



U.S. Withdrawal of Thailand's GSP Benefits: Real or Imagined?

Laura R. Sallstrom*

The Generalized System of Preferences (GSP) scheme evolved under the auspices of the United Nations Conference on Trade and Development, with the first programs being implemented in 1971. GSP provides for preferential tariff treatment for developing country exports of manufactured and semi-manufactured goods to "increase export earnings of developing countries, to promote industrialization, and to accelerate economic growth."¹

It is unclear whether GSP programs have been successful in achieving their economic development objectives. Successive rounds of GATT negotiations reduced tariff rates, but also lowered the margin of preference that developing countries gain from GSP. Nevertheless, developing countries clearly profit from their GSP benefits. [Table 1](#) shows the amount of duty free and/or reduced tariff rate exports from Thailand to the European Community, Japan, and the United States from 1989-1992, under their respective GSP programs. Given that Thai exporters gain from GSP programs, but abstaining from an examination of the quantity or quality of these gains, it is worth examining the likelihood that GSP be withdrawn from Thailand.

According to statistical data provided by the United States Trade Representative, Thailand was in 1993 the third largest beneficiary of the United States GSP program, behind Malaysia and Mexico. In that year, Thailand exported US\$2,143,279,761 worth of duty free goods to the United States and a total of US\$3,280,204,761 worth of GSP eligible products to the United States.² Since Thailand is such a significant beneficiary of the United States GSP program, Thai trade practices and Thai GSP benefits receive greater scrutiny than they otherwise might. A number of issues, including Thailand's rapid rate of development, its infringement on intellectual property rights, and the absence of adequate worker rights laws threaten the gains received under the GSP scheme. The following is an examination of the United States GSP criteria for graduation from the GSP program, their applicability to Thailand, and an evaluation of the likelihood of Thailand's graduation from the GSP program.

LEGAL GRADUATION CRITERIA

Section 504 of the amended 1974 United States Trade Act establishes the legal criteria for graduation of GSP benefits. Graduation is divided into two categories: product graduation and country graduation. Country graduation occurs when 1) a beneficiary exceeds the per capita GNP limit set by the GSP statute; or 2) a review of a beneficiary's advances in economic development and trade competitiveness indicates that GSP is no longer required.

When undertaking graduation action, the law requires, among other criteria, that consideration be given to the following:

*1) a country's general level of development; 2) its competitiveness in the particular product; 3) the country's practices relating to trade, investment and worker rights; and 4) the overall economic interests of the United States, including the effect continued GSP treatment would have on the relevant U.S. producers, workers and consumers.*³

In review of product cases, the President of the United States may graduate products in three instances:

*1) in responding to petitions submitted by the interested parties in the annual review; 2) in precluding individual beneficiaries from GSP eligibility on newly-designated articles; and 3) in denying re-designation to countries eligible for reinstatement of GSP statutes on specific articles.*⁴

In addition, the law stipulates a competitive need limit (CNL) which requires that countries export no more than 50 percent of total U.S. imports of each product or no more than a specified dollar amount of the imports for a given year.⁵ In 1993, the ceiling was US\$108 million. The United States Trade Representative administers a lower competitive need limit of 25 percent and a smaller dollar figure for items and countries which are deemed "sufficiently competitive" in a specified product. If a country exceeds the CNL in a given year, that country risks losing GSP benefits for the listed item. In October of each year, a warning list is issued advising countries that specified products are nearing their competitive need limit. Countries may request a waiver from the limit; if it is granted, the country will not lose its trade benefits for the next year. In general, the process of product graduation is more likely to occur as a result of a country's exceeding the CNL (and then being denied a waiver) than it is for a country to lose specific product benefits initiated by petition during the Annual Review. Waivers are fairly routinely granted. Unfortunately, Thailand is at a disadvantage with respect to the granting of waivers, as will be seen in the following sections.

