and six percent have made no advances.⁴⁴ Similarly, almost half of the countries classified as Tier Three in Department of State (DOS)’s 2017 Trafficking in Persons (TIP) report are currently receiving GSP benefits.⁴⁵ This is despite the fact that Tier Three countries, by definition, do not meet the minimum standards for the elimination

of human trafficking, nor are they making significant efforts to meet these standards.⁴⁶

The weak enforcement of the GSP may be due to a variety of reasons, including the wide executive discretion in making enforcement decisions, the reluctance of the U.S. government to initiate reviews, the lack of clear standards for admission and lengthy review process, the failure to create standards for a formative finding, and ineffective criteria for reinstating countries. Each of these gaps is outlined in further detail below.

DECISIONS SUBJECT TO WIDE EXECUTIVE DISCRETION

The President is legally required to revoke a country’s GSP status in cases of non-compliance with the mandatory labor rights criteria.⁴⁷ However, the executive branch enjoys wide discretion in implementing and enforcing this requirement. Such discretion is built into the Trade Act, which provides the President wavier authority when (s)he determines that the designation implicates “national economic interest.” This determination requires a formal finding by the President, followed by a notification to Congress. The U.S. government seldom invokes this waiver authority, particularly as the Trade Act also allows executive discretion in a less explicit way. By mandating the beneficiary country be “taking steps” to implement internationally recognized labor rights,⁴⁸ without requiring actual compliance with international labor standards, the vague language provides the executive branch substantial leeway in determining the parameters of the requirement.

The decision making process of GSP country eligibility further allows the President to factor in political considerations when enforcing the labor rights criteria. USTR, the lead agency

administering the GSP, implements this process through the GSP subcommittee of the Trade Policy Staff Committee (TPSC). The TPSC is an interagency group that consists of trade policy officials from 18 other government offices and agencies, including the Departments of Health and Human Services, Homeland Security, Justice, Labor, State, and the National Economic Council, among others. Once a petition for country practice review is filed, it is vetted by the TPSC to determine if it requires further investigation. If so, the TPSC may rely on a number of sources, such as reports by the labor officers or DOS personnel stationed in the relevant U.S. embassies or consulates, to make a determination.

TPSC's decision may be reviewed by the Trade Policy Review Group (TPRG), which is convened by the Deputy USTR and Under Secretary-level officials from other agencies.⁴⁹ Decisions by the TPSC or TPRG form the basis of a recommendation to the USTR, who may decide to overturn such recommendation. The USTR in turn advises the President on whether to adjust the country's GSP benefits.

Although the TPSC and TPRG include representatives from various government offices and agencies, including the DOL, the USTR may make his/her own determination on how to advise the President independent of recommendations from these groups. Ultimately, the final decision lies with the President, and such decision is again not bound by precedents or recommendations from agencies that have expertise in labor rights conditions in the target country. As such, the enforcement of the labor rights criteria is often criticized for its inconsistent application, which appears to be based on the geopolitical and foreign policy concerns of the particular administration. For instance, it is speculated that USTR refused to review Mexico and Colombia's labor rights violations following a 1993 petition because the United

States was then negotiating the NAFTA labor side agreement with Mexico and Colombia's president was the U.S. government's preferred candidate to head the Organization of American States.⁵⁰

RELUCTANCE OF THE U.S. GOVERNMENT TO INITIATE REVIEW OF BENEFICIARY COUNTRIES

Under the Trade Act the President is required to terminate a country's GSP eligibility if it is found not to be compliant with the labor criteria. Although the statute does not preclude the administration from self-initiating an eligibility review,⁵¹ the U.S. government has traditionally been reluctant to proactively review BDCs' compliance with the labor criteria. Therefore, country compliance review processes are often only initiated if an interested party, usually a labor union or civil society organization, files a petition requesting a review. USTR only reviews these petitions during a limited time period, usually once a year, as determined by the agency.⁵² According to the publicly available information on USTR's website, until recently, the U.S. government had not self-initiated an eligibility review of any country for at least ten years. This reluctance places the enforcement burden on civil society and trade unions, which often face resource and time constraints, further limiting the effectiveness and timely enforcement of the GSP.

However, recent actions by the U.S. government indicate that this enforcement gap may be closing. In June 2017, USTR initiated a review of Bolivia's commitments to eliminate the worst forms of child labor and the steps taken to afford its workers internationally recognized worker rights.⁵³ A few months later, in October, USTR announced a new triennial assessment process to ensure that all BDCs are in compliance with the eligibility criteria.⁵⁴ In its first year, this assessment will focus on Asian countries, expanding to other regions in its second and

third years. This assessment may lead to a full country practice review if it uncovers concerns about compliance. In so implementing this new assessment process, USTR emphasized the need to “ensure that countries that are not playing by the rules do not receive U.S. trade preferences,” which “sets the correct balance for a system that helps incentivize economic reform in developing countries and achieve a level playing field for American businesses.”⁵⁵ These actions and comments signal a potential increase in the enforcement of the GSP eligibility criteria.

LACK OF TRANSPARENCY OVER PETITION REVIEW PROCESS

Under the third party petition process, once a petition is filed, the TPSC will determine if sufficient information has been presented to satisfy the regulatory requirements to initiate a review. However, there is no publicly available information on the criteria the TPSC employs to make this determination. Similarly, when a petition is rejected, USTR does not publish an explanation for the decision.⁵⁶

If a petition is rejected, the petitioner is required to provide “substantial new information” during the next petition period for the country to be reconsidered.⁵⁷ A number of petitions have been cancelled or rejected under the “new information” rule. For example, as early as 1988, the AFL-CIO and other advocacy groups filed a petition on the deteriorating labor rights situation in Malaysia’s electronics and athletic footwear sectors.⁵⁸ After a year of review, USTR determined that Malaysia was “taking steps” in line with the statutory requirements and could retain its beneficiary status. However, it did not provide details of its decision, which was particularly egregious given USTR’s knowledge that Malaysia prohibited the full freedom of “workers to associate and form the labor organizations of their own choosing in certain export industries such as

the electronics industry,” which was raised in a letter from the then-USTR Carla Hills to the Malaysian Minister of Trade and Finance.⁵⁹

In 1990, the AFL-CIO filed a new petition based on the continued ban on independent unions and collective bargaining in the electronics export processing zones, citing to the USTR letter as further evidence. However, USTR refused to accept the petition for lack of “new information.”⁶⁰

NO STANDARDS AND TIMELINE FOR A FORMATIVE FINDING

If a petition alleges sufficient facts to trigger further investigation, the TPSC may place the target country under a continuous review process before making a formal finding of non-compliance and terminating the country’s GSP eligibility. During this “continuing review” process, the U.S. government may engage with the target government to improve its compliance with the eligibility criteria raised in the petition.

