COALITION for a PROSPEROUS AMERICA

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May 24, 2021

The Honorable Ron Wyden
Chairman, Senate Finance Committee
221 Dirksen Senate Office Bldg.
Washington, D.C., 20510

Re: Concerns with Generalized System of Preferences (GSP) and Miscellaneous Tariff Bill (MTB) Renewal

Dear Chairman Wyden:

I write on behalf of the Coalition for a Prosperous America (CPA) with concerns about your *Trade Preferences and American Manufacturing Competitiveness Act of 2021* ("bill"). CPA members are manufacturers, farmers, ranchers, and workers. They are the fiber holding our economy together and they produce the goods and food that power our nation. We support your efforts to rebuild our economy after the COVID-19 pandemic and after decades of industry erosion. However, we have opposed, and do oppose, trade preference programs because they have been part of the offshoring problem which is transforming America into a low wage country.

The Generalized System of Preferences (GSP) was passed in 1974 when America was unchallenged as the leading industrial economy. It was sold as a program to make friends globally in the developed world during the Cold War. However, there were conditions of participation, such as a prohibition on forced labor, that were not enforced. The impact on U.S. employment and industry was also not considered. It is now clear that the goal of building the middle class in developing countries through exporting to the U.S. largely failed.

The Miscellaneous Tariff Bill program was also started during the later stages of the Cold War. It was sold as a temporary import relief program to help U.S. manufacturers procure goods cheaply where there was no domestic alternative to add value and jobs here. However, the program has grown to be *de facto* permanent. It is abused by importers who lobby against policies to boost domestic production and it conflicts with the national imperative to re-shore the industries and jobs we have lost.

These two bills are part of the overall United States policy of import facilitation which helps drive out domestic production. As industrial production has moved overseas, the quality of jobs available in the U.S. has deteriorated significantly — especially for people of color. CPA's Job

Quality Index shows that the proportion of low wage/low hour jobs created in our economy over time continues to grow in relation to high wage jobs, including those in manufacturing. CPA members wish to invest, build, and create good paying manufacturing jobs. As Congress works hard to rebuild industries we have lost, CPA supports efforts to reshore critical industries and supply chains that have been offshored. However, we oppose renewing programs that are part of the cheap import policy of the past and stand in direct conflict with Congress's stated goals.

We have these specific suggestions for the bill relating to GSP and MTB in the event they are renewed.

1. **GSP: New administrative barriers to removing ineligible countries should not be added**

Many GSP countries have violated the terms of the program, for decades, without being held accountable. The rules have simply not been enforced. For example, forty-eight countries are on the Department of Labor's Forced Labor and Child Labor list and are still in GSP. Despite this lack of enforcement of GSP, Section 10001(b) of the bill adds further hurdles to removing an ineligible country by subjecting the President's, and USTR's, determination to a 'fact-finding' hearing governed by the Administrative Procedures Act and subject to judicial review.

Foreign countries, under this amendment, will be granted a new standing to challenge the President's decision by hiring highly paid Washington lawyers to advocate for them. There is no administrative hearing to put countries on the list after determining eligibility. Other countries do not give the U.S. government standing to challenge their internal decisions in their courts or administrative law process.

We request that the President's decision on removing a GSP country is not subjected to further administrative and court procedures.

2. **GSP: Focus on the least developed countries**

While your bill adds criteria that could cause a country to lose GSP status by failing to live up to human rights expectations or environmental commitments it has made, it does not touch the subject of when a country should 'graduate' out of GSP.

In a 2014 hearing on the *African Growth and Opportunity Act*, during a question and answer session, you asked Ambassador Froman: "Is it time for Congress and the Administration to consider whether countries like India, Thailand, Brazil and Turkey are also ready to graduate from the Generalized System of Preferences program?"[1]

CPA agrees that it is time for many beneficiary countries to graduate from the GSP program. Rather than reinvent a process, the obvious approach is to limit GSP to the least-developed countries, as already defined in the statute per World Bank standards.

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[1] U.S. Congress, Senate Committee on Finance, *The African Growth and Opportunity Act at 14*: The Road Ahead, 113th Cong., 2nd sess., July 30, 2014.

Extending GSP to more advanced economies that are industrializing quickly will hurt job creation in America and hamper future industrial strategy.

3. **GSP: Add Automatic Ineligibility Triggers for Labor Rights and Other Violations**

Labor rights criteria were introduced to GSP in 1984, championed by Congressman Don Pease. Those criteria have mostly been ignored. Rep. Pease wanted an automatic, mandatory trigger, but could not overcome opposition.[2]

The Department of Labor already works hard to investigate and identify countries using child labor or forced labor pursuant to the *Trafficking Victims Protection Reauthorization Act* (TVPRA). In 2020, the Department identified 155 goods from 77 countries.[3] Of the 77 countries identified by the Department of Labor, 48 are GSP beneficiaries.

