

Ukraine and the United States Generalized System of Preferences



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Abstract

The purpose of this report is to provide a brief overview of the U.S. Generalized System of Preferences (GSP) and recent developments of this system as it relates to Ukraine. The GSP is a United States program that provides preferential, duty-free treatment to eligible products from designated countries around the world, including Ukraine. Additionally, this section will serve as a reference point for Ukrainian companies or consultants seeking to import goods to the United States under the GSP and familiarize themselves with the relevant procedures.

This is particularly pertinent for Ukraine given the recent fluctuations in GSP policy as it relates to the eligibility of Ukrainian products. In 2017 the United States temporarily suspended Ukraine's eligibility under the GSP program for a lack of Intellectual Property (IP) enforcement. However, in October of 2019 the Trump Administration partially restored a portion of Ukraine's eligibility under the program for the progress it had made with regard to these issues. Part of the purpose of this guide, then, is to clarify the GSP status of certain goods from Ukraine as of January 2020 as well as give recommendations for how Ukraine may move forward given these developments. It should be noted that the United States Generalized System of Preferences is subject to alterations on an ongoing basis. Any company or individual should keep themselves up to date with the most recent information regarding the U.S. GSP.

Section I gives a broad overview of the history and structure of the United States Generalized System of Preferences as well as the processes surrounding it. Section II gives some advice for which Ukraine could utilize so as to optimize its use of this program for mutual benefit. Finally, Section III is a brief reference guide for Ukrainian exporters to become familiar with the processes of exporting to the United States under the GSP program.

Section I

**Overview of the Generalized System of
Preferences**

The U.S. Generalized System of Preferences (GSP) program provides nonreciprocal and duty-free tariff treatment to specified products imported from designated countries. These countries are designated in one of two categories: beneficiary developing countries (BDCs) and least-developed beneficiary developing countries (LDBDCs). As of December 2019, there are currently 120 developing countries and territories qualifying as BDCs with 44 of those with additional qualifications of LDBDC status.¹ The GSP program provides duty-free entry for over 3,500 products entering the United States and an additional 1,500 products from LDBDCs. These products are based on the 8-digit codes designated to them in the U.S. Harmonized Tariff Schedule (HTSUS). In 2018 the total U.S. imports from GSP-eligible countries amounted to \$238.4 billion with approximately ten percent of those imports being imported under the GSP program (valued at about \$23.8 billion).²

The purpose of the worldwide GSP programs is to give developing countries preferential market access to those countries with such programs in place. The primary rationale is that providing easier market access for developing economies to export their goods will spur economic growth. Having increased global market share will help in diversifying and stabilizing the economies of beneficiary countries. It also assists in decreasing dependence on trade in raw materials and in making the switch to increasing exports in value-added products. Another major purpose of creating such preferential trade agreements was to assist in international trade negotiations in the 1960s. Industrialized and developed nations claimed that the most-favored-nation (MFN) principle should be the fundamental rule underlying international trade. In essence, the MFN principle states that a right or privilege afforded to one member under a multilateral agreement by another shall be afforded to all other members of said agreement. On the other hand, developing nations argued that “special and differential treatment” was essential

to ensure equity in trade among economies widely varying in size and scope. GSP schemes became a middle way that offered special treatment to assist developing economies continue to progress while easing the fears in developed countries that unconditional tariff reductions could disrupt import-sensitive domestic industries.

While general consensus was ultimately reached on the need for such programs, it remained impossible to create one unified system of preferential treatment due to differences in those potential preference-granting countries. Each nation had differences in their overall economic structures, tariff systems, import-sensitive industries, etc. Therefore, it was deemed that each country would have agency over the adoption and regulation of their own individual GSP program. All programs, however, are to be guided by the core principle of providing developing economies with opportunities for export growth. Hence each preference-granting country has its own personalized temporary, generalized and nonreciprocal program that grants reduced or eliminated tariffs to some imports from qualifying beneficiary states.

Table 1: Donors with Generalized System of Preferences Programs (as of 2019)		
• Armenia	• Australia	• Canada
• European Union	• Iceland	• Japan
• Kazakhstan	• New Zealand	• Norway
• Russian Federation	• Switzerland	• Turkey
• United States of America		

Even though each country has its individualized GSP scheme, most preference-granting countries adhere to the following eight principles:

- (1) Exclusion of certain countries.
- (2) Determination of coverage for specific products.

- (3) Determination for the rules of origin of specified products.
- (4) Determination of the duration of the program.
- (5) Reduction of preferential margins by continuing to lower or remove tariffs via multilateral, bilateral and regional negotiations.
- (6) Prevention of the concentration of benefits among only a few of the qualifying BDCs.
- (7) Inclusion of safeguard mechanisms and “escape” clauses to protect import-sensitive industries.
- (8) Imposition of caps (in volume, value or both) on duty-free trade entering under the program.³

These principles are present in the criteria of all GSP programs, including that of the U.S. The nuances of the United States GSP system will be discussed in a later section (see *The United States GSP* below).

GSP within the GATT/WTO Framework

The Generalized System of Preferences has its origins stemming back to the late 1960s. The adoption of the concept of the GSP first occurred internationally in 1968 during the United Nations Conference on Trade and Development (UNCTAD) and the UNCTAD II. However, there was debate with regard to how the system could fit into the framework of the General Agreement on Tariffs and Trade (GATT). Signed by nearly two dozen nations in October 1947, the GATT outlined many of the basic legal principles of international trade and its scope continued to grow over the decades. One of the main principles of this agreement is the most-favored-nations (MFN) principle mentioned in the previous section. The MFN principle is enshrined in Article I:1 of the GATT and states:

“With respect to customs duties and charges of any kind imposed on or in connection with importation or ... any advantage, favor, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”⁴

The language of this fundamental principle of the GATT essentially made it legally inconsistent for GATT signatories to implement programs that would afford preferential treatment to other member states regardless of the economic and developmental status of those states. However, it was agreed among members that such nonreciprocal, preferential programs would act as key drivers in economic development among developing and transitioning countries.

Therefore, the GATT Members first added Part IV to the GATT in 1965 which was entitled *Trade and Development*.⁵ This section detailed how the promotion of the exportation of goods, aided by nonreciprocal tariff reductions for particular countries, was necessary for those states to grow their economies. As the language of Part IV succinctly put it, “There is need for a rapid and sustained expansion of the export earnings of the less-developed contracting parties.”⁶ Notwithstanding Article I of the GATT, preferential trading programs were one of the key means of achieving this objective. The second step was the adoption of a waiver of Article I for GSP programs that would allow for contracting parties to allow preferential treatment to products of developing countries for a period of 10 years. This was with the Decision of June 25, 1971 and allowed for several countries, including the United States, to establish their own versions of GSP pursuant to their domestic law.⁷

Finally, it was at the end of the Tokyo Round of Multilateral Trade Negotiations in 1979 that these preference schemes were given the opportunity to permanently reside within the GATT framework. The adoption of the “Enabling Clause” solidified this deviation from the MFN principle. The official title of this clause is the “Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries.”⁸ This acts as the legal basis for all GSP programs within the World Trade Organization (WTO) as well as

any other nonreciprocal preferential treatment. As the language of this decision states, the provisions were granted with regard to the following:

- a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences;
- b) Differential and more favorable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT;
- c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the contracting parties, for the mutual reduction or elimination of non-tariff measures, on products imported from one another;
- d) Special treatment on the least developed among the developing countries in the context of any general or specific measures in favor of developing countries.⁹

While several countries had already established some form of GSP by 1979, this was a fundamental step for establishing a sense of permanence to the idea of preferential and nonreciprocal trade for developing countries within the framework of the GATT.

The United States GSP Program

The GSP program of the United States took effect with the passage of the Trade Act of 1974 (P.L. 93-618).¹⁰ Housed within the act is Title V, which provides the President with the authority to designate beneficiary developing countries (Sec. 502) and to extend preferential treatment to those BDCs (Sec. 501). Currently, there are 120 countries and territories that fall under the designation of BDC in the U.S. program, with 45 of those being additionally designated as least-developed beneficiary developing countries (LDBDCs). The eligibility criteria for designated countries is also laid out in Title V of the 1974 Trade Act. However, GSP country eligibility for a country or product is made at the discretion of the President, who relies

on the advice of the International Trade Commission (ITC) and the United States Trade Representative (USTR). In addition to the ITC and the USTR, the Trade Policy Staff Committee (TPSC) is an executive branch interagency body that oversees various elements of United States trade policy. The GSP Subcommittee of the TPSC conducts annual reviews in which petitions regarding country and product eligibility are evaluated. This subcommittee makes recommendations to the TPSC which then passes them onto the USTR. The USTR, then, passes this advice to the President. See [here](#) for more information on the composition of the executive branch agencies represented on the Trade Policy Staff Committee and the Trade Policy Review Group.¹¹ The following section details the eligibility criteria of the United States GSP program. These criteria are outlined in Title V of the 1974 Trade Act and its subsequent amendments.

The United States GSP program is not permanent and is renewed on an ongoing basis. This is an important element of the United States GSP program and any countries currently taking advantage of the benefits of the GSP program should be aware of the general timeline of renewal and when the current iteration of the program is up for renewal. More information can be found in Appendix A of the most recent Congressional Research Service report on the GSP [here](#).¹² The current GSP program of the United States is effective until December 31, 2020. After this date, the United States government will either move to extend the program or let it expire.

Country Eligibility Criteria

The following table lays out the general criteria for which the law prohibits GSP treatment (with certain exceptions):

Table 2: Mandatory Prohibitions for GSP Eligibility ¹³
<ul style="list-style-type: none">• other industrialized countries (Australia, Canada, EU member states, Iceland, Japan, Monaco, New Zealand, Norway, and Switzerland are specifically excluded);• communist countries, unless they are a WTO member, a member of the International Monetary Fund, and receive Normal Trade Relations (NTR) treatment from the United States; must also not be “dominated or controlled by international communism”;• countries that collude with other countries to withhold supplies or resources from international trade or raise the price of goods in a way that could cause serious disruption to the world economy;• countries that provide preferential treatment to the products of another developed country in a manner likely to have a significant adverse impact on U.S. commerce;• countries that have nationalized or expropriated the property of U.S. citizens (including corporations, partnerships, or associations that are 50% or more beneficially owned by U.S. citizens), or otherwise infringe on U.S. citizens’ intellectual property rights (IPR), including patents, trademarks, or copyrights;• countries that have taken steps to repudiate or nullify existing contracts or agreements of U.S. citizens (or corporations, partnerships, or associations that are 50% or more owned by U.S. citizens) in a way that would nationalize or seize ownership or control of the property, including patents, trademarks, or copyrights;• countries that have imposed or enforced taxes or other restrictive conditions or measures on the property of U.S. citizens; unless the President determines that compensation is being made, good faith negotiations are in progress, or a dispute has been handed over to arbitration in the Convention for the Settlement of Investment Disputes or another forum;• countries that have failed to act in good faith to recognize as binding or enforce arbitral awards in favor of U.S. citizens (or corporations, partnerships, or associations that are 50% or more owned by U.S. citizens); and• countries that grant sanctuary from prosecution to any individual or group that has committed an act of international terrorism, or have not taken steps to support U.S. efforts against terrorism.