This continuing review approach may ameliorate potential unintended consequences the revocation of a country’s GSP status could have on workers, such as companies closing factories or shifting supply chain arrangements due to increased tariffs. It also provides the U.S. government leverage to pressure the target country to reform its labor practices, which has had some success. For example, after Americas Watch challenged the Dominican Republic’s practice of enslaving Haitian workers in its sugar plantations in 1990 and 1991, the Dominican Republic revised its labor laws to define forced labor more broadly to include the practice of debt bondage.⁶¹

Despite these positive aspects to the continuing review approach, there are some downsides. In particular, it has no publically available timeline nor is there a clearly defined baseline, metrics, or target to assess

the BDC's progress. In many cases, the U.S. government may engage with a country for years without revoking its eligibility. For example, the review petition filed against Niger in 2006 was finally closed in January 2017 with the U.S. government citing "progress by the government in raising awareness of and combatting forced and child labor."⁶² Niger thus retained its GSP status.⁶³ Likewise, the International Labor Rights Forum (ILRF) filed a petition in 2007 to review Uzbekistan's GSP eligibility given Uzbekistan's well-documented practice of using forced and child labor in its cotton industry. Ten years have passed and the review is still open and ongoing. Although the U.S. government has implemented technical assistance programs to assist Uzbekistan to address forced labor,⁶⁴ violations continue to persist while Uzbekistan enjoys preferential access under the GSP.⁶⁵

In fact, over the past ten years, the U.S. government has suspended GSP benefits for violations of the labor rights criteria for only one country: Bangladesh.⁶⁶ This suspension came six years after the initial petition was filed in 2007 and only after the notorious Rana Plaza factory collapse.⁶⁷ The lack of standards and timeline of the review process coupled with the U.S. government's general reluctance to revoke eligibility mean that the program is not effectively implemented and cannot consistently serve as meaningful leverage to promote better labor standards internationally.

CRITERIA FOR REINSTATING COUNTRIES ARE INEFFECTIVE

The U.S. government may continue to have leverage over a target country even after its beneficiary status is terminated or suspended should that country wish to have its eligibility status reinstated. For example, in 1989, Burma's beneficiary status was terminated due to labor rights concerns stemming from

the rise of the military junta.⁶⁸ The country engaged in political and some legal reforms and requested reinstatement of its GSP status in 2013. Subsequently, the U.S. government announced the launch of an *Initiative to Promote Fundamental Labor Rights and Practices in Myanmar* in 2014 to assist the country in improving labor rights as well as meeting the GSP eligibility criteria.⁶⁹

The Initiative to Promote Fundamental Labor Rights and Practices in Myanmar is a joint project of the U.S. government and the governments of Burma, Japan, Denmark, and the European Union, as well as the International Labor Organization (ILO). Its main goal is to "strengthen and support Myanmar in labor reform, enforcement, transparency, and domestic stakeholder consultations" through a multilateral and multi-stakeholder process.⁷⁰ The U.S. government provided the seed funding to create a "Labor Law Reform Cluster" tasked with "support[ing] the [Burmese government] and civil society groups in the development of the labor reform plan."⁷¹ As a result, the Burmese government has identified a number of short and mid-term priorities for labor law reform.⁷²

Although initiatives such as this may help propel labor reforms, as with other aspects of the GSP implementation, they do not set out specific standards on whether a country has made sufficient progress to justify the reinstatement of its GSP benefits. In fact, reinstatement often takes place without much progress on the ground. In the case of Burma, the announcement to reinstate its GSP status came in September 2016 after Burma had its first democratic transition to a civilian government in more than 50 years. However, the reinstatement decision was made without regard to concerns over persistent serious labor violations in the country.⁷³

One of the main pillars of the multi-stakeholder initiative was to “solidify [labor] reforms, help Burma comply with international standards,”⁷⁴ but forced labor is widespread, especially among ethnic minorities,⁷⁵ anti-union discrimination practices remain prevalent, the meager 3 USD per day minimum wage is treated as the maximum wage, and workers are still denied access to effective remedy for violations of their labor rights.⁷⁶ The U.S. government itself, through the DOS, confirmed widespread labor violations in its 2016 Trafficking in Persons report, downgrading Burma to the lowest tier, Tier Three. The report was published three months before the White House’s decision to reinstate Burma’s GSP status.⁷⁷

CASE STUDY BANGLADESH



Bangladesh serves as an illustrative example of the implementation gaps of the GSP. It shows that in cases of clear non-compliance, suspension of GSP benefits is needed to preserve the integrity of the program.

Since 1990, the AFL-CIO has filed five separate petitions, each with new information, requesting the U.S. government to review Bangladesh's GSP eligibility given widespread labor violations.⁷⁸ The most recent petition, filed in 2007, was accepted by the TPSC, which placed Bangladesh under continuing review, thereby permitting the country to enjoy GSP status while working with the U.S. government to improve its labor conditions.⁷⁹ Together, the U.S. and Bangladeshi governments developed a number of benchmarks to track Bangladesh's progress.

The TPSC held public hearings in October 2007, April 2009, and January 2012 regarding Bangladesh's labor conditions. Interested parties were permitted to file briefings urging the U.S. government to take action and revoke Bangladesh's GSP status. However, these hearings did not result in any concrete decision or outcomes.

Meanwhile, labor violations continued. The 2007 petition highlighted various labor rights violations in Bangladesh's export processing zones (EPZs).⁸⁰ Although engagement with the U.S. government led to some improvements, including the passage of a law that granted EPZ workers the right to form worker associations, workers were still unable to bargain collectively or meaningfully

participate in union activities.⁸¹ The AFL-CIO described progress as "one step forward, two steps back."⁸²

In November 2012, a major fire broke out at the Tazreen Fashions factory in Dhaka, killing more than 100 workers. In April 2013, the Rana Plaza building housing numerous garment factories collapsed, killing more than 1100 workers and injuring another 1500.⁸³ Two months after the Rana Plaza incident and six years after the AFL-CIO's 2007 petition, the U.S. government suspended Bangladesh's GSP status for failure to take steps to implement internationally recognized labor rights for workers.⁸⁴

The decision to revoke Bangladesh's GSP status was reached after extensive engagement with the government of Bangladesh to improve worker rights and highlighted tensions among TPSC members over differing approaches to enforcement of the eligibility criteria. According to media reports, the DOL pushed to revoke GSP status, arguing that doing so was necessary for the credibility of the program, while some in the DOS contended that continued diplomatic engagement was the best way to bring about change.⁸⁵ However, in the weeks after the Rana Plaza incident, there was an emerging consensus that GSP must be revoked.