If GSP is reauthorized, we recommend that any country on the TVPRA list two-years running is automatically determined ineligible.

4. **GSP: Prevent free riders like China by Tightening the Rules of Origin**

GSP's rule of origin threshold is currently 35%, which is too low, especially compared to the roughly 70% to 75% in USMCA. Of course, that means 65% of the tariff free content can come from third countries. It is worth noting that many GSP countries are China Belt and Road countries.

Sec. 10002(c)(2)(B) of your bill asks the USITC to submit a report to Congress on "the effectiveness of the rules of origin of the program in preventing the trans-shipment of articles from countries that are not designated as beneficiary countries" by July 1, 2023.

If GSP is to be extended until 2027, then the rule of origin threshold should be raised to the USMCA standard.

5. **GSP: Disallow Product in Industries We are Working to Rebuild**

The COVID-19 crisis exposed the folly in reliance on global supply chains for essential goods. For example, on March 3, 2020, the Government of India restricted the export of dozens of drugs including paracetamol and various antibiotics.[4] This was dangerous, as "India is one of the world's largest producers and exporters of drugs, with the U.S. and Europe heavily reliant on the supply."[5]

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[2] Compa, L. (2001)."Labor rights in the generalized system of preferences: A 20-year review." *Comparative Labor Law & Policy Journal, 22*, 199-238, p. 203., *available at* http://digitalcommons.ilr.cornell.edu/articles/171/

[3] U.S. Department of Labor, "List of Goods Produced by Child Labor or Forced Labor", *available at* https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods

[4] Hannah Ellis-Petersen, "India limits medicine exports after supplies hit by coronavirus", The Guardian, March 4, 2020, *available at* https://www.theguardian.com/world/2020/mar/04/india-limits-medicine-exports-coronavirus-paracetamol-antibiotics

[5] *Id.*

CPA recommends that essential goods be excluded from any tariff preference programs, as well as goods produced by industries that the federal government is spending money to grow.

6. MTB: Petitioners should work with the MEP to find domestic sources

The 2016 AMCA introduced helpful changes by creating the Miscellaneous Tariff Bill Petition System (MTBPS). The key improvement was the requirement that the Department of Commerce (DOC) conduct a "determination of domestic production" before granting tariff relief. However, despite the MTB being billed as "temporary" tariff reductions, Congress has provided petitioners with the expectation of permanent tariff reductions and little incentive to find domestic sources for their production.

In almost twenty percent of the petitions, the Department of Commerce determined that domestic production did in fact exist. MTB petitioners evidently give little effort to domestic sourcing: of the 3,479[6] petitions for tariff waivers USITC received in the 2020 MTB, there were 745 objections from domestic producers facilitated by the DOC.

The Hollings Manufacturing Extension Partnership (MEP) works with tens of thousands of supply chain manufacturers across the country. Many are able to produce goods claimed to be unavailable in the U.S. or could be easily produced by them. President Biden recently directed agencies to partner with the Hollings Manufacturing Extension Partnership (MEP) in their procurement work.[7]

CPA recommends that petitioners should (1) receive certification from their regional MEP when claiming no domestic sources exist; and (2) be required to engage meaningfully with their regional MEP to find domestic sources in the event a petition is granted.

7. MTB: Only manufacturers should be eligible to petition for intermediate goods

MTB proponents claim the program is needed for manufacturers to create jobs. But the program allows **retailers** to simply import cheap foreign goods. It also allows the importation of finished goods rather than intermediate goods or inputs to a final product. In either case, no jobs or manufacturing benefit are created.

Retailers with no domestic manufacturing are making exponentially greater use of the MTB, and the number of petitions is skyrocketing from the low hundreds to the thousands. Also, companies who may manufacture some finished goods often petition for the importation of finished goods they don't make or add value to, but merely wish to sell.

Any MTB renewal should simply disallow petitions from companies that do not manufacture and for any goods beyond inputs needed to make finished goods here.

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[6] The actual number of original petitions received by the USITC was 4,086; 3,479 represents what the USITC adjudicated following consolidations and withdrawals.

[7] Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers (January 25, 2021), section 7, *available at* https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers/

CPA and our members thank you for your commitment to reshoring U.S. domestic supply chains and boosting domestic production. The GSP and MTB programs should not be renewed unless and until they support the emerging strategy to rebuild industries that pay well and increase our national strength. We stand ready to work with you in this regard.

Thank you,

Michael Stumo
CEO, Coalition for a Prosperous America

CC: Ranking Member Mike Crapo