Two other criteria that have become important in the United States GSP have been the requirements of countries to recognize human rights with regard to production methods. In particular, these criteria require that beneficiary countries:

- have taken or are taking steps to grant internationally recognized worker rights (including collective bargaining, freedom from compulsory labor, minimum age for employment of children and acceptable working conditions with respect to minimum wages, hours or work and occupational safety and health).
- implement their commitments to eliminate the worst forms of child labor.¹⁴

Section 502(c) of the Trade Act also enumerates a number of “factors affecting country designation.” These are discretionary criteria but have been very important for the structuring and implementation of the program over the last several decades.

Table 3: Discretionary Criteria to Determine Country Eligibility¹⁵
<ul style="list-style-type: none"> • a country’s expressed desire to be designated a beneficiary developing country for purposes of the U.S. program; • the level of economic development of a country; • whether or not other developed countries are extending similar preferential tariff treatment to a country; • a country is committed to providing reasonable and equitable access to its market and basic commodity resources, and the extent to which a country has assured the United States that it will not engage in unreasonable export practices; • the extent to which a country provides adequate protection of intellectual property rights; • the extent to which a country has taken action to reduce trade-distorting investment policies and practices, and to reduce or eliminate barriers to trade in services; and • whether or not a country has taken steps to grant internationally recognized worker rights.

As listed above, countries are also assessed on the grounds of their own economies. The President has the authority to remove GSP beneficiaries based on their economic competitiveness and development. Countries face mandatory country graduation when they are deemed to be a “high income country.” This is determined when the gross national income (GNI) per capita of a country reaches \$12,055 or more according to World Bank statistics.¹⁶ The last instance of countries facing mandatory graduation was in September 2015, when Seychelles, Uruguay and Venezuela became “high income” countries and no longer eligible. On March 4, 2019, Turkey was designated as ineligible for the GSP program because to its level of economic development. However, in this case, this was due to the discretion of the President and not necessarily because it had reached the GNI threshold for mandatory graduation. In the case of Ukraine, its GNI per capita is \$9,020 according to the latest World Bank Statistics.¹⁷

Another criteria of ineligibility is when a country becomes a part of an association of countries specifically excluded from the GSP. As can be seen in Table 1 above, the European Union is the only association of countries currently listed in the text of the legislation. Bulgaria and Romania lost their GSP membership in 2007 for this reason and Croatia (which joined the EU in 2013) would have as well had it not been mandatorily graduated as a “high income” country in 2009. A country will also lose its preferential treatment under the GSP if it enters into a free trade agreement (FTA) with the United States. Colombia and Panama were the last countries to lose GSP status for this reason. The reciprocal concessions granted to countries entering into FTAs with the United States are generally favored over those of the GSP and bilateral negotiations provide opportunities to work out advantageous industry- or product-specific arrangements. Hence, if Ukraine were to either join the European Union or enter into an

FTA with the United States, the concessions afforded to it under the GSP framework would be theretofore nullified.

Finally, as previously mentioned, there are a number of mandatory and discretionary criteria that the President and the various entities that advise him take into account when assessing GSP eligibility. For example, President Trump terminated India's eligibility because "India has not assured the United States that India will provide equitable and reasonable access to its markets."¹⁸ Given that there are numerous factors the President and the U.S. government take into discretion with regard to a country's eligibility, it is important that any nation looking to benefit from the GSP program be familiar with these criteria. Ukraine has lost and regained its eligibility at various points over since the year 2000. This was due to issues regarding intellectual property rights (IPR). This will be discussed at length in the following section (see *Ukraine and the United States GSP Program*)

The President must notify Congress before granting any country GSP eligibility and this notification must be at least 60 days if he is designating a country as an LDBDC. The President also must notify Congress at least 60 days prior to any country's removal from GSP eligibility. These changes will become effective following the formal announcement of an executive order or presidential proclamation. An annual report is also published and given to Congress regarding labor standards of each BDC, other country practices and various product reviews.

Product Eligibility Criteria

As with country eligibility, there are certain requirements for the products that are allowed to fall under the GSP program. The President has the authority to give certain imports duty-free treatment under the GSP for BDCs (or exclusively LDBDCs) pursuant to the Trade Act of 1974. However, that act also classifies certain “import-sensitive” products that are specifically excluded from the program. Table 4 lists those categories of products explicitly stated in the Act. While this has been amended from time to time, the items covered in the following table are generally considered outside the scope of GSP-eligible products. The United States International Trade Commission (ITC) will then advise the President on those products otherwise being considered under the program.

Table 4: “Import-Sensitive” Article Categories	
A) Most Textile and Apparel	B) Certain Watches
C) Import-Sensitive Electronic Articles	D) Import-Sensitive Steel Articles
E) Footwear and other accessories	F) Import-sensitive (Semi)manufactured Glass Products
G) Agricultural Products Subject to Tariff-rate Quota	H) Certain Hand-Knotted or Hand-Woven Carpets
I) Certain Cotton Articles	J) Certain Luggage and Travel Articles

More than 3,500 items in the United States Harmonized Tariff Schedule (USHTS) are currently eligible for duty-free treatment with about 1,500 being additionally covered for LDBDCs.¹⁹ The differentiation between products covered for all BDCs and those for which only LDBDCs are eligible is an important one. There are also demarcations in the USHTS that note if a product has a particular country that is ineligible under the program. As noted above, this ineligibility can be the result of any number of reasons. When reading the USHTS, there are

three indicators that a product falls under the GSP in some capacity. Table 5 shows the various indicators used to demarcate GSP-eligible products as well as the latest data on the amount of items with such markings in the USHTS (as of May 1, 2019) ²⁰.

Table 5: Indicators of Product Eligibility in the USHTS		
Indicator	Meaning	Number of Products in HTS
A	All BDCs eligible	3,016
A+	Only LDBDCs eligible	1,491
A*	One or more beneficiary country ineligible	554

This can be seen when reading the USHTS directly. Below are three examples of these special indicators in the most current revision (effective August 7, 2019) ²¹.

Rolled or flaked grains of oats (HTS number 1104.12.00)

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
1104		Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked or ground:				
1104.12.00	00	Rolled or flaked grains: Of oats.....	kg.....	1.2c/kg ^{LI}	Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	1.8c/kg

Note the “A” in the under the column “Special”. This means that products covered under this HTS number are eligible for all beneficiary countries, including Ukraine. If the special indicator “A” was not present, or an importer did not request special tariff treatment under the GSP program, the tariff would be 1.2 cents per kilogram (as shown under column “General”)

Sunflower-seed oil (HTS number 1512.11.00)

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
1512 1512.11.00		Sunflower-seed, safflower or cottonseed oil, and fractions thereof, whether or not refined, but not chemically modified: Sunflower-seed or safflower oil and fractions thereof: Crude oil.....		1.7c/kg + 3.4% ^U	Free (A+) AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	9.9c/kg + 20%

Note the “A+” in the under the column “Special”. This means that products covered under this HTS number are only eligible for least-developed beneficiary developing countries (LDBDCs). Given Ukraine’s level of economic development, this excludes Ukraine from receiving duty-free treatment of this product under the GSP program.

Coffee or tea makers (HTS number 8516.71.00)

8516.71.00		Other electrothermic appliances: Coffee or tea makers.....		3.7% ST	Free (A*) AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	40%
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Note the “A” in the under the column “Special”. This means that products covered under this HTS number are ineligible for one or more countries. In this particular instance, these products are ineligible for Ukraine due to reasons that will be detailed in the following section. For information on how to determine country eligibility for particular products, see Section III).*

Rules of Origin

Another qualifier of a good being GSP-eligible are the rules of origin (ROO). Any good considered for treatment under the program are assessed on two criteria: 1) the production and in-country value added; and 2) the means of shipping. Since the GSP was originated with the intention to assist export-driven growth via increased production capacities in beneficiary countries, GSP-granting nations have rules of origin relating to the growth, production and manufacturing of goods covered by the program. In the United States GSP scheme, duty-free treatment is allowed only if the article is imported directly from the BDC to the United States (or at least does not enter the commerce of a third country it may pass through while in transit).²² Furthermore, the U.S. Code mandates that at least 25% of the appraised value of the final product must be from the “growth, product or manufacture” of a BDC.²³ This is defined as the sum of i) “the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country” and ii) “the direct costs of processing operations performed in such beneficiary developing country”.²⁴

When considering shipping as a Ukrainian exporter, all of the following questions should be answered in the affirmative when considering requesting a good be imported under the GSP program.

- Is the article grown, produced or manufactured in Ukraine?
- If foreign inputs are used, is at least 35% of the appraised value of the good?
- Is the article being imported directly from Ukraine to the United States without entering the commerce of any third country?
- Do shipping documents show the “United States” as the final destination?

Annual Reviews

Annual reviews are conducted by the TPSC GSP Subcommittee and are an important element of the GSP program. These reviews are mostly done on the basis of petitions that are sent in by BDCs or other interested parties requesting that products be added or removed from GSP eligibility. If a petition is approved for eligibility, it then becomes subject to duty-free treatment for all other BDCs as well (unless it is only designated for LDBDC eligibility). The last annual review was announced in the Federal Register on June 14, 2019 and the results were published by the USTR in late 2019.²⁵ An archive of USTR annual reports going back to 2008 can be found [here](#).²⁶ Annual reports may also be reviews of a country's observance of the criteria outlined above (such as IPR protection or labor issues.). The GSP Subcommittee consults with the ITC, which also publishes a report regarding potential modifications to the GSP system. For reference, a full archive of the ITC's reports can be found [here](#).²⁷ These annual reviews cover various elements that will herein be described.

Petitions for the Addition or Removal of Products from the U.S. GSP System

Petitions regarding the addition or removal of products is an important element of the GSP system. Not only do beneficiary countries seeking to import into the United States have a say in the petitioning process, but so do other stakeholders involved, such as U.S. industry representatives. As mentioned above, any change in the GSP product list resulting from a petition will immediately become effective for all BDCs (or in certain cases, only for LDBDCs). In the 2019 Annual Review, there were petitions to remove the eligibility of 2 products (both relating to polyethylene terephthalate) and 3 petitions to re-designate products previously excluded from GSP eligibility (freshly cut orchids and two plywood products).²⁸ In 2019 both

petitions for product removal were denied and all petitions to redesignate products to GSP eligibility were granted. The rate of acceptance or denial of petitions depends on several factors including i) the type of product; ii) the composition of and feedback from U.S. industry; and iii) the quantities of like or similar products entering the U.S. market. However, a historical analysis of past acceptances and denials of petitions, while outside the scope of this report, could prove to be useful for countries looking to strategically utilize the GSP program for products important to their domestic economies. As for Ukraine, some products under scrutiny in the previous annual product review are of particular importance to Ukrainian producers: sunflower and safflower oil (HTS 1512.11.00) and cherry juice (HTS 2009.89.6011 and 6019).²⁹

Competitive Needs Limits (CNL)

The statute on the GSP also establishes a “competitive need limit” (CNL). This is a requirement for the President to suspend GSP treatment for individual products based on the import volume.