Following the suspension, the U.S. government worked with the government of Bangladesh to improve the country's labor rights. The U.S. government developed a "Bangladesh Action Plan," which included a set of 16 conditions, outlining safety and labor benchmarks that Bangladesh would need to meet in order to regain its GSP eligibility.⁸⁶ The plan addresses a number of issues, including: (1) government inspections for labor, fire, and building standards; (2) rights to freedom of association and anti-discrimination measures for workers in the garment sector and the shrimp processing sector; and (3) specific standards for EPZs. For many aspects of the plan, the government of Bangladesh is required to support and act in coordination with the ILO on implementation.⁸⁷ In addition, the U.S. government also joined the Sustainability Compact, initiated by the European Union. The Compact similarly focuses on assisting the government of Bangladesh in improving labor rights and factory safety issues in the garment sector.⁸⁸

USTR dedicated significant time in 2014 and 2015 to working with the Bangladeshi government and other stakeholders to monitor Bangladesh's progress.⁸⁹ According to USTR's 2015 review, Bangladesh had made some improvements in fire and building safety issues. However, concerns over the lack of freedom of association and collective bargaining remain, particularly given the "continuing reports of harassment and violence against union activists seeking to establish new unions or to exercise their legal rights."⁹⁰ The U.S. government has indicated that more progress is necessary before the country's GSP benefits can be restored.⁹¹

Progress on reinstatement has been slow for a variety of reasons. First, there is minimal incentive to comply with the eligibility criteria as the GSP does not cover apparel products, which account for 82 percent of Bangladesh's exports.⁹² In addition, Bangladesh has retained its preferential access to the EU under a similar trade preference program, which does allow

apparel products to be imported duty-free. The availability and access to other markets has made implementation of the Bangladesh Action Plan a low priority and highlights the need for better coordination between the United States and the EU in enforcing trade preference programs.⁹³

Additionally, the government of Bangladesh takes issue with its being denied GSP eligibility while other countries with poor labor rights records continue to enjoy preferential access under the program,⁹⁴ although this may be a political excuse and it should not be a reason to justify the government of Bangladesh's failure to improve labor rights for its workers. In May 2017, it was reported that the government of Bangladesh decided to stop requesting that the United States reinstate its GSP status. Bangladesh announced that it had made a "strategic decision" to drop GSP as an issue to discuss with the U.S. government during an annual bilateral trade meeting where the two governments discuss barriers to trade and investments. A senior official from the Bangladeshi foreign ministry said, "We have been asking for GSP for long. But it seems we'll never get it back. So we have decided to stop asking for this. The GSP privilege was not significant as we did not us[e] . . . that for our main exports."⁹⁵

The case study highlights that U.S. policymakers often operate under the premise that "engagement" is preferable to a suspension of benefits. However, taking such an approach for a prolonged period of time even in clear cases of non-compliance harms the integrity of the program, showing the rest of the beneficiary countries that suspension of GSP privileges may only occur after a highly publicized destructive event. It also demonstrates the need for improved coordination between the United States and the EU in enforcing their respective trade preference programs.

III.

AFRICAN GROWTH AND OPPORTUNITY ACT

Enforcement of the GSP is particularly important because the GSP serves as the basis for the African Growth and Opportunity Act (AGOA), a regionally-focused trade preference program for sub-Saharan African (SSA) countries.⁹⁶ AGOA is the cornerstone of the U.S. trade and investment policy in SSA. It was passed as part of the Trade and Development Act of 2000 to expand U.S. trade and investment with sub-Saharan Africa.⁹⁷ By providing duty-free treatment to goods from beneficiary countries, AGOA was designed to stimulate economic growth, encourage economic integration, and facilitate sub-Saharan Africa's integration into the global economy.⁹⁸

AGOA and the GSP work together to create a comprehensive trade preference program for eligible countries. To be eligible for AGOA, countries must first qualify for the GSP,⁹⁹ meaning that where a country loses its GSP status, it will also lose its AGOA status. Products eligible for trade preferences under the AGOA are broader than those under the GSP and include value-added agricultural and manufactured goods, such as processed food products, apparel, and footwear. The program permits "duty-free access to the U.S. market for over 1,800 products beyond the products eligible under the GSP program."¹⁰⁰ CNLs that apply to GSP beneficiary countries do not apply to those that receive preferential treatment under AGOA.¹⁰¹ As a result, AGOA offers substantial trade preferences that, combined with the preferences under the GSP, allow virtually all marketable goods produced

in AGOA-eligible countries to enter the U.S. market duty-free, provided that they meet the local content requirements.¹⁰²

As of 2016, 38 sub-Saharan African countries were eligible for AGOA benefits.¹⁰³ That same year, the total amount of sub-Saharan African exports under AGOA amounted to more than \$9 billion, accounting for almost half of total U.S. imports from SSA countries.¹⁰⁴ Top importers under AGOA were, in order, Nigeria, South Africa, Angola, Chad, and Kenya.¹⁰⁵ More than 80 percent of Nigeria's exports to the United States proceeded under AGOA, while 42 percent of South Africa's exports came in through the AGOA.¹⁰⁶ However, for many top importers, such as Nigeria, Angola, and Chad, oil and gas constitute the majority of their exports to the United States.¹⁰⁷ In fact, petroleum products account for 55.6 percent of all of AGOA imports in the year of 2016,¹⁰⁸ leading some to question whether the program has achieved its intended results of expanding beneficiary countries' exports beyond raw materials and diversifying their economies to promote stable growth.¹⁰⁹

ADDITIONAL ELIGIBILITY CRITERIA UNDER AGOA

The eligibility structure of AGOA is similar to that for the GSP. Like the GSP, AGOA allows the President to afford duty-free benefits under AGOA to SSA countries that satisfy certain eligibility criteria. While the eligibility criteria for AGOA overlap with those for the GSP, AGOA includes a number of additional requirements. In particular, the program requires recipient countries to “make continual process toward establishing” the following:

- The rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law;
- Economic policies to reduce poverty;
- A system to combat corruption and bribery; and
- Protection of internationally recognized worker rights.¹¹⁰

Additionally, AGOA also mandates that the country not “engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities.”¹¹¹

The President must terminate a country’s eligibility under AGOA if s/he determines that the country is not making continual progress in meeting these requirements.¹¹² USTR is required to submit a biennial report on the implementation of AGOA to Congress.¹¹³ The report describes the status of trade and investment with sub-Saharan Africa, country compliance and changes in country eligibility, regional integration efforts, and U.S. trade capacity building efforts. The last report was issued in June 2016.¹¹⁴

AGOA ENFORCEMENT

AGOA is implemented by the AGOA Implementation Committee, a subcommittee of the TPSC. Unlike the GSP, where the default assumes country compliance unless the President acts, AGOA requires the President to make a positive compliance determination every year with regards to beneficiary countries' eligibility.¹¹⁵ The Trade Preferences Extension Act of 2015,¹¹⁶ which extended AGOA through 2025, further created a new petition process that mirrors that of the GSP, allowing interested third parties to submit noncompliance complaints to the TPSC, thereby initiating a country eligibility review.¹¹⁷ Petitions can be submitted at any time, but will only be reviewed during the annual review period, unless a request is made for an out-of-cycle review citing exceptional circumstances.¹¹⁸ Unlike the GSP, the 2015 amendment explicitly provides the presidential authority to initiate out-of-cycle reviews for AGOA beneficiary countries.¹¹⁹

Many AGOA beneficiary countries continue to have poor human and labor rights records. Forty two percent of AGOA beneficiary countries are ranked in the bottom two tiers of ITUC's Global Rights Index, meaning that they either do not guarantee worker rights or that they permit systematic violations of worker rights.¹²⁰ However, the legal structure of the compliance review process under AGOA has prompted more proactive action from the administration. As such, although there has only been one country review predicated on the labor rights criteria, the U.S. government has enforced the broader human rights and rule of law criteria against a number of AGOA beneficiary countries.