Finally, in any modification of the list of eligible products or eligible countries, the President must consider the extent to which the beneficiaries "are offering reasonable and equitable market access to U.S. goods and services; adequately and effectively protecting U.S. intellectual property rights; eliminating trade-distorting investment practices; eliminating trade-distorting export practices; and ensuring `internationally recognized workers rights."⁶

COUNTRY GRADUATION

Formal Criteria

While Thailand's graduation is a theoretical inevitability, country graduation on the basis of per capita GNP development is not likely to occur in the near future. In 1990, the per capita GNP limit was US\$10, 405.⁷ Thailand's per capita GNP in 1990 was US\$1,492.⁸ National Economic and Social Development Board (NESDB) 1993 figures indicate that Thailand's per capita GNP was 38,680 baht, approximately US\$1,547. Clearly, Thailand remains well within the range of GSP eligibility judged on a per capita basis. Two of the four Asian "tigers" which already graduated from GSP—Hong Kong and Singapore—far exceeded the per capita limit set for 1990.

The GSP criteria also include a provision for country graduation when a country makes significant advances in economic development and competitiveness. South Korea likely graduated under this rule, since its per capita GNP in 1990 was only US\$5,400 and its percent growth rate over the 1965 to 1990 period was 7.1 percent.⁹ According to the Bank of Thailand, Thailand's growth rate in 1990 was 11.7 percent overall and 10.0 percent on a per capita basis. While this growth rate continues to increase at an impressive speed, there appears to be no sense among Washington officials that Thailand's rapid economic development would cause graduation from the GSP program. Rather, if any type of new graduation were to occur, it would be as a result of other GSP criteria.

Labor

There is an on-going worker rights dispute between the United States and Thailand. In 1991, the AFL-CIO filed a country practice petition against Thailand through the GSP Annual Review requesting a review of worker rights laws and practices. Specifically, the AFL-CIO raised concerns regarding child labor and government efforts to reform the State Enterprise Labor Relations Act (SELRA). A decision on this case was deferred several times in response to the current Chuan Leekpai Government's stated intention to reform SELRA. At present legislation pending in the Thai Parliament regarding reform of SELRA would resolve many U.S. concerns. If this legislation is passed, and if the Government continues its efforts to reform child

labor practices, the issue is likely to be dropped from the U.S.-Thai GSP trade agenda.

Since worker rights groups have recently suffered a number of political losses (e.g., NAFTA, China MFN), it is possible that Congress and the Clinton Administration will "feel obligated" to consider more carefully their concerns. Additionally, with the Clinton Administration's aggressively seeking linkage between trade and worker rights through the new World Trade Organization (WTO), questions regarding Thailand's progress on worker rights may be raised even more forcefully. On the other hand, the Administration's delinking of trade and human rights issues in China could affect worker rights and trade issues in other countries. Whatever occurs, however, it is unlikely that the United States would completely drop the worker rights issue in Thailand.

Intellectual Property

The intellectual property dispute between the United States and Thailand has a long and complicated history, beginning in 1985 when the International Intellectual Property Alliance (IIPA) named Thailand as one of the worst countries in the world for copyright piracy.

In 1989, the Reagan Administration determined that Thailand did not provide adequate and effective intellectual property protection to United States products and services. Consequently, the United States revoked GSP benefits worth US\$165 million on a number of products; since then the value of lost GSP benefits has risen. In addition, and perhaps more seriously, this revocation included a determination to view "unfavorably" any request from Thailand for GSP waivers. In the future, therefore, if Thailand finds itself in a situation where it exceeds its competitive need limits on a particular product, it risks graduation of that product.

Special 301 is a U.S. trade law requiring the identification and penalization of countries which are determined to be egregious intellectual property violators. As a result of "Special 301" consultations, the United States and Thailand reached in 1993 an interim agreement on some significant points of contention in their intellectual property dispute. From the United States point of view, this included a commitment from the Thai Government to increase its enforcement of intellectual property laws. The agreement between the two countries was sufficient to downgrade Thailand from the "priority foreign country list" to the "priority watch list." At the time, however, the results were deemed insufficient to immediately restore GSP benefits.

United States industries represented by such organizations as the IIPA and the Motion Picture Association of America (MPAA) continue to raise their concerns over Thailand's violation of intellectual property rights with the Office of the U.S. Trade Representative (USTR); this has been done both privately and formally through "Special 301" legal process. In February of this year, IIPA submitted another Special 301 petition against Thailand. It seems unlikely that the recording industry will drop its complaints, unless there is a visible increase in the level of enforcement and "at a level serious enough to deter further piracy"¹⁰ in Thailand.