- Imports of a product from a single country reach a specified threshold value, which increases by \$5 million each calendar year (i.e., \$190 million in 2019, \$195 million in 2020, and so on); or
- 50% or more of total U.S. imports of a product entering under GSP come from a single country.³⁰

In 2018 there were 57 products that were identified as GSP-eligible articles from BDCs were imported into the United States in excess of \$185 million or at a rate greater than 50 percent of the total U.S. import value for that product. None of these CNL-exceeding products came from Ukraine.³¹

Waivers for Various Stipulations

There are three types of waivers for which countries can petition:

- Competitive Needs Limits (CNL) Waivers
- *De Minimis* Waivers
- Waivers for Articles Not Produced in the U.S. (NPUS)

As described above, CNL refers a threshold – in either dollar value or percentage – that articles entering the United States under duty-free treatment should not exceed. CNL waivers allow for BDCs to exceed these thresholds by petition and the President will review these on a case-by-case basis. The President must receive advice from the ITC to determine the potential effects on domestic industry should the waiver be granted. Furthermore, it must be determined that the waiver is in the interest of the U.S. economy and the determination must be published in the *Federal Register*. The statute also states that, “the President shall give great weight to the extent to which a) a beneficiary developing country has assured the United states...equitable and reasonable access to the markets and basic commodity resources of such country and... b) such country provides adequate and effective protection of intellectual property rights.”³² Generally, these stipulations are taken into account for all three types of waivers.

De Minimis waivers refer to petitions that may be provided if the total dollar value of a specific article imported into the U.S. from all countries is small. The *de minimis* threshold increases by \$500,000 for each calendar year. In 2019 it was \$24.5 million, \$25 million in 2020 and it will be \$25.5 million in 2021.³³ In the 2019 GSP product review, there were 27 *de minimis* waivers applied for by various countries.³⁴ All of these waivers were granted. There were no *de minimis* waivers applied to by Ukraine.

Waivers for Articles Not Produced in the United States (NPUS) is a relatively new stipulation that was enacted in March 2018.³⁵ Pursuant to the statute, limitations “shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States in any of the preceding 3 calendar years.”³⁶ Similarly, NPUS waivers can be petitioned for during the annual review process. There were no such petitions during the previous review process.

It is important for interested parties to be aware of when the annual review process will take place. The timing varies year to year and all announcements will be made through the *Federal Register*. To get a sense of the general timeline, the 2019 annual review process can be seen below.³⁷

Table 6: Timeline of the GSP Annual Review Process	
March 25, 2019	Office of the USTR publishes announcement in the Federal Register that it is accepting petitions
April 18, 2019	Deadline for petitions to modify the GSP and for waivers of various types
June 14, 2019	Office of the USTR announces that it has received petitions and publishes a notice of hearing and requests for public comments.
June 26, 2019	Deadline for submission of comments, pre-hearing briefs and requests to appear at the GSP Subcommittee Public Hearing
July 2, 2019	GSP Subcommittee holds a public hearing
September 2019	U.S. International Trade Commission delivers a report to the USTR providing advice on the probable economic effects of additions, removals, waivers, etc.
November 1, 2019	Effective date for any modification by the President

Country Review

During each GSP annual review process, any interested party can file a request that the GSP eligibility of any current BDC be reviewed. These reviews are based on the mandatory and discretionary criteria outlined above. For example, 2018 held a number of requested country examinations. India was reviewed on its opening up its markets and providing “equitable and reasonable access” to them.³⁸ This review was based on petitions from three U.S. industry associations and ultimately resulted in the President’s proclamation that India be removed from the list of eligible beneficiary countries.³⁹ Kazakhstan was also reviewed during the same period. A petition was submitted from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) based on allegations that Kazakhstan was restricting the rights of workers to form trade unions.

Ukraine has been subject to country reviews over the last three decades. These requests for country reviews were initiated at the behest of the International Intellectual Property Alliance (IIPA).⁴⁰ In 2001 Ukraine lost its eligibility under the GSP program for lack of enforcement of producers of pirated CDs and DVDs which were distributed throughout Europe. A petition was also filed against Ukraine in 2011 which led to its partial suspension from the GSP program in 2017.⁴¹ The case of Ukraine’s suspension from the GSP will be covered in greater detail in the following section. More often than not, petitions for review are based on one of these three criteria: equitable market access, worker rights and intellectual property rights.

Possible Futures of the United States GSP Program

It is important that any beneficiary country of the United States GSP program be familiar with the potential avenues the system may go down in the future. A November 2019 report from

the Congressional Research Service provides a summary of the varying views in Congress and among stakeholders for how the GSP program may evolve. Of course, any changes to the program would likely have to be viewed with the WTO framework in mind. The United States would have to notify and possibly consult with other WTO Members before moving forward with any changes to its GSP program. As paragraph 4(b) of the Enabling Clause states:

Any contracting party...taking action to introduce modification or withdrawal of the differential and more favorable treatment so provided shall...if requested to do so by such contracting party, consult with all contracting parties concerned with respect to the matter with a view to reaching solutions satisfactory to all such contracting parties.⁴²

Therefore, if any BDC that is also a WTO Member (or any other state within the WTO) sought to consult with the United States about any major proposed changes to the program, it is contractually afforded the ability to do so.

There are several strains of thought among U.S. policymakers with regard to the future of the GSP program. There are some that contend it makes more sense for some developing countries to negotiate free trade agreements (FTAs), or similar arrangements, with the United States. This would open up the possibility of greater reciprocal trade benefits and would likely apply to a broader swath of the economy than would GSP. In fact, all of the United States' current FTA partners (except for Canada and Australia) are former beneficiaries of the GSP program. However, to do such is a lengthy process and depends on the conditions of any given FTA proposal. Nevertheless, BDCs (especially higher income countries like Ukraine) could benefit from analyzing the possibilities of negotiating trade agreements with the U.S. in lieu of the GSP program. Another idea floated in Congress was to modify the GSP so that it only applies to least-developed countries. This option would leave Ukraine and many other countries out of

the scope of eligibility under the program. However, there is no indication that legislative action in this direction is currently on the horizon.

The Congressional Research Service provides a number of viable options that Congress could and may take depending on if it decides it would prefer to move in the direction of expanding or restricting the application of the GSP.

Table 7: Congressional Options for Expanding the Application of GSP ⁴³

- Expand the list of tariff lines permitted duty-free access. Allow some import-sensitive products to receive preferential access.
- Increase flexibility of rules of origin requirements. For example, allow more GSP beneficiaries to cumulate inputs with other beneficiaries to meet the 35% domestic content requirement.
- Eliminate competitive need limitations for BDCs, or raise the thresholds that trigger them.
- Reauthorize GSP for longer terms or make the program permanent.

Table 8: Congressional Options for Restricting the Application of GSP ⁴⁴

- Consider mandatory graduation for “middle income” countries, similar to EU GSP changes, or strengthen the language giving the President authority to graduate countries based on competitiveness.
- Reconsider criteria for graduation of countries from GSP or direct greater enforcement of the eligibility criteria.
- Strengthen provision that allows graduation of individual industry sectors within beneficiary countries.
- Modify the rule-of-origin requirement for qualifying products to require that a greater percentage of the direct costs of processing operations (currently 35%) originate in beneficiary developing countries.
- Lower the threshold at which the President may (or must) withdraw, suspend, or limit the application of duty-free treatment of certain products (CNLs).
- Require the President to more frequently and actively monitor (currently an annual process) the economic progress of beneficiary countries, as well as compliance with GSP criteria.

It remains to be seen what the future will hold with regard to the fate of the United States GSP program. In looking back over the last several years, it can be seen that the United States has been working relatively well in reviewing and responding to those BDCs that are not living up to the criteria set forth by statute or discretion of the U.S. Government. These issues have been effectively resolved on a case-by-case basis without resorting to discussion of reforming the GSP program itself. That being said, those BDCs interested in keeping abreast of which way the United States may move legislatively in the future should pay attention to both public opinion, the opinion of industry stakeholders and academic and government analysts.

On the one hand, there are many who view the GSP program as very beneficial to the American economy. The Coalition for GSP is a group of American companies and trade associations that organize to educate policymakers, voters and others about the benefits of the GSP program. Currently there are over 400 companies and trade associations on their GSP Supporter List.⁴⁵ On the other, there are those who view the GSP program as something that should be viewed with more scrutiny. In August 2018, the Information Technology & Innovation Foundation (ITIF) published a report entitled *Time to Restrict GSP Benefits to Fight Trade Mercantilism* in which they concluded, “the United States needs to ramp up its use of existing trade enforcement tools – including GSP eligibility – to contest growing foreign innovation mercantilism.”⁴⁶ In the same report the ITIF explicitly mentioned Ukraine, stating that, “USTR should fully withdraw Ukraine’s GSP access...[due to its] track record on intellectual property protection and enforcement.”⁴⁷ However, in the time since that report was published Ukraine has taken significant steps to mitigate the issues of intellectual property referred to by the ITIF. What this does show, though, is how one of the main methods to be taken in addressing public opinion

in the United States with regard to the future of GSP is couched within a BDC's review of its own internal policies.

While the GSP is not very well-known by the average American voter, keeping up to date with the opinion of potential changemakers – both on the side of expansion and restriction – is important. Ultimately, several factors make it appear likely that the GSP will not be restricted and possibly may even be expanded:

- 1) The economic benefits that are afforded to American business – namely small to medium enterprises (SMEs)
- 2) The political leverage the program can provide in certain contexts – such as the current situation with India.⁴⁸
- 3) The fundamental notion behind the GSP program of spurring export-driven growth in developing countries without the lengthy arbitration of forging bilateral trade agreements
- 4) The GSP system gives the United States the authority to control preferential treatment by product or sector – this can be adjusted based on the state of domestic industry at any given time.

Underutilization of the GSP Program by Eligible Countries

Analyses of the utilization rates of preferential trading programs are important for understanding the effectiveness of these programs for both donors and beneficiaries.