For instance, in January 2016, Burundi's AGOA status was revoked because it failed to meet the eligibility criteria related to human rights, governance, and the rule of law.¹²¹ In particular, USTR noted that there is corruption throughout Burundi's "police, judiciary and tax

service institutions," and that the country suffers from the practice of "[e]xtra-judicial killings and pre-trial detentions." In addition, freedom of the press and association have been curtailed, sexual and gender-based violence are widespread, labor rights have not been upheld, and the ruling party has violently intimidated the opposition, which has led to a refugee crisis.¹²² In prior years, the U.S. government has revoked AGOA status of other countries, such as The Gambia for human rights abuses and South Sudan for political violence and armed conflict.¹²³ The Democratic Republic of Congo's eligibility was terminated in 2011 over continued concerns regarding corruption, child labor, and other issues.¹²⁴

As of date, AGOA eligibility has been revoked over labor rights violations against one country. When concerns were raised about Swaziland's implementation of internationally recognized labor rights, U.S. government officials worked with the country to improve its labor standards. The administration identified a number of benchmarks for the government of Swaziland, including: amending relevant laws to (1) allow for the registration of labor and employer federations, (2) ensure that the efforts to combat terrorism and protect public order is not undermine worker's rights to freedom of association, and (3) remove legal liability for participants in peaceful labor protests.¹²⁵

USTR led an interagency trip to Swaziland in April 2014 to provide guidance on how the nation could better protect freedom of association.¹²⁶ However, despite these efforts, Swaziland failed to make sufficient progress to meet the benchmarks. Subsequently, in June 2014, the U.S. government revoked Swaziland's AGOA status, effective as of January 1, 2015.¹²⁷ In doing so, the administration acknowledged the impact revocation might have on Swazi workers, as AGOA had been an "important source of employment for approximately 15,000 Swazi citizens" in the apparel sector.¹²⁸

The AGOA eligibility review process has prompted a number of corrective actions from the target countries. After the United States revoked Swaziland's AGOA eligibility, the government of Swaziland passed laws to allow union federation registration and remove criminal liability for labor leaders during peaceful demonstrations.¹²⁹ On December 22, 2017, President Trump reinstated Swaziland's AGOA status.¹³⁰

The threat of losing AGOA status also added critical pressure for political stability and legal accountability for those involved in the violent military coup in August 2014 in Lesotho, which threw the country in turmoil. The coup resulted in Lesotho's then Prime Minister Tom Thabane fleeing the country as well as the reinstatement of a former commander of the Lesotho Defense Force, who played a leading role in the coup.¹³¹ The U.S. DOS issued a statement in 2015 expressing grave concerns over these developments, particularly as "no one has been held accountable for the August 2014 political unrest and violence."¹³² The statement highlighted "reports of kidnappings and abuse within the Lesotho Defense Force, the murder of a prominent supporter of the major opposition party, and the failure to provide security for former Prime Minister Thabane."¹³³

Citing AGOA's rule of law and human rights eligibility criteria, the then USTR Michael Fromen threatened to revoke Lesotho's AGOA status, which had been crucial for the country's garment and textile industry.¹³⁴ This prompted a protest in Lesotho among some 20,000 workers, calling for the government to "restore democracy and the rule of law."¹³⁵ In response to the pressure, the government of Lesotho has implemented some recommended measures, including prosecuting military commanders involved in the 2014 coup.¹³⁶ The country has so far kept its AGOA eligibility.

The new third party petition process under the Trade Preferences Extension Act of 2015, which went into effect in March 2016, complements the mandatory annual country eligibility review for AGOA beneficiary countries.¹³⁷ Such a petition process may further spur enforcement of the human and labor rights eligibility criteria. It also allows civil society organizations to engage the administration on these grounds and utilize AGOA as a tool to affect change on the ground.

IV. CONCLUSION AND RECOMMENDATIONS

The GSP and other trade preference programs have come under the microscope due to the Trump administration's focus on prioritizing American interests and emphasis on addressing U.S. trade deficits. This current administration's approach, combined with USTR's June 2017 announcement regarding its efforts to better enforce trade preference program eligibility criteria, make for a timely review of the GSP and related programs.

The current GSP expired at the end of 2017. While Congress contemplates its renewal, it is important to recognize the GSP's potential leverage for the promotion of labor rights abroad. Admittedly, while trade preference programs have led to some improvement of labor rights on the ground, there are still significant gaps in enforcement. Countries with extremely poor labor rights records continue to enjoy duty-free access to the U.S. market, an attractive incentive for more foreign investment, without adequate accountability.

The slow and politicized nature of enforcement undermines the effectiveness and credibility of the program. To ensure that the GSP can realize its goals and maximize its intended benefits to workers in recipient countries, enforcement of the eligibility criteria must be strengthened. This requires actions from both Congress and the executive branch, particularly USTR. To do so, we recommend the following:

CONGRESS

- Improve alignment across trade preference programs by updating the GSP eligibility criteria to align with that of AGOA, particularly in relation to human rights, the rule of law, and corruption.
- Amend the labor rights criteria under the GSP to require compliance with basic minimum labor standards consistent with those under the eight fundamental conventions of the International Labor Organization (ILO) (including rights related to freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation), and ILO standards relating to acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

- Amend the labor rights criteria under the GSP to preclude countries labeled Tier Three in DOS's Trafficking in Persons report.
- Amend the bases for a CNL waiver to include a beneficiary country's compliance with the labor rights criteria.
- Promote more proactive enforcement actions by updating the country compliance review process of GSP to that of AGOA. This includes mandating periodic review of each beneficiary country to affirm compliance with the eligibility criteria, and explicitly allowing the President to initiate out-of-cycle reviews.
- Improve monitoring and oversight of USTR's enforcement of the eligibility criteria by issuing letters, holding public hearings, and tying the agency's performance to its annual budget.

EXECUTIVE BRANCH/UNITED STATES TRADE REPRESENTATIVE

Generally:

- Revise its regulations to include clear and concise compliance standards for the labor rights criteria under the GSP.
- Revise its regulations to tie product eligibility to compliance with the labor rights criteria by mandating that a country can only be considered for a CNL waiver if there have been no labor rights compliance petition against it accepted in the previous three years.
- Afford substantial deference to TPSC members that have expertise and experience in labor rights, such as DOL's ILAB, when assessing a country's compliance or progress on the labor rights criteria.
- Strengthen coordination with the EU and other key trading partners in determining BDC's eligibility under the U.S. GSP.