PRODUCT GRADUATION

New Petitions

As part of the 1993 Annual Review, the Government of Thailand has petitioned for re-designation of some of its products which were removed under the Reagan Directive. It is unclear whether or not the Clinton Administration feels intellectual property concerns have been addressed sufficiently by Thailand to merit re-designation of any of these goods. The IIPA offered no comment on Thailand's GSP benefits through either the Special 301 process or the GSP Annual Review.

Thailand's waiver requests cover a number of products which were not included in the original Reagan Directive, but which subsequently exceeded CNL. Only one of the products petitioned by the Thai Government for re-designation was protested by an American industry. The Tile Council for America, Inc.

opposes re-designation of HTS 6908.10.20 "certain ceramic tiles." In 1992, Thailand exported US\$4,780,582 to the United States, approximately 24.3 percent of total U.S. ceramic tiles imports. Other GSP beneficiaries shipped ceramic tiles worth US\$2,619,208 duty free into the United States. The United States imported ceramic tiles worth US\$19,603,055 from Thailand. Based on this data, it is assumed that Thailand is a major competitor in the U.S. ceramic tile market and, therefore, it may be even more difficult to have GSP benefits for ceramic tiles reinstated than it would be to have other items reinstated.

In addition, product number HTS 8517.82.00—"electrical telegraph apparatus"—exceeded the US\$108 million competitive need limit for 1993 (US\$108,042,056). If the United States persists in denying competitive need waivers to Thailand, electrical telegraph apparatus should be graduated officially from the GSP program in July 1994. At the time of writing, the results of the 1993 Annual Review were unavailable; however, it will set an important precedent for future cases.

[Table 2](#) gives the results (based on 1993 exports) of the simulated, constant, annual growth for each of Thailand's top ten GSP benefiting exports to the United States. Based on data from actual 1992 figures and an estimated seven percent growth rate, the Table projects what year each of these products would hit the US\$108 million CNL ceiling. Excluding "electrical telegraph apparatus," the next products to surpass the mark would be "insulated ignition wiring sets" (in 1995) and microwave ovens (in 1997). The remaining products in the top five categories will not graduate until the year 2004 (see [Figure 1](#)). All of the top ten products will not be graduated until the year 2010.

If the United States maintains its historical pattern of annually increasing competitive need limits ceilings, the ceilings would increase between 1994 and 2010. This would extend the amount of time it would take for these products to hit their competitive need limits. In addition, as is also evident in [Table 2](#), the top five GSP products have rather erratic growth rates. Three of the five products have a downturn in growth between 1989 and 1993. Presumably, therefore, growth over the next ten to 15 years is likely to be similarly erratic and will not mirror the constant seven percent growth rate used in the simulation.

Finally, [Table 3](#) shows Thai imports as a percentage of total United States imports from 1989 to 1992. This table indicates that none of the top ten products are near the 50 percent cut-off mark. Therefore, the possibility of exceeding total dollar amounts is likely of more concern than the percentage cut-off. As long as the CNL continues to increase, Thailand's major concern will continue to be regaining access to CNL waivers. Unfortunately, however, the Clinton Administration has proposed to significantly lower the competitive need limit in renewal legislation.

NEW LEGISLATION

The United States GSP authority expires on September 30, 1994. Currently, the Administration is working with the Congress to pass renewal legislation. In the meantime, no new petitions on GSP will be accepted. The USTR, however, will be proceeding with reviews, petitions, and competitive need limits reviews which are outstanding from 1993.

In March of this year, the Clinton Administration submitted a draft proposal to the United States Congress House Ways and Means Subcommittee on Trade to renew the GSP program. The Administration's intention is to attach GSP renewal legislation as a "rider" to the Uruguay Round implementing legislation. This would allow a vote on GSP legislation, like the Uruguay Round implementing legislation, with only a "yes" or "no." No amendments would be permitted once the Administration formally submitted legislation. At this time, it is still unclear whether or not the Uruguay Round implementing legislation will be ready for submission to Congress by September 1994. If it is not ready, GSP legislation will go through Congress independently and will therefore receive more (potentially negative) attention than if it were only a small part of the Uruguay Round legislation.