Nevertheless, the literature on this issue has been relatively sparse with regard to the United States' GSP program in particular. In August 2012, Shushanik Hakobyan, visiting professor at Middlebury College, published a report titled *Accounting for Underutilization of Trade Preference Programs: The U.S. Generalized System of Preferences*.⁴⁹ Hakobyan sought to

explain why GSP benefits were claimed for just 60 percent of eligible imports by those qualified BDCs. In her work she claimed that the production structure of beneficiary countries (especially with regard to the 35% minimum rules of origin requirement) was one of the primary explanatory factors. While the following data is from 2012, Table 9 shows the general patterns of utilization of the United States GSP by eligible beneficiaries. This data is from Professor Hakobyan’s report, the full text of which can be found [here](#).

Table 9: Top 20 GSP Beneficiaries by share in imports claiming GSP (2012)

Country	Number of	Share in imports	Utilization	Utilization Rate (%)		Coverage
	GSP products	claiming GSP (%)	of GSP (%)	Average	Median	(%)
	(1)	(2)	(3)	(4)	(5)	(6)
India	2,034	19.0	59	77	94	51
Thailand	1,347	16.9	67	68	92	55
Brazil	1,539	13.2	51	74	98	62
Indonesia	917	10.3	74	68	95	37
South Africa	791	7.0	90	67	96	39
Argentina	778	6.7	87	73	100	50
Turkey	851	4.4	67	71	97	51
Philippines	860	4.4	57	67	94	47
Russia	549	2.8	45	57	80	10
Kazakhstan	30	1.5	61	49	49	49
Peru	503	1.3	19	45	42	42
Venezuela	276	1.2	47	67	100	7
Angola	11	1.1	69	25	0	100
Colombia	731	1.1	31	36	12	34
Pakistan	410	0.9	95	85	100	6
Equatorial Guinea	2	0.8	99	99		100
Sri Lanka	232	0.7	89	77	100	10
Tunisia	139	0.7	85	41	0	35
Georgia	65	0.7	98	34	0	79
Ukraine	227	0.5	70	57	88	37

Notes: The statistics reported here are based on the universe of eligible country-product pairs.

The reasons pointed out in the literature on preference program underutilization can be summarized into the following points:

- Benefits accrued to importers of eligible products may not be worth any additional administrative costs.
- BDC governments do not sufficiently promote the existence of opportunities under the preference programs.
- Lack of available infrastructure in production, transport and export structures.

- Major exports of eligible countries are considered to be “import-sensitive” in the United States.

Efforts to increase underutilization of the GSP on the whole have been discussed. Some options have been to work with BDC governments to spread awareness of the program. A broader strategy would be for the U.S. to implement “trade capacity building efforts similar to those employed as part of the African Growth and Opportunity Act (AGOA).”⁵⁰ The AGOA is a similar program focused on improving the economies of sub-Saharan African countries through nonreciprocal, preferential treatment. More information on this program can be found [here](#).⁵¹ Finally, expanding the length of the terms for which the GSP is renewed would provide greater stability and certainty for BDCs to pursue utilization strategies, thus increasing the utilization rate by BDCs employing such approaches. As underutilization relates to Ukraine, this will be discussed in the following section.

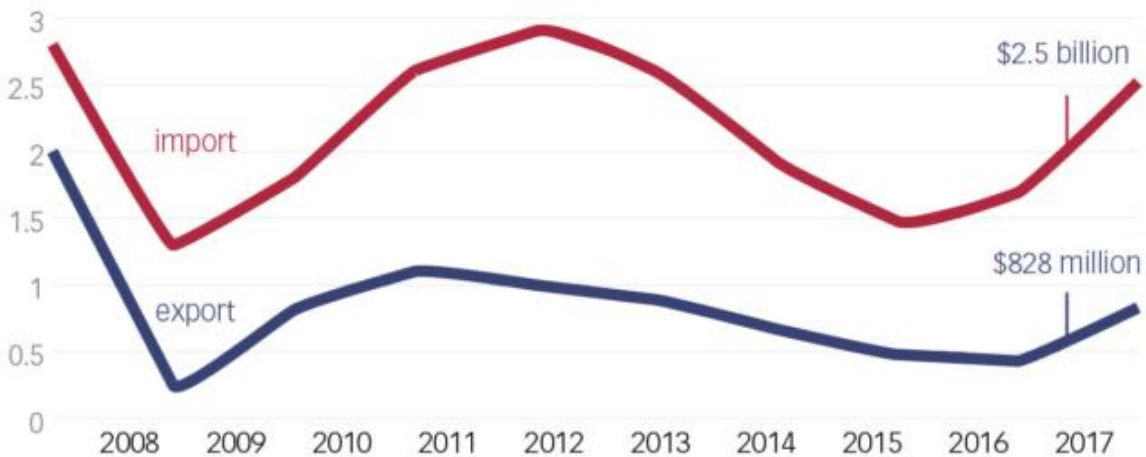
Section II

Ukraine and the United States GSP Program

Overview of Ukraine – U.S. Trade

According to the USTR, Ukraine is currently the 67th largest goods trading partner with the United States.⁵² In 2018, a total of \$3.8 billion in two-way goods trade was conducted. Goods exports from the United States to Ukraine totaled \$2.5 billion, while goods imports from Ukraine to the United States totaled \$1.4 billion.⁵³ The U.S. trade surplus with Ukraine in 2018 was \$1.1 billion. In comparison with the rest of the world, Ukraine was the United States' 73rd largest supplier of goods in 2018. A report published in Forbes in September 2019 posits that Ukraine is on track for a third straight year of record trade with the United States.⁵⁴ In 2019 through the summer, Ukraine-U.S. trade was up 3.57%.⁵⁵ Ukrainian exports to the United States have experienced a substantial increase over the last several years. The following graphic from a Kyiv Post report shows the total dollar amount in exports to the United States over the last decade.⁵⁶

Ukraine's trade deficit in bilateral trade with the United States (in billion dollars)



Bilateral trade between Ukraine and U.S. is on an upward trend since 2016. Exports from Ukraine almost doubled in 2017, while imports increased by 49 percent. However, imports surpass exports as usual.

Source: State Fiscal Services of Ukraine

The top import categories from Ukraine to the United States in 2018 can be seen in Table 10

Table 10: Top Imports from Ukraine by Harmonized Tariff Schedule Chapter (2018) ⁵⁷		
Category	HTS Chapter	Value (USD)
Iron and Steel	Chapter 72	\$786 million
Iron and Steel Products	Chapter 73	\$133 million
Electrical Machinery	Chapter 85	\$59 million
Animal or Vegetable Fats and Oils	Chapter 15	\$30 million

Agricultural products imported to the United States from Ukraine totaled \$112 million in 2018. The top categories included other vegetable oils (\$31 million); snack foods (\$23 million); fruit and vegetable juices (\$5 million); wine and beer (\$1 million) and essential oils (\$990,000).⁵⁸

It remains to be seen what impact the impeachment proceedings in the United States and the focus of Ukraine in them will have on trade relations between the two countries. However, the trend in increasing exports to the U.S. provides ample opportunity for Ukraine to further take advantage of the GSP program for mutual benefit.

Ukraine’s Utilization of the United States GSP

Ukraine is a relatively light user of the United States GSP program. The latest analysis of Ukraine’s utilization rate of the preferential treatment was conducted in 2015. The Office of the USTR found that Ukraine’s utilization rate of the GSP was about 28%.⁵⁹ This is down several points from 2008, when the United States Government Accountability Office calculated Ukraine’s utilization rate at 34%.⁶⁰ In 2018 Ukraine was not among the top 20 GSP beneficiary countries, as calculated by the U.S. dollar amount of goods imported under the program.⁶¹

According to the data from the USTR, \$17.4 billion worth of products were imported by U.S. businesses in 2015, with \$41 million worth coming from Ukraine (approximately 2.9% of the total) ⁶². Total customs value of goods imported under the GSP program (as demarcated by special indicator “A”) in 2019 to date is \$38,453,475 (this only includes quarters 1 to 3). The total customs value of goods imported under the GSP program in 2018 was \$50,659,637.⁶³

The top products imported under the GSP program have remained relatively constant over the last several years. The top 5 GSP imports as reported in the 2016 USTR presentation are as reported in Table 11. Calculations done for the purposes of this report show the top 10 imports from Ukraine under the GSP program from 2018 and 2019 (Quarters 1 to 3) in Table 12 and Table 13 respectively.

Table 11: Top 5 Imports from Ukraine under GSP Treatment (2018)		
HTS Number	Product Description	Total GSP Value
2804.29.00	Rare gases, other than argon	\$12,145,000
8607.19.03	Parts of railway/tramway locomotives/rolling stock, axles	\$3,877,000
4409.29.05	Nonconiferous wood continuously shaped along any of its ends, whether or not also continuously shaped along any its edges or faces	\$3,348,000
3206.11.00	Pigments & preparations based on titanium dioxide containing 80 percent or more by weight off titanium dioxide	\$3,028,000
1806.90.90:	Chocolate and preps w/cocoa, nesoi, not put up for retail sale	\$1,880,000

Table 12: Top 10 Imports from Ukraine under GSP Treatment (2018)		
HTS Number	Product Description	Total GSP Value
1806.31.00	Chocolate and other cocoa preparations, in blocks, slabs or bars, filled, not in bulk	\$15,448,767
2804.29.00	Rare gases, other than argon	\$7,226,014
3206.11.00	Pigments & preparations based on titanium dioxide containing 80 percent or more by weight off titanium dioxide calculated on the dry weight	\$7,194,063

4409.29.06	Other nonconiferous wood, continuously shaped along any ends, whether or not also continuously shaped along any edges or faces	\$5,370,983
8516.71.00*	Electrothermic coffee or tea makers, for domestic purposes	\$1,795,524
4011.10.10*	New pneumatic radial tires, of rubber, of a kind used on motor cars (including station wagons and racing cars)	\$951,921
8531.90.90**	Parts of electric sound or visual signaling apparatus, nesoi	\$827,262
8108.90.60	Titanium, wrought nesoi	\$688,774
9013.10.30*	Telescopic sights for rifles designed for use with infrared light	\$669,808
7326.90.86	Iron or steel, articles, nesoi	\$663,600

*Currently ineligible for Ukraine, as demarcated by special product indicator (SPI) "A**"

**No longer eligible under GSP for all BDCs (as of July 2019)

Indications based on the most recent U.S. tariff and trade information from the U.S. ITC's Dataweb application.