Petition process:

- Initiate periodic review of country compliance with the eligibility criteria and revise the regulations to permit interested parties to petition for out-of-cycle reviews.
- Increase transparency of the petition review process by providing petitioners with timely and written explanations when a petition is rejected.
- Publicize standards, procedures, and timelines for the triennial assessment process that incorporate input from public consultations with civil society and labor groups.
- Eliminate the "new information" requirement from the regulations.

Country review process:

- Create clear, binding, and publically available targets and corresponding timelines for countries under continuing review.
- Limit the continuing review process to three years, after which time the country's eligibility must be revoked if it has failed to meet the prescribed targets.

Reinstatement:

- Create a clear and binding action plan with defined targets for each country requesting reinstatement of its trade preference eligibility.
- Ensure reinstatement only occurs after the targets described under the actions are met.

V. ENDNOTES

¹ Vivian Jones, *Generalized System of Preferences (GSP): Overview and Issues for Congress*, CONGRESSIONAL RESEARCH SERVICE 6 (Dec. 27, 2017), <https://fas.org/sgp/crs/misc/RL33663.pdf>.

² 19 U.S.C. § 2462 (b)(2).

³ Industrial Tariffs, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, *available at* <https://ustr.gov/issue-areas/industry-manufacturing/industrial-tariffs> (“Approximately 96 percent of U.S. merchandise imports are industrial (non-agricultural) goods. The United States currently has a trade-weighted average import tariff rate of 2.0 percent on industrial goods. One-half of all industrial goods entering the United States enter duty free.”).

⁴ See, e.g., USTR Announces New Trade Preference Enforcement Effort, OFFICE OF THE U.S. TRADE REP. (June 2017), *available at* <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/june/ustr-announces-new-trade-preference> (last visited Jun. 29, 2017) [hereinafter New Trade Preference Enforcement Effort, June 2017].

⁵ OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2017 TRADE POLICY AGENDA AND 2016 ANNUAL REPORT OF THE PRESIDENT OF THE UNITED STATES ON THE TRADE AGREEMENTS PROGRAM 2, *available at* <https://ustr.gov/sites/default/files/files/reports/2017/AnnualReport/AnnualReport2017.pdf>, [hereinafter USTR 2017 Annual Report].

⁶ New Trade Preference Enforcement Effort, June 2017, *supra* note 4.

⁷ USTR Announces New Enforcement Priorities for GSP, OFFICE OF THE U.S. TRADE REP. (Oct. 2017), *available at* <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/october/ustr-announces-new-enforcement> [New Enforcement Priorities for GSP].

⁸ Trade Act of 1974, 19 U.S.C. § 2462; Vivian C. Jones, *Generalized System of Preferences: Overview and Issues for Congress*, CONGRESSIONAL RESEARCH SERVICE (2015), *available at* <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RL33663.pdf>.

⁹ 19 U.S.C. § 2462.

¹⁰ 19 U.S.C. § 2462 (b)(2)(G); 19 U.S.C. § 2462 (c)(7).

¹¹ 19 U.S.C. § 2467.

¹² 19 U.S.C. § 2462 (b)(2)(G), (H).

¹³ 19 U.S.C. § 2467(6).

¹⁴ Lance Compa and Jeffery S. Vogt, *Labor Rights in the Generalized System of Preferences: A 20-Year Review*, 22 Comp. Lab. L. & Pol’y J. 199 (2000-2001), *available at* <http://heinonline.org/HOL/LandingPage?handle=hein.journals/cllpj22&div=19&id=&page> (last visited Nov. 16, 2017) [hereinafter A 20-Year Review].

¹⁵ 19 U.S.C. § 2462 (b)(2).

¹⁶ 19 U.S.C. § 2462 (d)(1).

¹⁷ The GSP program was established under the auspices of the General Agreement on Tariffs and Trade (GATT), which permitted developed countries, including the United States and the European Union (EU), to voluntarily extend trade preferences to developing countries.

¹⁸ OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, *U.S. Generalized System of Preferences Guidebook* 16 (March 2017), <https://ustr.gov/sites/default/files/gsp/GSP%20Guidebook%20March%202017.pdf> [hereinafter *USTR Guidebook*].

¹⁹ USTR 2017 Annual Report, *supra* note 5, at 184.

²⁰ 19 U.S.C. § 2463 (c)(2)(A); *USTR Guidebook*, *supra* note 18 at 11.

²¹ 19 U.S.C. § 2463 (c)(2)(D).

²² 19 U.S.C. § 2463 (d); *USTR Guidebook*, *supra* note 18 at 11.

²³ 19 U.S.C. § 2463 (d)(2).

²⁴ *USTR Guidebook*, *supra* note 18 at 11-12.

²⁵ 19 U.S.C. § 2463 (b).

²⁶ New Trade Preference Enforcement Effort, June 2017, *supra* note 4.

²⁷ See International Trade Administration, Section on African Growth and Opportunity Act, <http://trade.gov/agoa/> (last visited Oct. 20, 2017).

²⁸ See Office of the United States Trade Representative, Section on Caribbean Basin Initiative, <https://ustr.gov/issue-areas/trade-development/preference-programs/caribbean-basin-initiative-cbi> (last visited Oct. 20, 2017).

²⁹ See Office of the United States Trade Representative, Section on GSP and ATPA: Critical to the United States, <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2011/gsp-and-atpa-critical-united-states> (last visited Oct. 20, 2017). The Andean Trade Preference Act has expired. Many of the countries previously covered by the act have entered into bilateral free trade agreements with the United States, thus eliminating the trade preference eligibility, or have otherwise become ineligible.

³⁰ 19 U.S.C. § 2703a (through the Haitian Hemispheric Opportunity for Partnership Encouragement Act of 2006 (HOPE) and the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II)).

³¹ USTR 2017 Annual Report, *supra* note 5, at 184.

³² *Id.*; The top- ten importer countries along with their percentage share of imports are: India - 4.7 billion USD (10 percent), Thailand - 3.9 billion USD (14 percent), Brazil - 2.2 billion USD (8.4 percent), Indonesia - 1.8 billion USD (8.9 percent), Philippines - 1.5 billion USD (14 percent), Turkey - 1.4 billion USD, (17 percent), South Africa - 1 billion USD (14.3 percent), Ecuador - 390 million USD, (6.4 percent), Pakistan - 247 million USD, (7 percent) and Sri Lanka - 173 million USD (6 percent).

³³ USTR 2017 Annual Report, *supra* note 5, at 185.

³⁴ Lance A. Compa, *The Multilateral Agreement on Investment and International Labor Rights: A Failed Connection*, 31 CORNELL INT'L L.J. 693 (1998), available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1173&context=articles> [hereinafter *MIA and Int'l Labor Rights*].

