

USTR suspends GSP for certain Thai origin goods, Commerce issues preliminary determination on Vietnam CVD case

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Executive Summary

United States (US) President Donald Trump announced on 30 October 2020, via Presidential Proclamation, that the US would suspend the duty-free treatment of certain goods from Thailand (Thai-origin goods) afforded under the Generalized System of Preferences (GSP), effective 30 December 2020, citing Thailand's lack of assurance to provide the US with equitable and reasonable access to its markets, a primary condition of program eligibility.¹

The US Trade Representative (USTR) issued a subsequent announcement detailing the enforcement action against Thailand and other country review procedures under GSP. The announcement reaffirmed the removal of certain Thai origin goods, and provided additional details noting that the suspension action specifically targeted Thai goods with an annual import value of US\$817 million² currently granted as duty free under GSP.³ In the same announcement, the USTR provided an update on several other outstanding GSP eligibility reviews, including Georgia, Indonesia, and Laos and Uzbekistan.⁴ Finally, the USTR opened two new eligibility reviews on Eritrea and Zimbabwe.

On 4 November 2020, the US Department of Commerce (Commerce) announced an affirmative preliminary determination in the countervailing duty (CVD) investigation of passenger vehicle and light truck tires (passenger tires) from Vietnam.⁵ The announcement cited subsidies provided to Vietnamese

exporters and producers, specifically Vietnam's undervalued currency, as the cause of the preliminary determinations. This announcement follows the recent initiation of a Section 301⁶ investigation by the USTR into the currency practices of Vietnam.⁷

Detailed discussion

GSP

The GSP was implemented as part of the *Trade Act of 1974* and became effective on 1 January 1976. The program, designed to promote economic growth in developing countries by helping countries diversify their trade with the US, provides duty-free benefits for a wide range of qualifying products listed in the Harmonized Tariff Schedule of the US (HTSUS). GSP currently covers 3,500 products from the 119 designated beneficiary countries and territories.⁸

To remain eligible to receive duty-free benefits under the GSP, beneficiary countries must comply with various eligibility criteria. The USTR periodically conducts reviews of the program to confirm conformity of the beneficiary countries to the prescribed criteria. On 30 October 2020, the USTR announced the results of such a review.

In its announcement the USTR confirmed the removal of certain Thai-origin goods from the GSP, covering \$817 million in trade preferences, citing Thailand had failed to provide the US with equitable and reasonable market access for pork products.

Notable Thai origin goods that have been suspended from eligibility under the GSP, effective 30 December 2020, include:

- ▶ Spices imported under HTSUS 0910.99.60
- ▶ Assembled wood flooring panels, other than of bamboo, other than for mosaic or multilayer imported under HTSUS 4418.79.01
- ▶ Garden or similar umbrellas imported under HTSUS 6601.10.00
- ▶ Manicure and pedicure sets, and combinations thereof, other than in leather containers imported under HTSUS 8214.20.90
- ▶ Flashlights imported under HTSUS 8513.10.20

The suspension reflects continued scrutiny and analysis on equitable trade relations and worker rights between the US and designated beneficiary countries. The USTR had previously removed approximately one-third, or \$1.3b, of

the \$4.4b⁹ Thai origin goods from the list of GSP eligible products in November 2019, due to Thailand's lack of action in providing internationally recognized worker rights. See EY Global Tax Alert, [*USTR announces various actions related to exclusion processes for China origin goods covered under trade remedy actions and initiates revisions for future exclusion requirements; US continues to evaluate certain country eligibility benefits under GSP*](#), dated 1 November 2019 for further detail.

In addition to the suspension of certain Thai origin goods, the USTR announced the status of reviews into several other GSP countries, summarized below:

- ▶ Georgia - The USTR has closed a review into Georgia's worker rights eligibility criteria following the passage of new worker rights legislation in Georgia.
- ▶ Indonesia - The USTR has closed a review into Indonesia's market access eligibility following positive steps taken by Indonesia to address trade and investment matters.
- ▶ Laos - Laos requested to be designated as a GSP beneficiary country in 2013. The USTR has closed the designation review without a change in status due to lack of engagement from the Government of Laos on the worker rights eligibility criteria.
- ▶ Uzbekistan - The USTR has closed a review into Uzbekistan's worker rights eligibility following monitoring that found no systematic use in child labor, as well as a continuous decline in forced adult labor.

Finally, the USTR has initiated two new GSP eligibility reviews due to concerns regarding worker rights for Eritrea and Zimbabwe.

Vietnamese CVD finding

Commerce made the first affirmative CVD determination pertaining to foreign currency on 4 November 2020, when it announced an affirmative preliminary determination in the countervailing duty (CVD) investigation of passenger vehicle and light truck tires (passenger tires) from Vietnam. The preliminary determination found that exporters and producers in Vietnam were receiving subsidies with rates ranging from 6.23% to 10.08%. Among the subsidies countervailed, Commerce cited Vietnam's undervalued currency.

Following the announcement, Commerce noted it will instruct US Customs and Border Protection (CBP) to collect cash deposits from importers of Vietnamese-origin passenger tires based on the preliminary rates of 6.23 to 10.08%.

Commerce is anticipated to announce its final determination in the case in mid-March 2021.

The announcement follows the initiation of a Section 301 investigation by the USTR into the currency practices of Vietnam to determine if they are unreasonable or discriminatory to US commerce. For more information, see EY Global Tax Alert, [US initiates Section 301 investigation into Vietnam currency policy; files WTO appeal on Canada lumber finding](#), dated 8 October 2020.

Actions for business

Companies that have historically imported goods from Thailand and claimed duty-free treatment under the GSP should evaluate the overall impact from the elimination of GSP eligibility. Companies importing goods from any GSP-eligible country should also closely monitor status of the USTR eligibility reviews in anticipation of adjusted eligibility actions that may be taken in the future.

Similarly, companies who currently import Vietnamese-origin passenger vehicle and light truck tires (passenger tires) impacted by the CVD action should assess the impact and consider mitigation strategies, as well as review and monitor Commerce's actions for impact to other products.

Such actions may include considering alternative sourcing or optimizing duty planning strategies, such as:

- ▶ Mapping their complete, end-to-end supply chain to fully understand the extent of products impacted, potential costs, alternative sourcing options, and to assess any opportunities to mitigate impact such as tariff engineering.
- ▶ Identifying strategies to defer, eliminate, or recover the duties paid such as bonded warehouses, Free Trade Zones, substitution drawback, and Chapter 98.
- ▶ Exploring strategies to minimize the customs value of imported products subject to duties, re-evaluating current transfer pricing approaches, and for US imports, considering US customs strategies, such as First Sale for Export.

Endnotes

1. See Presidential Proclamation, "Proclamation to Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes."
2. Currency references in this Alert are to the US\$.
3. See USTR press release, "USTR Announces GSP Enforcement Action, Country Successes, and New Eligibility Reviews."
4. *Id.*
5. See Commerce press release, "U.S. Department of Commerce Issues Affirmative Preliminary Countervailing Duty Determination for Passenger Vehicles and Light Truck Tires from Vietnam."
6. Section 301 is provided for under the *Trade Act of 1974*.
7. 85 FR 63637.
8. See Footnote 2.
9. Thai imports that claimed GSP totaled \$4.4b in 2018.

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