Table 13: Top 10 Imports from Ukraine under GSP Treatment (2019 Quarters 1-3)		
HTS Number	Product Description	Total GSP Value
8108.90.60	Titanium, wrought nesoi	\$10,536,531
3206.11.00	Pigments & preparations based on titanium dioxide containing 80 percent or more by weight off titanium dioxide calculated on the dry weight	\$4,675,950
1806.31.00	Chocolate and other cocoa preparations, in blocks, slabs or bars, filled, not in bulk	\$3,772,048
4409.29.06	Other nonconiferous wood, continuously shaped along any ends, whether or not also continuously shaped along any edges or faces	\$3,597,048
2804.29.00	Rare gases, other than argon	\$3,243,698
9032.89.40	Automatic voltage and voltage-current regulators, not designed for use in a 6, 12, or 24 V system	\$1,310,738
3925.20.00	Doors, windows, and their frames and thresholds for doors, of plastics	\$952,772
8515.90.20	Parts of electric welding machines and apparatus	\$828,592
8309.90.00	Base metal stoppers, caps and lids (o/than crown corks), threaded bungs, bung covers, seals, other packing accessories and parts	\$801,447
2823.00.00	Titanium oxides	\$759,325

Recent Developments with regard to Ukraine and the GSP

In 2011 a petition was submitted by the International Intellectual Property Alliance (IIPA), a coalition of five copyright industry trade associations, that requested Ukraine's eligibility be reviewed. Its requests were based on Ukraine's alleged lack of enforcement of intellectual property rights (IPR) protection. Investigations were launched under the Obama

Administration in 2012 and over the following five years the case was being examined.

Finally, a pivotal GSP Country Practice Hearing was held September 27, 2017 in which the IIPA spoke on the issue of IPR in Ukraine. As Eric Schwartz, a U.S. lawyer representing the IIPA, proclaimed during the hearing:

*“Our two most persistent problems are 1) an unfair and non-transparent administration of collective administrative rights, mostly relevant to the music industry and 2) the failure of the Government of Ukraine to implement effective and systematic means of combatting the widespread online infringement of copyright and related rights.”*⁶⁴

This mirrored developments in 1999 during which the IIPA submitted a petition regarding lack of governmental oversight of optical disc plants used for producing pirated CDs and DVDs. Ukraine’s GSP eligibility was revoked in 2001 for this reason and eventually reinstated in 2006 after the Ukrainian government took steps to shut down those plants.⁶⁵ However, as technology progressed and CDs and DVDs became a secondary means of dissemination relative to online and digital ones, issues of IPR evolved and Ukraine, as well as the rest of the world, found itself behind in regulating IPR protection. As Mr. Schwartz noted in his testimony, “[O]bviously, that [shutting down optical disc plants] was a technological solution of now 12 years ago, and things have moved on...IPR problems that still remained in Ukraine and, as I said, in not just Ukraine, obviously around the world...have morphed into different problems.”⁶⁶

The hearings of September 2017 were framed in light of determining whether Ukraine was properly adhering to the mandatory criteria regarding IPR. A few months later, President Trump announced that Ukraine would have its GSP treatment would be partially revoked on December 22, 2017.⁶⁷ It was estimated by the USTR that this loss of privileges had affected about \$36 million in trade per year, or approximately 1% of Ukraine-U.S. trade.⁶⁸ A full list of the items that were removed in 2017 can be found [here](#).⁶⁹

However, Ukraine took important steps to mitigate the issues raised by the IIPA and that ran against the stipulations laid out in U.S. GSP legislation. There were two major legislative reforms within Ukraine that demonstrated Ukraine’s commitment to IPR protection. The first was a law criminalizing bringing video cameras into movie theaters, as many new releases pirated on the Internet are simply recordings of movie screens in cinemas. These recordings are then distributed widely on various websites and torrenting platforms, resulting in a loss of revenue at the box office. Another law was also passed in Ukraine to improve royalty collections in its music industry.⁷⁰ The IIPA was supportive of these actions and eventually the USTR and the President took action to partially restore Ukraine’s eligibility under the GSP program. As President Trump wrote in Proclamation 9955 of October 25, 2019, “Ukraine has made progress in providing adequate and effective protection of intellectual property rights. Accordingly, it is appropriate to terminate the suspension of the duty-free treatment accorded under the GSP to certain eligible articles that are the product of Ukraine.”⁷¹ This resulted in a total of 147 products being reinstated as GSP-eligible (approximately \$12 million of Ukrainian trade) with the October proclamation.⁷² This went into effect on October 30, 2019. A full list of the articles that were restored to GSP eligibility for Ukraine in October 2019 can be found [here](#).⁷³

Table 14 provides information on the number of total number of items that were restored to GSP eligibility for Ukraine and a breakdown by HTS Chapter.

Table 14: Products Restored to GSP Eligibility for Ukraine, Oct. 2019 (By HTS Chapter)		
HTS Chapter Number	Chapter Category	# of Products Restored
7	Edible vegetables and certain roots and tubers	3
9	Coffee, tea, maté and spices	3
11	Products of the milling industry; malt; starches; inulin; wheat gluten	2
16	Preparations of meat, of fish or of crustaceans, mollusks or other aquatic invertebrates	7

17	Sugars and sugar confectionery	1
18	Cocoa and cocoa preparations	1
19	Preparations of cereals, flour, starch or milk; bakers' wares	2
20	Preparations of vegetables, fruit, nuts or other parts of plants	14
21	Miscellaneous edible preparations	5
22	Beverages, spirits and vinegar	9
33	Essential oils and resinoids; perfumery, cosmetic or toilet preparations	3
35	Albuminoidal substances; modified starches; glues; enzymes	1
39	Plastics and articles thereof	8
40	Rubber and articles thereof	3
42	Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)	5
44	Wood and articles of wood; wood charcoal	6
62	Articles of apparel and clothing accessories, not knitted or crocheted	3
63	Other made up textile articles; sets; worn clothing and worn textile articles; rags	1
64	Footwear, gaiters and the like; parts of such articles	2
65	Headgear and parts thereof	1
69	Ceramic products	2
71	Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof; imitation jewelry; coin	5
73	Articles of iron or steel	1
76	Aluminum and articles thereof	2
82	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	1
84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	15
85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	21
87	Vehicles other than railway or tramway rolling stock, and parts and accessories thereof	3
90	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	9
92	Musical instruments; parts and accessories of such articles	1
93	Arms and ammunition; parts and accessories thereof	1
94	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated sign illuminated nameplates and the like; prefabricated buildings	2
95	Toys, games and sports requisites; parts and accessories thereof	3
96	Miscellaneous manufactured articles	1

In comparing the lists, it is the case that the vast majority of the articles removed in 2017 were restored to GSP eligibility with Presidential Proclamation 9955. However, there are several products that account for large portions of the value of GSP imports from Ukraine which are still

marked as ineligible (such as those indicated in Table 12). Trade data for the fourth quarter of 2019 (during which the products were reinstated) is still not available at the time of the writing of this study, but it would be of value to observe how these changes have impacted imports of such products in a) quantities; b) monetary value and c) proportion entered under GSP treatment since the October proclamation.

General Advice for Ukraine to Optimize GSP

The following section will briefly outline seven different areas of interest for which Ukraine could look into should it seek to optimize its utilization of the GSP program in the United States. The purpose of this section is not to provide a full and detailed analysis of any one of these interest areas. Rather, it is to provide a broad array of recommendations for which any interested parties in either Ukrainian government or industry could conduct or request further analysis.

1. Review the Top Exports from Ukraine to the United States in light of the GSP

An analysis could be done to determine those goods that are already being imported into the United States from Ukraine and cross-reference them with the list of goods receiving GSP treatment. This can be done for either the dollar value of the goods being imported or their quantities. At the time of the authoring of this report, data is only available for quarters 1-3 of 2019. However, this data from the first 3 quarters of 2019 highlights the already in-place export structures in Ukrainian industry. Producers of these goods can then be targeted for dissemination of information regarding the benefits of the GSP to ensure that their products are imported with duty-free treatment in a timely fashion. Table 15 displays the top eleven GSP-eligible products

imported into the United States from Ukraine in terms of their customs value. Table 16 displays the top five products imported into the United States from Ukraine in terms of their quantities. In both tables, the top three products are included for reference even though they are not GSP-eligible as well as those products that are still designated as GSP-ineligible for Ukraine (demarcated by SPI “A*” in the Harmonized Tariff Schedule). Items are listed regardless of whether or not GSP eligibility was requested by the exporting entity.

Table 15: Top GSP-Eligible Products Imported from Ukraine in 2019 (Customs Value)			
Ranking	HTS Num.	Product Description	Total Value 2019 in Qs 1-3 (USD)
1	7201.10.00	Nonalloy pig iron containing by weight 0.5 percent or less of phosphorus	\$338,739,704
2	7304.29.20	Iron (o/than cast) or nonalloy steel, seamless casing pipe, not threaded or coupled, of a kind used in drilling for oil or gas	\$47,669,051
3	2009.79.00	Apple juice, of a Brix value exceeding 20, unfermented	\$39,517,447
...			
18	8108.90.60	Titanium, wrought nesoi	\$11,043,867
20	8516.71.00*	Electrothermic coffee or tea makers, for domestic purposes	\$9,788,222
23	9506.11.40*	Skis, snow-skis (o/than cross-country)	\$6,628,584
27	1806.31.00	Chocolate and other cocoa preparations, in blocks, slabs or bars, filled, not in bulk	\$5,935,611
35	8544.30.00	Insulated ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships	\$4,861,313
36	3206.11.00	Pigments & preparations based on titanium dioxide containing 80 percent or more by weight off titanium dioxide calculated on the dry weight	\$4,770,950
39	2804.29.00	Rare gases, other than argon	\$3,872,836
42	4409.29.06	Other nonconiferous wood, continuously shaped along any ends, whether or not also continuously shaped along any edges or faces	\$3,597,048
47	8516.79.00*	Electrothermic appliances nesoi, of a kind used for domestic purposes	\$2,742,464
57	8903.10.00*	Vessels, inflatable, for pleasure or sports	\$2,032,957
63	7326.90.86	Iron or steel, articles, nesoi	\$1,432,915

Table 16 – Top GSP-Eligible Products Imported from Ukraine in 2019 (Quantity)				
Ranking	HTS Num.	Product Description	Total Quantity 2019 (Qs 1-3)	Units
1	2009.79.00	Apple juice, of a Brix value exceeding 20, unfermented	149,700,042	Liters
2	2614.00.60	Titanium ores and concentrates, other than synthetic rutile	66,370,195	Kg.
3	7304.29.20	Iron (o/than cast) or nonalloy steel, seamless casing pipe, not threaded or coupled, of a kind used in drilling for oil or gas	53,167,435	Kg.
...				
16	3923.50.00	Stoppers, lids, caps and other closures, of plastics	4,667,464	Number
21	2202.99.36	Juice of any single fruit or vegetable (except orange juice) fortified with vitamins or minerals, in nonconcentrated form	3,104,809	Liters
24	3206.11.00	Pigments & preparations based on titanium dioxide containing 80 percent or more by weight off titanium dioxide calculated on the dry weight	2,120,500	Kg.
26	1806.31.00	Chocolate and other cocoa preparations, in blocks, slabs or bars, filled, not in bulk	1,986,570	Kg.
29	7009.92.50	Glass mirrors (o/than rearview mirrors), framed, over 929 cm ² in reflecting area	1,595,959	Cm. ²

2. Cross-Reference the List of Goods Restored GSP Eligibility in October 2019

By cross-referencing the list of goods which were restored eligibility in October 2019 with import data of Ukrainian goods entering the United States, those products that are now re-eligible can be targeted in a similar way as those in Recommendation 1. Given the recency of this development, it is likely that many Ukrainian producers aren't aware that their products may now again be granted duty-free treatment under the GSP program. By analyzing whether these products with restored eligibility are being exported to the U.S. and at what volume, an approach can be adopted that specifically works to get producers of GSP-eligible products informed on the benefits and processes surrounding the GSP program.