³⁵ *Id.*

³⁶ HANNAH MURPHY, *THE WORLD BANK AND CORE LABOUR STANDARDS: BETWEEN FLEXIBILITY AND REGULATION* (2012), available at http://paperroom.ipso.org/papers/paper_10209.pdf; *MIA and Int'l Labor Rights*, supra note 34 at 698.

³⁷ BARBARA FICK, *CORPORATE SOCIAL RESPONSIBILITY FOR ENFORCEMENT OF LABOR RIGHTS: ARE THERE MORE EFFECTIVE ALTERNATIVES?* 14 (2014), available at http://scholarship.law.nd.edu/law_faculty_scholarship/1223/.

³⁸ EMILIE M. HAFNER-BURTON, *MAKING HUMAN RIGHTS A REALITY*, Oxford: Princeton University Press 143, 2013, <http://www.jstor.org/stable/j.ctt24hpvc> (last visited Nov. 20, 2017).

³⁹ AFL-CIO, *Request to Testify and Pre-hearing Brief on the Petition to Move Mauritania from the List of Beneficiary Countries Pursuant to 19 U.S.C. § 3703(1)(F) of the African Growth and Opportunity Act* (Aug. 4, 2017), <https://agoa.info/images/documents/15237/afl-ciomauritaniaprehearingbriefdrakeinttenttotestify.pdf>.

⁴⁰ Kevin C. Kennedy, *The Generalized System Of Preferences After Four Decades: Conditionality And The Shrinking Margin Of Preference*, 20:3 Mich. State L.J. 521, at 638 (2012), available at <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1094&context=ilr>.

⁴¹ GLOBAL SLAVERY INDEX 2016, *Global Findings*, <https://www.globallslaveryindex.org/findings/> (last visited Jul. 12, 2017).

⁴² INTERNATIONAL TRADE UNION CONFEDERATION (ITUC), *The 2017 ITUC GLOBAL RIGHTS INDEX: THE WORLD'S WORST COUNTRIES FOR WORKERS 10* (2017), available at https://www.ituc-csi.org/IMG/pdf/survey_ra_2017_eng-1.pdf [hereinafter *THE 2017 ITUC GLOBAL RIGHTS INDEX*].

⁴³ See United States International Trade Commission, Section on Interactive Tariff and Trade DataWeb, Section on Tariff and Trade Data from the U.S. Department of Commerce and the U.S. International Trade Commission, <https://dataweb.usitc.gov>. (last visited Nov. 16, 2017).

⁴⁴ DEPARTMENT OF LABOR, BUREAU OF INTERNATIONAL LABOR AFFAIRS, *2015 FINDINGS OF WORST FORMS OF CHILD LABOR* (Sept. 30, 2016).

⁴⁵ GSP BDC countries that are classified as Tier Three country under the 2017 TIP report are: Belize, Burundi, Central African Republic, Comoros, Democratic Republic of Congo, Republic of Congo, Eritrea, Guinea, Guinea-Bissau, Mali, Mauritania, and Uzbekistan.

⁴⁶ Department of State, *Trafficking in Persons Report, June 2016*, available at <https://www.state.gov/documents/organization/258876.pdf> (last visited Oct 25, 2017) [hereinafter *Trafficking in Persons Report*].

⁴⁷ 19 U.S.C. § 2462 (d)(2).

⁴⁸ 19 U.S.C. § 2462 (b)(7).

⁴⁹ 15 C.F.R. 2007.2 (f) – (h); George Washington University Institute for International Economic Policy, *United States Trade Representative*, https://www2.gwu.edu/~iiep/signatureinitiatives/governance/US_Trade_Policy/briefs/3USTRadeRep.pdf.

⁵⁰ Pharis J. Harvey, *U.S. GSP Labor Rights Conditionality: “Aggressive Unilateralism” or a Forerunner to a Multilateral Social Clause?* 4, available at https://www.laborrights.org/sites/default/files/publications-and-resources/GSP_Labor_Rights_Conditionality_Harvey.pdf [hereinafter *Labor Rights Conditionality*].

⁵¹ 15 C.F.R. § 2007.0 (b).

⁵² SEN. COMM. ON FIN., HEARING ON U.S. PREFERENCE PROGRAMS: OPTIONS FOR REFORM, TESTIMONY OF JEFFREY S. VOGT 4 (Mar. 2010), available at <https://www.finance.senate.gov/imo/media/doc/030910jvtest.pdf> [hereinafter HEARING ON U.S. PREFERENCE PROGRAMS].

⁵³ New Trade Preference Enforcement Effort, June 2017, *supra* note 4.

⁵⁴ New Enforcement Priorities for GSP, *supra* note 7.

⁵⁵ *Id.*

⁵⁶ HEARING ON U.S. PREFERENCE PROGRAMS, *supra* note 52.

⁵⁷ *Id.*; Bama Athreya, *International Labor Rights Forum, Comparative Case Analysis of the Impacts of Trade-Related Labor Provisions on Select US Trade Preference Recipient Countries* 27 (Sept. 2011), available at <https://www.dol.gov/sites/default/files/research/2010ILRF.pdf> [hereinafter IMPACTS OF TRADE-RELATED LABOR PROVISIONS].

⁵⁸ Marvin J. Levine, *Worker Rights and Labor Standards in Asia’s Four New Tigers: A Comparative Perspective*, MALAYSIA AND THE WORLD 403 (Plenum Press, New York, 1997), available at https://books.google.com/books?id=7UYOBwAAQBAJ&pg=PA403&lpg=PA403&dq=AFL-CIO+review+petition+malaysia+USTR+GSP&source=bl&ots=NZc7wOzcMA&sig=PL_pDq2nn5wwuYWIBfmxYPQhW2o&hl=en&sa=X&ved=0OahUKEwi38NiytsPXAhVM64MKHXAWBooQ6AEIODAC#v=onepage&q=AFL-CIO%20review%20petition%20malaysia%20USTR%20GSP&f=false (last visited Nov. 16, 2017).

⁵⁹ S. HRG. 103-991 103rd Congress at 45 (1994), PROPOSAL TO RENEW GENERALIZED SYSTEM OF PREFERENCES, available at <https://ia802606.us.archive.org/24/items/proposalstorenew00unit/proposalstorenew00unit.pdf> (last visited Nov. 20, 2017).

⁶⁰ A 20-Year Review, *supra* note 14, at 225.

⁶¹ *Labor Rights Conditionality*, *supra* note 50, at 6.

⁶² International Labor Rights Fund, *Request For Review of the GSP Status of the Republic of Niger for Violations of Worker Rights* 2 (2006), available at <https://laborrights.org/sites/default/files/publications-and-resources/NigerGSPpetition.pdf>.

⁶³ USTR 2017 Annual Report, *supra* note 5, at 159.

⁶⁴ *Id.*

⁶⁵ *Uzbekistan's Forced Labor Problem*, COTTON CAMPAIGN, <http://www.cottoncampaign.org/uzbekistans-forced-labor-problem.html> (last visited Nov. 16, 2017).

