

International Trade Alert

GSP Update: March 25, 2010 Deadline for Public Comment on CNL Waivers Subject to Revocation, De Minimis Waivers and Product Redesignations

March 8, 2010

On March 5, 2010, the Office of the United States Trade Representative (USTR) issued a notice in the Federal Register announcing the availability of import statistics for 2009 relating to competitive need limitations (CNLs) under the Generalized System of Preferences (GSP).¹ USTR has also identified product-country pairings that could experience a change in GSP status based on 2009 import data. USTR will accept public comments no later than Thursday, March 25, 2010, regarding: (1) potential revocations of CNL waivers that meet certain statutory thresholds; (2) possible de minimis CNL waivers; and (3) potential redesignations of articles currently not eligible for GSP benefits because they previously exceeded the CNL thresholds. U.S. importers of potentially affected articles should examine U.S. import data for 2009 to determine the likely impact of USTR's GSP review on duty treatment for those articles.

Competitive Need Limitations

The GSP program is a duty preference program that authorizes duty-free treatment of imports from designated beneficiary developing countries (BDCs). The program seeks to stimulate economic development in those countries by encouraging exports. GSP benefits may be removed once those exports are deemed, by exceeding applicable CNLs, to be competitive. CNLs apply to specific articles exported from BDCs to the United States during a calendar year when those articles (1) have been imported in a quantity that exceeds the absolute value threshold for that calendar year (i.e., \$140 million for 2009), or (2) have been imported in a quantity that exceeds 50 percent of the value of all such articles imported from all countries. The CNLs may, however, be waived under conditions specified in the GSP statute.

Competitive Need Limitation Waivers

USTR has announced the opportunity for public comment, with respect to any category of imported products regarding—

- **CNL Waiver Revocation.** Importers should be aware that statutory thresholds enacted in 2006 may result in the revocation of existing CNL waivers. Under these thresholds, the president should revoke any CNL waiver that has been in effect with respect to an article for five years or more if the BDC's annual exports to the United States of the article at issue exceed either (1) 1.5 times the CNL for that calendar year (\$210 million in 2009) or (2) 75 percent of the appraised value of the total imports of that article into the United States during that calendar year.
- **De Minimis Waiver.** Waiver of the 50 percent CNL is permitted for eligible articles from a BDC if the total imports of that article from all countries during the calendar year did not reach a de minimis level. For 2009, the de minimis level is \$19.5 million.

¹ See 75 Fed. Reg. 10339 (March 5, 2010).



- **Product Redesignation.** Those imports that ceased to receive duty-free treatment because they exceeded the statutory limits in a prior year may be reconsidered for duty-free treatment if imports in the most recent calendar year did not exceed the CNLs.

2009 CNLs Public Comment

Interested parties should review the 2009 import statistics to determine whether public comment concerning their imported products is appropriate.

- **Available Data.** Each interested party should conduct an independent review of the full schedule of 2009 import data for potential changes to relevant CNL statuses. USTR has provided a document, "[Full-Year 2009 Import Statistics Relating to Competitive Need Limitations](#)," to facilitate this analysis.
- **Public Comment.** USTR will make recommendations to the president regarding the revocation of existing CNL waivers and product redesignation as a part of the 2009 GSP review process. USTR invites public comment in support of, or in opposition to, revocation or redesignation. De minimis waivers are granted automatically and without petition. However, public comments in support of, and opposition to, de minimis waivers are also invited.
- **Submission Requirements.** Submissions of public comments must be filed by 5 p.m., Thursday, March 25, 2010, and in accordance with the electronic submission guidelines provided by the USTR.

CONTACT INFORMATION

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