For the purposes of this report, a cross-reference was done with products restored from only one chapter of the U.S. Harmonized Tariff Schedule (USHTS). Chapter 85 (Electrical

machinery and equipment and parts thereof, etc.) was chosen for a several reasons. First, it was the USHTS Chapter for which the greatest number of products were restored eligibility for Ukraine pursuant to the October 2019 Proclamation. Secondly, these tend to be relatively high-value goods and ones that require value-added productive capacities in the country of origin to make them. Finally, these goods are related to the information technology (IT) sector – an industry that is of particular interest to Ukraine, especially in the Western United States. Table 17 highlights those products that were both imported into the United States in 2019 and also restored eligibility in October 2019. Given that the data only reflects imports up to September 2019, data from 2020 may reveal a greater number of newly-eligible goods entering the U.S. market from Ukraine. Nevertheless, such cross-referencing can provide valuable insight to Ukrainian officials by highlighting those goods that are currently being traded and again eligible for duty-free treatment from the U.S. as well as crafting an import strategy based on the most up-to-date information regarding America’s GSP scheme. It also will allow interested parties to track changes in U.S.-Ukraine trade as the number of GSP-eligible products covered for Ukraine expands.

Table 17 shows all goods from USHTS Chapter 85 that were restored eligibility in October 2019 for Ukraine. Those rows that are highlighted in yellow demarcate goods that were imported from Ukraine to the United States in the first three quarters of 2019. For those goods that were imported, the total customs value in USD is also provided. The total amount of Chapter 85 goods that fell under both GSP-restored and imported to the U.S. in 2019 was \$332,387.

Table 17: Comparison of Chapter 85 Goods Restored and Imported in 2019

HTS Num.	Product Description	Total Customs Value Imported in Qs 1-3 (USD)
8501.32.20	DC motors nesoi, of an output exceeding 750 W but not exceeding 14.92 kW	-
8501.40.40	AC motors, nesoi, single-phase, exceeding 74.6 W but not exceeding 735 W	\$277,332
8501.51.40	AC motors, nesoi, multi-phase, of an output exceeding 74.6 W but not exceeding 735 W	-
8501.51.60	AC motors nesoi, multi-phase of an output of 746 W but not exceeding 750 W	-
8504.31.40	Electrical transformers other than liquid dielectric, having a power handling capacity less than 1 kVA	-
8504.40.95	Static converters (for example, rectifiers), nesoi	\$15,057
8504.50.80	Other inductors, nesoi	\$6,628
8509.40.00	Electromechanical food grinders, processors, mixers, fruit or vegetable juice extractors, w self-contained electric motor, for domestic uses	-
8518.29.80	Loudspeakers nesoi, not mounted in their enclosures, nesoi	\$29,252
8518.50.00	Electric sound amplifier sets	-
8531.80.15	Doorbells, chimes, buzzers, and similar apparatus	-
8531.80.90	Electric sound or visual signaling apparatus, nesoi	-
8539.50.00	Light-emitting diode (LED) lamps	\$4,118
8543.70.42	Flight data recorders	-
8543.70.45	Other electric synchros and transducers; defrosters and demisters with electric resistors for aircraft	-
8543.70.71	Electric luminescent lamps	-
8543.70.89	Portable battery operated electronic readers for recording text, still images or audio files	-
8543.70.91	Digital signal processing apparatus capable of connecting to a wired or wireless network for sound mixing	-
8543.70.95	Touchscreens without display capabilities for incorporation in apparatus having a display	-
8543.70.97	Plasma cleaner machines that remove organic contaminants from electron microscopy specimens and holders	-
8543.70.99	Other machinery in this subheading	-
		Total: \$332,387

3. Highlight the Losses Accrued by not Requesting GSP Treatment

Information dissemination is the primary methodology for ensuring Ukrainian goods that can be entered under the GSP program are being granted appropriate duty-free treatment and that losses in the Ukrainian economy are minimized. While the onus is on the individual exporter to request that a good be granted duty-free treatment (see Section III for more information), information regarding the program and the potential losses of not utilizing it could act as a significant driver to increasing Ukraine's GSP utilization rate. Of course, the responsibility would rest on individual firms to calculate if the price of ensuring GSP treatment (either derived from administrative costs or production-related costs such as fulfilling the 35% ROO requirements) outweighs the losses from not having GSP eligibility.

While outside the scope of the present study, it would be of major interest to Ukrainian government and industry to calculate the total losses accrued by not requesting GSP duty-free treatment when importing goods to the United States. This is especially true now that data will become available over the next year relating to those products that were restored eligibility in October 2019. This could be done by analyzing the import data for all GSP-eligible goods (including those recently restored eligibility for Ukraine and excluding those that still remain marked as ineligible specifically for Ukraine). The difference of GSP-eligible goods that were not imported under the GSP program and those same goods that were imported under the GSP program provides the gap in GSP coverage (hereinafter "GSP Gap"). This difference can then be compared with the duties paid on those particular products during the same time period to calculate the potential losses from tariff payments that could otherwise have been nullified with GSP treatment. Of course, it must be noted that the "GSP Gap" could be due to various

exogenous and endogenous factors. This could be caused by lack of requesting GSP treatment, statutes of the GSP program itself (i.e. CNL requirements), cost or production hindrances, or a combination of these factors. This would have to be disaggregated separately.

Table 18 shows the preliminary step of this method for the top three products (by total customs value) imported under the GSP program in the first three quarters of 2019. This excludes those goods that are GSP-eligible but that still remain ineligible for Ukraine (certain coffee and tea makers and skis). Import data for these products was used to calculate the “GSP Gap”, or the difference between the total amount of an article imported to the U.S. minus the amount of that same good entered under GSP treatment.

Table 18: Top 3 GSP-Eligible Products Imported and GSP Gaps				
HTS Num.	Product Description (truncated)	Total Imported	Total Imported (GSP)	GSP Gap <i>(Difference between columns 3 and 4)</i>
8108.90.60	Titanium	\$11,043,867	\$10,980,815	\$63,052
1806.31.00	Chocolate	\$5,935,611	\$3,772,048	\$2,163,563
8544.30.00	Wiring Sets	\$4,861,313	\$0	\$4,861,313

Using the MFN tariff rates of these goods, the loss in benefits from the GSP can then be calculated as such:

Table 19: Top 3 GSP-Eligible Products and Potential Loss in Benefits			
Product	MFN Tariff Rate <i>(Ad Valorem)</i>	GSP Gap	Potential Loss in Benefits <i>(MFN Rate * GSP Gap)</i>
Titanium	15%	\$63,052	\$9,458
Chocolate	5.6%	\$2,163,563	\$121,160
Wiring Sets	5%	\$4,861,313	\$243,066

As can be seen above, the total loss from just the top three GSP-eligible products from Ukraine (ranked by customs value) was approximately \$373,684 in the first three quarters of

2019. According to data from US ITC, no imports of wiring sets (8544.30.00) were claimed under the GSP program. Hence, by highlighting the losses accrued by not requesting GSP treatment for specific, eligible products, interested parties could inform Ukrainian producers and exporters of these goods on how to benefit from duty-free treatment when exporting to the United States.

4. Monitor High-Value and Highly Traded Products Still Ineligible for Ukraine

Interested parties in Ukraine should keep a close eye on the eligibility of products that are of high value and are traded in high volume from Ukraine to the United States. There are several of these products that have been highlighted above that are still ineligible for GSP treatment for Ukraine at the time of the writing of this report (December 2019). However, there is the possibility that these products will be restored to GSP-eligibility for Ukraine in a move similar to Presidential Proclamation 9955 in October 2019. Table 20 highlights four of the top-traded goods (calculated by customs value in USD) that are GSP-eligible but still denied eligibility for Ukraine specifically. The potential loss in benefits for these goods is also calculated in the same manner as outlined in the recommendation above.

Table 20: Potential Loss of Benefits from Top GSP-ineligible Products for Ukraine				
HTS Num.	Product Description (shortened)	Total Value in 2019	MFN Tariff Rate (<i>Ad Valorem</i>)	Potential Loss of Benefits
8516.71.00	Electrothermic coffee or tea makers	\$9,788,222	3.7%	\$362,164
9506.11.40	Skis	\$6,628,584	2.6%	\$172,343
8516.79.00	Electrothermic appliances nesoi,	\$2,742,464	2.7%	\$74,047
8903.10.00	Vessels, inflatable, for pleasure or sports	\$2,032,957	2.4%	\$48,791
Total:				\$657,345

The primary course of action Ukraine could take to facilitate the United States reinstating GSP eligibility for these products would be to continue to work on IPR protections and domestic laws relating to IPR (see Recommendation 7). If and when these articles are restored GSP treatment under U.S. law, information could be promptly disseminated to exporters of these products so as not to prolong the lag time between export and request for GSP treatment.

5. Cross-Reference GSP-eligible Goods with “Priority Goods”

In February 2018 the Canada-Ukraine Trade and Investment Support Project (CUTIS), the Ministry of Economic Development and Trade and the U.S.-Ukraine Business Council organized a presentation regarding optimization of Ukraine’s trade relations with North America. The presentation was titled “*Definition and Market Analysis of Priority Goods to Support of Ukrainian Export to the USA*”⁷⁴. During the meeting, it was stated that the United States was one of the “focal markets” according to the Export Strategy of Ukraine.⁷⁵ The meeting revolved around a report facilitated by CUTIS which detailed various goods and sectors with high growth potential. This analysis is very thorough and provides many resources and recommendations for Ukraine to optimize its export strategy with regard to the United States. There is ample opportunity to couple the export strategy outlined by CUTIS with one that takes full advantage of duty-free treatment under the United States GSP program. This would provide the added benefit of receiving duty-free treatment along with a coordinated and calculated export strategy focused on growth. According to the analysis, the top 6 product groups that have significant potential for growth are:

- | | |
|---|---|
| <ul style="list-style-type: none">• Carpentry• Ceramic Tiles• Bakery Products | <ul style="list-style-type: none">• Alcoholic Beverages• Chocolate• Confectionary |
|---|---|

The full CUTIS report (in Ukrainian) can be found [here](#).⁷⁶ A table of 55 products determined to have significant growth potential for both global and U.S.-export (categorized the 4-digit HS code) can be found on page 11 of the report. This table can be cross-referenced with the list of GSP-eligible products for further optimization of Ukraine's export strategy.