⁶⁶ The numbers were computed from annual country practice review results enlisted on USTR's website: *Prior Reviews*, OFFICE OF THE U.S. TRADE REP. <https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp/prior-reviews>. Swaziland was revoked of its duty-free treatment for non-compliance with the labor rights criteria under AGOA on January 1, 2015. President Trump reinstated Swaziland's AGOA status in December 2017.

⁶⁷ Office of the U.S. Trade Rep, *Annual GSP Review: Results of the 2015/2016 Generalized System of Preferences (GSP) Annual Review 9 (2015-2016)*, available at <https://ustr.gov/sites/default/files/Outcomes-2015-2016-GSP-Annual-Review.pdf> (last visited Nov. 20, 2017).

⁶⁸ United States Reinstates Trade Preference Benefits for Burma Following Review of Eligibility Criteria, OFFICE OF THE U.S. TRADE REP. (Sept. 2016), available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2016/september/united-states-reinstates-trade>.

⁶⁹ USTR 2017 Annual Report, *supra* note 5, at 160.

⁷⁰ Fact Sheet: Initiative To Promote Fundamental Labor Rights and Practices In Myanmar, INTERNATIONAL LABOR ORGANIZATION, available at http://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/---ilo-yangon/documents/publication/wcms_319813.pdf (last visited Nov. 16, 2017) [hereinafter Myanmar Fact Sheet].

⁷¹ *New Initiative to Improve Labour Rights in Myanmar*, INTERNATIONAL LABOR ORGANIZATION (2014), http://www.ilo.org/yangon/info/public/speeches/WCMS_319811/lang--en/index.htm (last visited Nov. 16, 2017).

⁷² Myanmar Fact Sheet, *supra* note 70.

⁷³ The White House, Office of the Press Secretary, *Presidential Message to the Congress -- Restoring Burma's Trade Benefits Under the Generalized System of Preferences (GSP)* (Sept. 2016), available at <https://obamawhitehouse.archives.gov/the-press-office/2016/09/14/presidential-message-congress-restoring-burmas-trade-benefits-under> (last visited Nov. 16, 2017).

⁷⁴ Myanmar Fact Sheet, *supra* note 70.

⁷⁵ Aubrey Belford & Soe Zeya Tun, *Forced labor shows back-breaking lack of reform in Myanmar military*, REUTERS (July 2, 2015), <https://www.reuters.com/article/us-myanmar-rohingya-forcedlabour/forced-labor-shows-back-breaking-lack-of-reform-in-myanmar-military-idUSKCNOPC2L720150702>.

⁷⁶ International Corporate Accountability Roundtable & ALTSEAN-Burma, "*Shadow*" National Baseline Assessment (NBA) of Current Implementation of Business and Human Rights Frameworks 11-12 (Dec. 2017), available at <https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/5a29628b9140b7ba4c3a4a1d/1512661648489/FINAL+Myanmar+Shadow+NBA.pdf>; *Burma – Events of 2016*, HUMAN RIGHTS WATCH, available at <https://www.hrw.org/world-report/2017/country-chapters/burma> (last visited Nov. 16, 2017).

⁷⁷ *Trafficking in Persons Report*, *supra* note 46, at 112; Matt Spetalnick, Jason Szep & Antoni Slodkowski, *Exclusive: U.S. to downgrade Myanmar in annual human trafficking report – sources*, REUTERS (June 27, 2016), available at <http://www.reuters.com/article/us-humantrafficking-myanmar/exclusive-u-s-to-downgrade-myanmar-in-annual-human-trafficking-report-sources-idUSKCNOZD333>.

⁷⁸ SEN. COMM. ON FOREIGN RELATIONS, HEARING ON LABOR ISSUES IN BANGLADESH, TESTIMONY OF CELESTE DRAKE 6 (Jun. 2013), available at https://www.foreign.senate.gov/imo/media/doc/REVISED_Drake_Testimony.pdf [hereinafter, TESTIMONY OF DRAKE].

⁷⁹ *Id.*

⁸⁰ JEFFREY S. VOGT, *Trade and Investment Arrangements and Labor Rights*, in CORPORATE RESPONSIBILITY FOR HUMAN RIGHTS IMPACTS: NEW EXPECTATIONS AND PARADIGMS (Lara Blecher, et al. eds., 2015); IMPACTS OF TRADE-RELATED LABOR PROVISIONS, *supra* note 57, at 21.

⁸¹ TESTIMONY OF DRAKE, *supra* note 78, at 7.

⁸² *Id.*

⁸³ *Id.* at 2.

⁸⁴ *U.S. Trade Representative Michael Froman Comments on President's Decision to Suspend GSP Benefits for Bangladesh*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE (June 2013), available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2013/june/michael-froman-gsp-bangladesh>.

⁸⁵ Ian Urbina, *Unions Press to End Special Trade Status for Bangladesh*, N.Y. TIMES (May 31, 2013), available at <http://www.nytimes.com/2013/05/31/business/us-pressure-rises-to-end-bangladesh-trade-status.html>.

⁸⁶ *Statement by the U.S. Government on Labor Rights and Factory Safety in Bangladesh*, U.S. DEPT. OF LABOR, (July 19, 2013), available at <https://www.dol.gov/opa/media/press/ilab/ILAB20131494.htm>.

⁸⁷ *Id.*

⁸⁸ *Support the Implementation of the Sustainability Compact*, INTERNATIONAL LABOR ORGANIZATION, http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_396191/lang--en/index.htm (last visited Jan. 25, 2018).

⁸⁹ USTR 2017 Annual Report, *supra* note 5, at 147.

⁹⁰ *GSP Review of Bangladesh Recognizes Progress, Urges that More be Done on Worker Safety and Rights*, OFFICE OF THE U.S. TRADE REP. (Jan. 2015), available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/january/gsp-review-bangladesh-recognizes>.

⁹¹ *Id.*

⁹² *Bangladesh – Garment and Textile Machinery and Equipment*, EXPORT.GOV (Oct. 16, 2017), available at <https://www.export.gov/article?id=Bangladesh-Textiles-and-Textile-Machinery-and-Equipment>.

⁹³ Staff Correspondent, *Improve labour rights to retain GSP benefit*, DAILY STAR NEWS [BANGLADESH] (June 7, 2017), available at <http://www.thedailystar.net/frontpage/improve-labour-rights-retain-gsp-benefit-bangladesh-1416529>.

⁹⁴ Sarah Labowitz, *Shut Out: Bangladesh, labor rights and U.S. trade policy*, NYU STERN SCHOOL OF BUSINESS – CENTER FOR BUSINESS AND HUMAN RIGHTS BLOG (Aug. 13, 2015), available at <https://bhr.stern.nyu.edu/blogs/2015/8/12/labor-trade-bangladesh>.

⁹⁵ Senior Correspondent, *Bangladesh stops asking US for GSP trade facilities*, BDNEWS24.COM (May 17, 2017), <https://bdnews24.com/business/2017/05/17/bangladesh-stops-asking-us-for-gsp-trade-facilities>.

