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## trade preference programs get new life

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*MSK Client Alert*

July 2015

On June 29, 2015, the Trade Preferences Extension Act of 2015 became Public Law No. 114-27. As a result, the Generalized System of Preferences (GSP) was extended to December 31, 2017, with retroactive effect to July 31, 2013 (when it last expired).

Section 201 provides:(B) REQUESTS.— A liquidation or reliquidation may be made under [the provision which extends the effective date] with respect to an entry only if a request therefor is filed with U.S. Customs and Border Protection not later than 180 days after the date of the enactment of this Act that contains sufficient information to enable U.S. Customs and Border Protection—

(i) to locate the entry; or(ii) to reconstruct the entry if it cannot be located. (C) PAYMENT OF AMOUNTS OWED.— Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry of [an eligible] article under subparagraph (A) shall be paid, without interest, not later than 90 days after the date of the liquidation or reliquidation (as the case may be).

After GSP expired, importers had the ability to continue to file their entries with the "A", "A\*" or "A+" indicator, but had to pay full duty and wait for the program to be reinstated, see CSMS 13-000348 dated July 12, 2013. This "A" flag allows CBP to now quickly identify the eligible entries and issue refunds. In CSMS 14-000286 dated May 16, 2014 and CSMS 14-000326 dated June 9, 2014, importers were reminded while the "A" indicator could be used, liquidation extensions and protests could not be entertained, as GSP had expired.

If you filed during the lapsed period and your entries include the "A" indicator, you will benefit in the refund process. CBP will be able to readily retrieve those GSP entries and issue refunds. If not, you will have to file for refunds. Either way, importers are advised to carefully review their records, identify each entry on which GSP could have been claimed, and make sure those refunds are timely received. If not, do not wait until the last minute to file your refund request.

Refund claims must be filed no later than December 28, 2015, the 180th days after enactment. As is the norm, those refund claims must be filed at the ports

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where the original entries were filed. If you have only a handful of entries on which refunds are due, it may make sense to wait until close to the deadline to file, but that is a matter of business discretion. However, if you are an importer with many such claims, it is prudent to file your claims in smaller batches, and to do so as soon as you are able to adequately identify them. At the same time, importers are cautioned CBP could seek supporting documentation which establishes the eligibility of the goods for GSP benefits, especially if GSP was not claimed at time of entry filing. So, in order to streamline the refund process as much as possible, when filing refund requests, importers should consider doing more than simply saying here is a list of my entries (or entry lines) and give me my money! Do you have documentation from your supplier which supports GSP eligibility? Have you performed a recent analysis to establish the 35% value added requirement (labor and materials) is met? Does double substantial transformation occur? Are you able to fully document and support your GSP claims? If not, it is late to start, but be prepared to support those claims when you file your refund requests.

It is premature to file just now, as CBP has yet to issue the expected notice about how it intends to process these refunds. For right now, the next step is to figure out which entries are eligible for refunds, and get your paperwork in order. Then, once CBP issues its guidance document, you will be ready to file your refund claims. In this context, it is important to keep in mind the August 11, 2014 letter from Headquarters to the CBP filed offices, and subsequent CSMS (see 14-000458 and 14-000460 dated August 14 and August 15, 2014) messages. This combination of messages made clear that using post-entry amendments, including protests, to for the first time raise a GSP (and others) duty refund claim was not going to be accepted by CBP. According to CBP, the law did not allow them to do so. There has been much speculation in the legal community about the veracity of that conclusion, but for now, it remains the standard. So for that reason alone, seeing what CBP has to say about how it intends to process GSP refunds is worth the wait. The law does not speak directly to the question of whether GSP had to be claimed at time of entry to now be eligible for a duty refund. What will CBP decide?

The new law also included updates to the African Growth and Opportunity Act (AGOA) which benefits were extended to September 30, 2025. Additionally, Haiti will now continue to receive benefits for its apparel articles under the Caribbean Basin Economic Recovery Act (CBERA) until September 30, 2025. However, for international traders the immediate interest is with GSP extension. Therefore, importers should also keep in mind that while the law mandates the refunds should be issued within 90 days of filing, it is likely some will take longer to process. Regardless of the timing, whenever you receive your refund check, keep in mind, it will be without interest. Also, if you think CBP did not refund enough money, make sure you fully explore your appeal options.