6. Monitor Petitions Relating to Sunflower-seed Oil & other Relevant Goods

Ukrainian government and industry should also be aware of potential changes during the GSP Annual Product Review each year, especially as it relates to goods that are particularly relevant to Ukraine's economy. A notable example of this was the potential for crude sunflower-seed and safflower oil (1512.11.00) to be added to the list of GSP-eligible goods. A petition to add this good was submitted by Argentina after it eliminated its export tax and export permit requirements and sunflower oil production in the country expanded.⁷⁷ An analysis of the import situation and domestic industry of sunflower oil in the United States was conducted by the U.S. ITC in 2017 to determine the potential impacts of adding sunflower oil to the list of eligible commodities.⁷⁸

This potential change was of particular importance to Ukraine. According to the ITC report, Ukraine accounted for the vast majority of crude sunflower-seed and safflower oils from GSP-eligible countries (accounting for \$12.6 million out of a total of \$13.6 million worth of U.S. imports).⁷⁹ Furthermore, according to the UN Department of Economic and Social Affairs, sunflower-seed and safflower oil was Ukraine's top export commodity from 2016 to 2018.⁸⁰ Given the international interest in sunflower-seed oil and its positioning within the GSP program, Ukraine should be aware of the discourse surrounding GSP modification for 1512 commodities. While U.S. law does not stipulate that a specific reason must be given for the denial of a petition,

it could be of interest for Ukrainian officials and producers of 1512 commodities to review the 2017 ITC report (market analyses, voices of opposition, etc.). Interested parties in Ukraine can also petition to have sunflower oil, or any other good, reviewed for addition to the list of GSP-eligible products. The full text of the ITC report can be found [here](#).⁸¹ According to trade data calculated from the ITC DataWeb application, the approximate amount of duties paid on 1512 products imported from Ukraine (1512.11.00 and 1512.19.00) totaled \$1.46 million in 2018.

7. Maintain Open Communication with U.S. Industry, Policymakers & Voters

Ukraine should continue to maintain open channels of communication with U.S. industry and policymakers regarding the GSP program and its position within it. The two major things that should be communicated are 1) Ukraine's continuing efforts with regard to IPR protection and 2) the benefits of the GSP program on U.S. producers and consumers. Ukraine should make clear to policymakers and other interested parties (particularly the IIPA) that it is addressing the three major concerns highlighted in the country practice reviews of the last two years:

- The unfair, nontransparent administration of the system for collective management organizations (CMOs), which are responsible for collecting and distributing royalties to U.S. and other right holders.
- The widespread use of unlicensed software by Ukrainian government agencies.
- The failure to implement an effective means to combat the widespread online infringement of copyright in Ukraine.⁸²

Ukraine's work on resolving these issues has already resulted in partial restoration of GSP benefits. Any further steps in that direction should be announced to the relevant

changemakers so that the remainder of ineligible products be restored as well, which would have a positive economic impact on a range of Ukrainian sectors and industries.

Finally, Ukraine (as well as other GSP-eligible countries) should make coordinated efforts in communicating the mutual benefits duty-free treatments brings not only to the Ukrainian economy, but to the U.S. economy as well. The Coalition for GSP has a variety of resources that highlight the benefits of the GSP program in the United States. Most of these benefits are the result of production inputs being able to be imported at a lower cost (duty-free), which in turn benefits U.S. companies. This mutually beneficial relationship is demonstrated in a number of the Coalition's publications and should be continuously emphasized. The Coalition for GSP calculated that the program saved American companies over \$1.03 billion in 2018 alone.⁸³

Below is a graphic produced by the Coalition for GSP that demonstrates the value of GSP imports and the amount saved by U.S. companies from the duty-free treatment provided by the program. The results are disaggregated by state. For example, Ukrainian officials and industry members in California (the top beneficiary of GSP) could espouse the benefits of the program to the citizens of that state to relevant parties and through proper communicatory channels. This would assist in balancing out some of the opposition to the GSP program in the American political discourse. In fact, GSP beneficiaries could further disaggregate the benefits of the program down to the state and product categories in order to create a coordinated communication strategy relevant to goods important to their national export strategies.



Source: Coalition for GSP, “2018 GSP Savings by State”⁸⁴

Conclusion

There are multiple methods that Ukrainian industry and the Ukrainian government can pursue individually and in tandem for an optimal utilization of the GSP program. This section outlined seven broad recommendations for carrying out such an aim. These recommendations can be summarized as:

- (1) Review the top exports from Ukraine to the United States in light of the GSP program.
- (2) Cross-reference the goods restored eligibility in October with Ukrainian imports to the U.S.
- (3) Highlight the losses accrued by not requesting GSP treatment for Ukrainian exporters.
- (4) Monitor high value and highly traded products that are still ineligible for Ukraine.
- (5) Cross-reference GSP-eligible goods with products with high growth potential for Ukraine.
- (6) Monitor petitions relating to the addition or removal of sunflower-seed oil and other goods relevant to the Ukrainian economy.
- (7) Maintain open communication with U.S. industry, policymakers and voters.

The reinstating of GSP eligibility for a number of Ukrainian goods was a major development with regard to Ukraine's export strategy. It is unclear whether the remaining goods designated as GSP-ineligible for Ukraine will be restored to eligibility in 2020. However, it is likely that the steps taken by the Trump Administration in 2019 relating to Ukraine's furthering of IPR protection are indicative of future restorations. Several confounding factors such as the impeachment proceedings in the United States, the 2020 U.S. Presidential Elections and the state of and voices from U.S. industry also make predicting Ukraine's position under the GSP program difficult. Nevertheless, there are steps that Ukraine can take today to maximize its utilization of the GSP program and continue to create mutually beneficial bilateral trade relations with the United States.

Section III

Utilizing the GSP as a Ukrainian Importer

This section is designed as a brief reference guide for Ukrainian producers looking to export goods to the United States under the GSP program. Two steps are necessary to ensure proper import regulations are met: 1) a good is classified under a GSP-eligible HTS code and 2) a customs form is properly filled out so that the imported good is afforded GSP treatment. These two processes will be walked through in the sections below.

Classifying the Good as a GSP-Eligible Product

All goods imported into the United States are classified under the United States Harmonized Tariff Schedule (USHTS). The USHTS is composed of 22 sections and further broken into 99 chapters, with each chapter covering a certain category of goods. The full US Harmonized Tariff Schedule by chapter can be found [here](#).⁸⁵ It is important that producers find the appropriate HTS number for their good and this can be done in a number of ways.

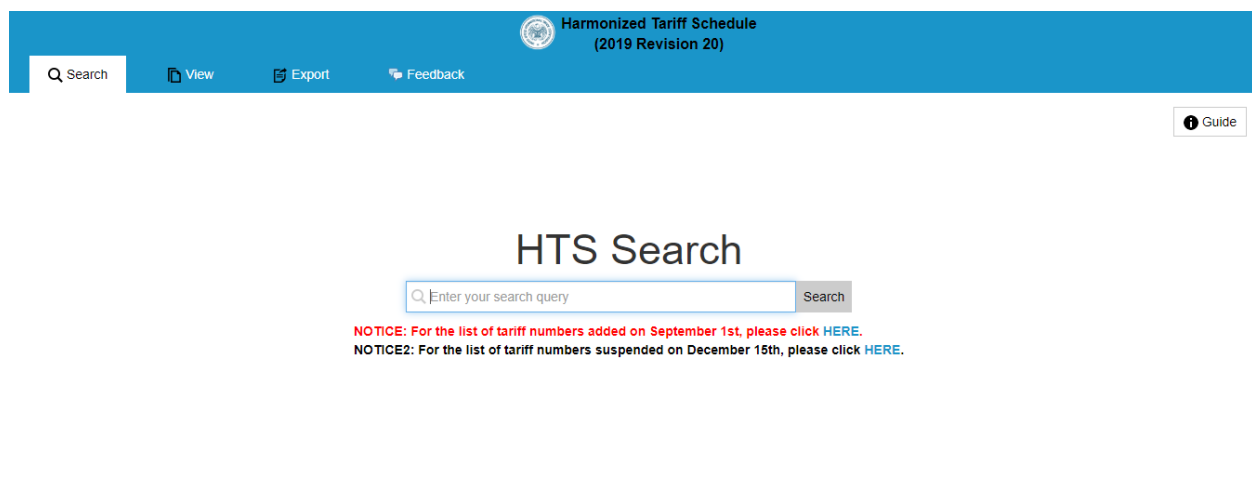
Given that there are multiple systems for classifying goods internationally, there can be some confusion on how to classify goods according to the system of a specific country's import regulations. Fortunately, 98% of goods in international trade is categorized using the Harmonized System (HS) classification.⁸⁶ This is a classification system of six-digit HS codes administered by the World Customs Organization. The United States Harmonized Tariff Schedule (USHTS) number is an eight- to ten-digit classification system with the first six digits being harmonized with the international HS code. For producers seeking further guidance on HTS classification, more in depth information on the differences between the HS code and the HTS number of goods can be found [here](#).⁸⁷ Additional information from the US International Trade Commission regarding the general processes of importation can be found [here](#).⁸⁸

Once the HTS number of a good has been determined, it then must be cross-referenced with the list of GSP-eligible goods. The full list of GSP-eligible goods from all beneficiary countries as of December 2019 can be found [here](#).⁸⁹

A walkthrough will be provided with the instance of a product that is one of Ukraine’s top exports as well as a GSP-eligible good. According to the UN Department of Economic and Social Affairs, corn (classified as HS code 1005) was Ukraine’s second largest export commodity in 2018.⁹⁰ The total value of exported corn to all importing countries was \$3.5 billion. While corn is not necessarily a top exported good to the United States, it is nevertheless important for Ukrainian exporters to keep in mind the process of designating a good as GSP-eligible when trading goods with other donor countries (such as EU members). For exporters of goods to the United States, the process is as follows:

Step 1 – Determine the HTS number of the product

Go to <https://hts.usitc.gov/> and enter the name of the product (i.e. “corn”) in the search bar.



Step 2 – Find the HTS number of the particular product

Once the search criteria have been entered, find the precise type of product to be exported. Notice that when “corn” is entered into the search bar, several options are included. For example, “sweet corn” is classified under 0710 and 0712 and “corn flour” under 1102. Further research on the product information is necessary to find the appropriate code.

The screenshot shows the Harmonized Tariff Schedule (2019 Revision 20) search results for the keyword "corn". The search results are displayed in a table with columns for Heading/Subheading, Stat Suffix, Article Description, Unit of Quantity, and Rates of Duty. The search results are filtered to show 25 results. The table lists various corn products and their corresponding HTS numbers and rates of duty.