⁹⁶ 19 U.S.C. § 2466a (a).

⁹⁷ 19 U.S.C. § 3701.

⁹⁸ *African Growth and Opportunity Act (AGOA)*, OFFICE OF THE U.S. TRADE REP., <https://ustr.gov/issue-areas/trade-development/preference-programs/african-growth-and-opportunity-act-agoa> (section on Preference Program) (last visited Nov. 20, 2017).

⁹⁹ 19 U.S.C. § 2466a (a).

¹⁰⁰ *Id.* at 6.

¹⁰¹ 19 U.S.C. § 2463 (c)(2)(D).

¹⁰² OFFICE OF THE U.S. TRADE REP., *BEYOND AGOA LOOKING TO THE FUTURE OF U.S. – AFRICA TRADE AND INVESTMENT 56* (Sept. 2016), available at <https://ustr.gov/sites/default/files/2016-AGOA-Report.pdf>; 19 U.S.C. § 2466a (b)(2).

¹⁰³ OFFICE OF THE U.S. TRADE REP., *2016 BIENNIAL REPORT ON THE IMPLEMENTATION OF AGOA* (June 2016), <https://ustr.gov/sites/default/files/2016-AGOA-Implementation-Report.pdf> [hereinafter 2016 BIENNIAL REPORT].

¹⁰⁴ *U.S. Trade with Sub-Saharan Africa*, INT’L TRADE ADMIN, <https://www.trade.gov/agoa/pdf/2016%20US-SSA%20Trade%20One-Pager.pdf> (last visited Nov. 20, 2017).

¹⁰⁵ USTR 2017 Annual Report, *supra* note 5.

¹⁰⁶ *U.S. Trade with Sub-Saharan Africa*, *supra* note 104.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See, e.g., AFL-CIO & Solidarity Center, *Building a Strategy for Workers' Rights and Inclusive Growth—A New Vision for the African Growth and Opportunity Act* (July 2014), available at <https://aflcio.org/sites/default/files/2017-03/AGOA%2Bno%2Bbug.pdf>.

¹¹⁰ 19 U.S.C. § 3703 (a)(1).

¹¹¹ 19 U.S.C. § 3703 (a)(3).

¹¹² 19 U.S.C. § 3703 (b).

¹¹³ 19 U.S.C. § 3705.

¹¹⁴ 2016 BIENNIAL REPORT, *supra* note 103, at 4.

¹¹⁵ 19 U.S.C. § 2466a (a)(2) (“The President shall monitor, review, and report to Congress annually on the progress of each country listed in section 107 of the African Growth and Opportunity Act in meeting the requirements described in paragraph (1) in order to determine the current or potential eligibility of each country to be designated as a beneficiary sub-Saharan African country for purposes of this section.”).

¹¹⁶ Trade Preferences Extension Act of 2015, Pub. L. No. 114-27 (2015).

¹¹⁷ *Id.* § 105 (d); U.S. Trade Rep., *USTR Announces New Petition Process to Review AGOA Country Eligibility*, AGOA.INFO, Mar. 18, 2016, <https://agoa.info/news/article/6067-ustr-announces-new-petition-process-to-review-agoa-country-eligibility.html>.

¹¹⁸ 15 C.F.R. §2017.1 (2017); [No. 53] 81 Fed Reg., Rules and Regulations at 14717 ¶¶ Para Part 17 § 2017.1 (Mar. 18, 2016), available at <https://agoa.info/images/documents/6068/2016-06127.pdf>.

¹¹⁹ Pub. L. No. 114-27, § 105 (d)(4)(A); 19 U.S.C. § 2466a (d)(4).

¹²⁰ See THE 2017 ITUC GLOBAL RIGHTS INDEX, *supra* note 42. For example, forty two percent of AGOA beneficiary countries are ranked in the bottom two tiers of ITUC’s Global Rights Index, meaning that they either do not guarantee worker rights or that they permit systematic violations of worker rights.

¹²¹ 2016 BIENNIAL REPORT, *supra* note 103, at 8.

¹²² *Id.*

¹²³ REPORT TO CONGRESSIONAL REQUESTERS, AFRICAN GROWTH AND OPPORTUNITY ACT ELIGIBILITY PROCESS AND ECONOMIC DEVELOPMENT IN SUB-SAHARAN AFRICA, GAO-15-300 (Feb. 2015), available at <http://www.gao.gov/assets/670/668473.pdf> [hereinafter REPORT TO CONGRESSIONAL REQUESTERS].

¹²⁴ The White House (USA), *DRC loses AGOA Beneficiary Status*, AGOA.INFO, <https://agoa.info/news/article/4679-drc-loses-agoa-beneficiary-status.html> (last visited Nov. 20, 2017).

¹²⁵ U.S. Department of Labor, *Standing Up for Workers: Promoting Labor Rights through Trade* 38-39 (Feb. 2015), <https://www.dol.gov/ilab/reports/pdf/USTR%20DOL%20Trade%20-%20Labor%20Report%20-%20Final.pdf>.

¹²⁶ REPORT TO CONGRESSIONAL REQUESTERS, *supra* note 103, at 13.

¹²⁷ *Id.*

¹²⁸ *Standing Up for Workers: Promoting Labor Rights through Trade*, *supra* note 125, at 40.

¹²⁹ *Id.*

¹³⁰ The White House, *Presidential Proclamation to Take Certain Actions under the African Growth and Opportunity Act and for Other Purposes* (Dec. 22, 2017), <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-take-certain-actions-african-growth-opportunity-act-purposes/>.

¹³¹ 2016 BIENNIAL REPORT, *supra* note 103, at 35.

¹³² Statement by U.S. Department of State on Concerns about Security Sector Reform in Lesotho, U.S. EMBASSY IN LESOTHO (May 27, 2015), <https://ls.usembassy.gov/statement-u-s-department-state-concerns-security-sector-reform-lesotho/>.

¹³³ *Id.*

¹³⁴ Ryan Lenora Brown, *The U.S. Finally Did Something Right in Africa—and It's About to Stop*, Foreign Policy (Dec. 5, 2016), <http://foreignpolicy.com/2016/12/05/the-u-s-finally-did-something-right-in-africa-and-its-about-to-stop/>.

¹³⁵ Leonie Barrie, *Workers in Lesotho demonstrate to 'save AGOA'*, AGOA.INFO (Dec. 7, 2016), <https://agoa.info/news/article/14952-workers-in-lesotho-demonstrate-to-save-agoa.html>.

¹³⁶ Bereng Mpaki, *Lesotho: Economy set to grow 3% thanks to AGOA*, AGOA.INFO (Nov. 24, 2017), <https://agoa.info/news/article/15301-lesotho-economy-set-to-grow-3-thanks-to-agoa.html>.

¹³⁷ Pub. L. No. 114-27, § 105 (d).