The content of the Administration's proposal essentially mirrors past legislation. The majority of proposed changes are linked with procedural issues; there are some significant changes, however, which would have a direct impact on Thailand. The proposal seeks, for example, a legislative clarification of the specific

content of waivers in order to apply GSP rules more consistently. For product petitions, the Administration proposes limiting the filing of petitions in order to add items to the GSP list every three years and to permit the filing of petitions to remove items from GSP at any time during the year. Petitions to waive competitive need limits would continue to be filed on an annual basis.

In addition, the Administration has proposed changes to the "country practice" review process. These would establish a clearer standard for the acceptance of petitions and would restructure the review process. The review process would be divided into two stages—expanding the time frame for clarification of country practices and offering ample opportunity for negotiation. In total, however, it appears that the review process for country practice cases is set up to last no more than one year. More importantly for Thailand, the Administration will coordinate the public comment period and decision timing of the "Special 301" review with the public comment period for GSP country practice petitions, both of which will occur in April of every year. This translates into an even stronger relationship between intellectual property issues and GSP.

Two of the proposed legislative changes could present specific problems for Thailand. First, the Administration proposed lowering the total dollar value of the competitive need limit to US\$75 million. Thailand would risk, therefore, the graduation of any products currently surpassing that limit. Without access to waivers, the loss of benefits multiplies. If the CNL were to be lowered, based on the seven percent growth projection in [Table 2](#), all products would be graduated by the year 2005, five years earlier than under the US\$105 million limit. Second, the Administration proposed changing the mandatory GNP graduation criteria in order to be able to drop in any calendar year any country that the World Bank designates as "high income." Therefore, any country with a per capita GNP in excess of US\$7,000 would automatically be graduated from the program. As Thailand approached this designation, graduation would become more likely.

POTENTIAL NEW CONCERNS

Two other issues can potentially affect Thailand's GSP status. First, GSP graduation criteria presently require that consideration be given to whether a country is "offering reasonable and equitable market access to U.S. goods and services" and is "eliminating trade-distorting investment practices." Should U.S.-Thailand trade disputes in areas such as financial services and investment escalate, they could conceivably be linked to GSP benefits. No government officials in Washington have suggested such a strategy, but the potential for linkage exists. Still, it is unlikely that the USTR will want to "overplay" GSP as a negotiating tool with Thailand.

Second, during Congressional hearings on GSP renewal, certain Congressmen have insisted that environmental concerns be included as criteria for consideration in future GSP law.¹¹ The U.S. Trade Representative formally opposes this proposal; but if environmental issues are included in GSP legislation, Thailand can expect environmental issues to be linked to its GSP status. The exact details of the new GSP legislation should be known by the end of September 1994.

CONCLUSION

Thailand eventually may graduate from the United States GSP program. If Thailand's economy continues to grow and if the Clinton Administration significantly lowers the per capita GNP criteria, the Thai economy could reach the per capita GNP limit sooner than anticipated. American officials involved in the GSP process, however, believe that neither Thailand, nor any new products, will be targeted specifically for graduation in the near future. The monetary value of Thailand's GSP benefits is diminishing, due to the United States' withdrawal of benefits for intellectual property rights violations and the continuing decrease in MFN tariff rates under GATT. Thailand's greatest current concerns with United States' GSP benefits are changes to the GSP program under renewal legislation and the resolution of intellectual property issues, which would hopefully lead to the reinstatement of previous benefits.

While graduation does not appear imminent, it may be useful to weigh the costs and benefits to Thailand

of maintaining its GSP status. Clearly, Thai exporters gain from the duty free benefits granted under the GSP law (over US\$2 billion in exports in 1993). GSP is not, however, "costless" for Thailand. It involves adhering to international standards, as interpreted by the United States, in areas such as worker rights, intellectual property rights, and potentially in the realms of services and environmental protection. On the other hand, the development of these standards, painful as they may be, are all part of the economic development process. Since it is unlikely that the United States would completely withdraw GSP benefits in the near-term, it is up to Thailand to determine if the costs of the program outweigh its benefits.

© Copyright 1994 *Thailand Development Research Institute*