Heading/ Subheading	Stat Suf fix	Article Description	Unit of Quantity	Rates of Duty	
				1 General	2 Special
0710.40.0000		Sweet corn			
0712.90.8550		Sweet corn seeds of a kind used for sowing			
1005		Corn (maize):			
1005.10.00		Seed	Free		0.98¢/kg
1005.10.0010		Yellow corn			
1005.90		Other:			
1005.90.20		Yellow dent corn	0.05¢/kg	Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	0.98¢/kg
1102.20.0000		Corn (maize) flour			
1103.13.00		Of corn (maize)			

Step 3 – Check the GSP Eligibility of the Product

There are several ways to check if a product is GSP-eligible. A full list of GSP-eligible products is kept on the *GSP Program Information Page* of the USTR website [here](#).⁹¹ This will allow an individual to search among only GSP-eligible products. When reviewing the list for products under the 1005 heading, there are two products fall under the GSP program for the

United States: “yellow dent corn” and “corn (maize), other than seed and yellow dent corn.” The non-GSP tariff rates for these products would be 0.05 cents/kg and 0.25 cents/kg respectively.

HS Code	Product Name	Rate	Notes
1005.90.20	Yellow dent corn	0.05 cents/kg	A
1005.90.40	Corn (maize), other than seed and yellow dent corn	0.25 cents/kg	A*

Note that the second product is demarcated with an “A*.” This indicates that certain BDCs are ineligible for GSP treatment for any number of reasons. If a product for which GSP-treatment is sought is found to be marked with an “A*” when cross-referencing the list, further steps should be taken to ensure that the exporting producer does not fall under this category of ineligibility. However, if an item is marked only with an “A”, it can be deemed as eligible for any BDC.

However, a simpler method of finding the eligibility of any given product can be done with the use of the United States International Trade Commission’s (ITC) DataWeb application. This can be accessed at <https://dataweb.usitc.gov/>. This platform allows a user to search for a particular product to see if it is generally GSP-eligible and – if it is ineligible for any country – for which country that is the case. The utilization of these two methods in tandem will assist exporters in gaining familiarity with the various facets of the United States GSP program. A walkthrough of the process of using the DataWeb application begins on the following page.

1) Visit <https://dataweb.usitc.gov/> and click “Tariff Database”

dataweb.usitc.gov

dataweb.usitc.gov

THE PREMIER SOURCE OF FREE U.S. TRADE & TARIFF DATA.

USITC DataWeb provides U.S. merchandise trade and tariff data in a user friendly web interface. Trade data for 1989 to the present are available on a monthly, quarterly, annual, or year-to-date basis and can be retrieved using a sophisticated querying tool with features such as user defined country and commodity groups. [Read more...](#)

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TRADE

Retrieve U.S. merchandise trade data using the data request tool.

- [Imports For Consumption](#)
- [Domestic Exports](#)
- [General Imports](#)
- [Total Exports](#)
- [Trade Balance](#)

TARIFF

Get past, current, and future U.S. tariff rates in multiple formats.

- [HTS Search](#)
- [Tariff Database](#)
- [Tariff Annual Data](#)
- [Tariff Programs](#)
- [Future Tariff Rates](#)

CLASSIFICATION

Find correlations between classification systems and related data.

- [Commodity Translation Tool](#)
- [Commodity Description Lookup](#)
- [NAICS System](#)

2) Enter the HS code in the search bar (searches can be conducted at up to 8 digits)

[Home](#) → [Tariff](#) → Tariff Database

USITC Tariff Database

Tariff data current through December 11, 2019.
This site has data for individual tariff lines.

Enter either the first part of an HTS category number up to 8 digits — e.g., “8501” or “850110”, or any part of a product description — e.g., “bovine”, or “articho” (without the “quotes”). The search is not case-sensitive, so the results for “Bovine” will be the same as for “BoViNE”.

1005 [List Items](#)

[Download Annual Tariff Data](#)

3) Find the desired product in the list and click on it for detailed tariff information

Select an item for which you want tariff and trade information:

HTS	Name	Begin Effect Date
10051000	Seed corn (maize)	01/01/1998
10059020	Yellow dent corn	10/31/2012
10059040	Corn (maize), other than seed and yellow dent corn	07/01/2013

4) Scroll down to “GSP (Generalized System of Preferences)” subheading.

Preferential (duty-free or reduced rate) tariff program applicability to this HTS item

GSP (Generalized System of Preferences)

Status:

Eligible: code "A*" (Certain Countries Excluded)

Countries Excluded from GSP eligibility on this item:

Brazil

As can be seen above, only Brazil is listed under the category “Countries Excluded from GSP eligibility on this item”. This means that such corn from any BDC other than Brazil would be eligible for GSP treatment when exporting to the United States. A Ukrainian exporter could then proceed with the process of shipping this good under duty-free GSP treatment.

Importing the Good as a GSP-Eligible Product

Once the research has been done on the particular product and GSP eligibility has been determined, then the exporter must take steps to ensure that the product is granted GSP status upon its importation. For the most part, GSP donors require exporters from BDCs to submit a Generalized System of Preferences Certificate of Origin Form A (a copy of this document and further information can be found [here](#))⁹². It should be noted that the United States does not require that countries submit this form, as a declaration setting forth all pertinent detailed information on the production or manufacture of the merchandise is considered sufficient. However, any producer exporting to the United States should always keep detailed records of these processes for ease of reference if requested to produce additional documentation.

For producers that are exporting to the United States and seeking GSP treatment a Special Program Indicator (SPI) must be placed on the Entry Summary (CBP Form 7501) or the corresponding electronic transmission. The SPI “A” indicates a request for duty-free treatment under the GSP program. Page 59 shows where the SPI must be placed on the Entry Summary while the following page gives an example of the form with the SPI appropriately applied. U.S. Customs and Border Protection gives specific instructions for how producers importing to the United States should fill out this form with respect to the GSP program:

*“Where a reporting number is preceded by an alpha character designating a special program, that indicator is to be placed in column 27, directly below the line number. The special program indicator (SPI) should be right justified on the same line and immediately preceding the HTS number to which it applies.”*⁹³

Full instructions for filling out CBP Form 7501 can be found [here](#).⁹⁴

CBP Form 7501 – Appropriately Filled Out to Request GSP Treatment

15-1, 1-5/07 18.35an Free Trade Origin Invoice

002441286

1 107 2 001/002 F-306

DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection ENTRY SUMMARY				1. Filer Code/Entry No. ASFC 000	12. Entry Type 01 ABI/A	5. Summary Date 10/04/2006									
E. Exporting Carrier		B. Mode of Transport 11		4. Entry No. 8	6. Used Type 2704	7. Entry Date 09/24/2006									
19. U.S. or AWP No.		13. Manufacturer ID		19. Country of Origin TR		11. Inland Code 09/26/2006									
16. I.T. No.		17. I.T. Desc	18. Missing Desc	14. Exporting Country TR		18. Entry Date 08/30/2006									
21. Location of Goods (S.O. No.)		22. Consignee No. SAME		18. Foreign Port of Lading 55735	20. U.S. Port of Unloading 2704										
25. Ultimate Consignee Name and address				26. Number of Revenue Miles											
City State IN Zip				City State IN Zip											
27. Description of Merchandise				32. A. Entered Value											
Line No.	A. HTSUS No.	B. ADICVD Code No.	C. Gross Weight	D. Net Quantity in HTSUS Units	B. CHGO	C. Relationship	33. A. HTSUS Rate	B. ADICVD Rate	C. ERG Rate	D. Rate No.	34. Duty Rate	35. IR Tax			
001	M 4465000914		16940	112500	51840	NOT RELATED	FREE				0.00				
A	DISPOSED, SHAKLES RUBBER GL				C3959		0.125%				64.00				
	HARBOR MAINTENANCE FEE						0.21%				108.86				
	MERCHANDISE PROCESSING FEE														
				AS ENTERED											
Other Fee Summary to Book 30				36. Total Entered Value			CBP USE ONLY			TOTALS					
Total Other Fees \$ 173.66				\$ 51,840.00			A. Use Code 359			37. Duty					
							REASON CODE			38. Tax					
							B. As certified Duty			39. CBT					
							C. As certified Tax			40. Total					
							D. As certified Clear			173.66					
							E. As certified TRC			173.66					
38. DECLARATION OF IMPORTER OF RECORD (OWNER OR PURCHASER OR AUTHORIZED AGENT)				I declare that I am the <input type="checkbox"/> Importer of record and that the article owner, purchaser, or consignee for CBP purposes is as shown above, OR <input checked="" type="checkbox"/> owner or purchaser or agent thereof. I further declare that the merchandise <input checked="" type="checkbox"/> was obtained pursuant to a purchase or agreement to purchase or <input type="checkbox"/> was not obtained pursuant to a purchase or agreement to purchase and the statements in this invoice are true to the best of my knowledge and belief. I also declare that the statements in this invoice to the best of my knowledge and belief are true and correct, and goods or services provided to the holder of the merchandise either free or at reduced cost are fully disclosed. I will immediately furnish to the appropriate CBP office any information showing a different statement of fact.			39. Signature			40. Date			10/12/2006		
41. Declarant Name				42. Declarant Title			43. Broker/Importer File No.			6841					
44. Broker/Importer Information (Name, address, phone number)															

Final Note on Importing into the United States

When importing any product to the United States, it is imperative that those doing such are familiar with all rules and regulations. The purpose of this document is not to provide a detailed description of these processes. However, there are ample resources provided by the U.S. Customs and Border Protection (CBP) that can be referenced for those looking to sell goods in the United States. These can be found by clicking the hyperlinked text below:

- [Basic Importing and Exporting](#)⁹⁵
- [Importing into the United States: A Guide for Commercial Importers](#)⁹⁶

For ease of reference, below is a checklist of those documents that any individual or entity should have ready when importing to the United States. Further information can be found in the GSP Guidebook from the USTR ([here](#))⁹⁷ as well as in the abovementioned resources.

Checklist for Importing Goods to the United States Under GSP⁹⁸
GSP Declaration
Bill of Materials
Invoices
Purchase Orders
Production Records Kept in the Ordinary Course of Business
Payroll Information to Document Labor Costs
Factory Profile
Affidavit with Supporting Documentation

Any importer should also consult with a licensed customs broker before commencing any international exchange. A customs broker is a private individual, partnership, association or corporation that is empowered by the CBP to assist importers and exporters in meeting Federal requirements. Additionally, they assist in submitting the appropriate payments (such as tariff fees) to CBP. There are currently about 14,450 licensed brokers in the United States.⁹⁹ The CBP provides a database of active brokers that is searchable by port of entry:

- [U.S. Customs and Border Protection: Find a Broker by Port](#)¹⁰⁰

Finally, for information regarding Customs and Border Protection and the Generalized System of Preferences, the CBP provides additional resources on their website.

- [Generalized System of Preferences \(GSP\)](#)¹⁰¹

Any additional inquiries regarding the GSP, its rules, annual reviews, etc. can be sent to the Director for GSP at the Office of the United States Trade Representative:

- Claudia Chlebek, Director for GSP at (202) 395-2974 or claudia.m.chlebek@ustr.eop.gov

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