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*Committee on Development*

**2004/0242(CNS)**

19.1.2005

## OPINION

of the Committee on Development

for the Committee on International Trade

on the proposal for a Council regulation applying a scheme of generalised tariff preferences  
(COM(2004)0699 – C6-0001/2005 – 2004/0242(CNS))

Draftsman: Margrietus van den Berg

(\*) Enhanced cooperation between committees - Rule 47 of the Rules of Procedure



## SHORT JUSTIFICATION

The proposed regulation for a new scheme of generalised tariff preferences was issued by the Commission on 20 October 2004, and, according to the text proposed by the Commission, should regulate the GSP from 1 July 2005 to 31 December 2008.

The proposal follows a Communication dated 7 July 2004 setting out the guidelines of the new GSP system for the ten-year period from 2006 to 2015. Following the presentation of oral questions to the Commission and the Council by the DEVE and INTA Committees, this Communication was widely debated in Plenary on 14 October, and was the subject of a resolution adopted practically unanimously.

Since its creation in 1971, the GSP has been a key instrument of the EU's Development Policy. Indeed, every year the EU "donates" 2.2 billion USD dollars in the form of trade preferences, which is actually superior to the level of official development aid.

It is the responsibility of the Development Committee in particular and of the European Parliament in general to maintain this strong development focus of the GSP system.

The reforms proposed in the draft regulation were previously outlined by the Commission in its Communication of 7 July, to which the Parliament reacted on 14 October with a resolution adopted by a large majority. As the EP stated in that resolution, the draftsman strongly supports the objectives set out in the Communication and further developed in the draft regulation, such as the simplification, stabilisation and clarification of the arrangements, the concentration of preferences on those developing countries most in need, and the enhancement of the sustainable development component.

There are, however, some discrepancies between the Communication and the draft regulation issued by the Commission, about which the Parliament should ask for clarification or further information.

The first discrepancy between the Communication and the legislative text, observed by the draftsman, is the proposed timing of application of the regulation. Since the beginning of the revision process, and until the 20 of October (the very day this draft regulation was published), the Commission maintained that the date for the new regulation's entry into force would be 1 January 2006. This date was confirmed by Commissioner Pascal Lamy in his speech at the European Parliament plenary session on 14 October. As mentioned by many parliamentarians during the debate with Pascal Lamy, this date already implied a tight timetable for consultation with the EP and stakeholders.

For the Commission, it has always been a priority that the GSP instrument should be predictable, and it has always insisted that the new GSP regulation should be adopted at least 12 months before its entry into force. Commissioner Lamy agreed that this period could be shortened to nine months, to provide enough time for a meaningful consultation with the EP.

The Council recognised, in its conclusions adopted on 12 October, the need for a meaningful consultation with the EP and other stakeholders on the GSP reform, as well as the need to give economic operators adequate time to adapt to the new rules.

Now that the Commission draft has been published, we see that the proposed date for entry into force is 1 July 2005. The Commission explains that this change was related to a WTO panel brought by India to challenge the GSP drugs regime. The ruling obliges the EU to implement changes by 1 July 2005 and the Commission proposes to do this through the proposed reform. However, the draftsman considers that the EU should consider the following factors:

- ✓ If the new regulation enters into force on 1 July 2005, this could potentially cause enormous damage for the countries currently benefiting from the GSP special arrangements (labour rights, protection of the environment and to combat drug production and trafficking), including the Andean Community and Central American countries. They will, in theory, qualify for a similar regime (GSP plus) but they will need more than three months to prepare for it. Some countries, like El Salvador, would need to reform their Constitutions before ratifying some of the conventions.
- ✓ The timetable proposed by the Commission goes against some of the principles previously stated by the Commission itself:
  - the need for a meaningful consultation with stakeholders
  - the need for predictability for economic operators
  - the need for customs administrations to prepare themselves to apply a new system
  - the risk of creating a dangerous legal vacuum if the previous regime is repealed by 30 June 2005 (as stated in the proposal), but the new regime is not yet in place. It would be too optimistic to think that the Commission and the Council will be able to adopt the list of "GSP plus" beneficiaries by 1 July 2005.

In consequence, in his amendments the draftsman proposes to return to the scheduled date of 1 January 2006, while he encourages the Commission and the Council to look for alternative solutions in order to comply with the WTO ruling without bringing forward the date of entry into force of the current regulation.

Furthermore, the draftsman has proposed changes to some articles, in order to include the European Parliament and civil society representatives as potential sources of information and verification for the implementation of relevant conventions.

Finally, the draftsman has proposed minor changes in the drafting of some articles, with a view to clarifying their legal meaning.

The draftsman intends to address additional issues in further amendments to his own draft text, once he has consulted relevant stakeholders. This will particularly affect:

- ✓ The rules of origin. In the Communication, the Commission stated its intention to reform the system of rules of origin in form, substance and procedures, recognising that the complexity of these provisions is one of the main reasons for the under-utilisation of GSP trade preferences, particularly by Least Developed Countries. However, the draft regulation presents no change at all to the current system. The position of the EP was

clearly stated in the resolution unanimously adopted on 14 October: expansion to cross-regional cumulation, and consideration of full or global cumulation.

The draftsman intends to ask the EP to commission an independent expert review of this issue, to be sent to the Commission and the Council for consideration, in time for the next review of the regulation within three years.

- ✓ The "generosity" of the instrument. Recognising that the EU GSP is the most generous trade preference scheme offered by any developed countries to the developing world, the draftsman would like to recall that in this draft regulation the Commission has not gone as far as it could. The EU could use three tools to tackle the problem of erosion of preferences: enlarge the list of products covered by the system, move some products from the "sensitive" category to the "non sensitive" and increase the preferential margins for both categories. In this draft regulation the Commission has decided to apply only the first possibility by including some 300 new products in the list of products covered by the system. This may be enough for the first three years, but the Development Committee should encourage the Commission and the Council to start looking at the other two possibilities as well. This will be especially relevant if, as a result of a successful conclusion of the Doha Round the erosion of preferences becomes more acute.

The draftsman will certainly address further points in his future amendments after taking into account the view of interested parties. These are: social dialogue (involvement of Trade Unions in the revision of GSP "plus" requirements), revision clauses (safeguard provisions, Article 15) and a deeper analysis of the new proposed graduation mechanism (based exclusively on market share criteria, Article 13).

## AMENDMENTS

The Committee on Development calls on the Committee on International Trade, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

Amendment 1  
Recital 1 a (new)

***(1a) Since its creation, the Generalised System of Preferences (GSP) has been one of the key instruments to assist developing countries to reduce poverty by helping them to generate revenue through international trade and to contribute to their sustainable development by promoting industrial***

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<sup>1</sup> Not yet published in OJ.

***development and the diversification of their economies.***

*Justification*

*The draftsman wants to underscore that the first and overall objective of the scheme is to assist developing countries to reduce poverty.*

Amendment 2  
Recital 6 a (new)

***(6a) In order to increase the utilisation rate of the GSP and to allow developing countries to capture the benefits of international trade and preferential arrangements, the European Union will strive to provide these countries, and in particular the LDCs, with adequate technical assistance.***

Amendment 3  
Recital 7

(7) The special arrangement for sustainable development and good governance is based on an integral concept of sustainable development as recognized by international conventions and instruments such as the UN Declaration on the Right to Development of 1986, the Rio Declaration on Environment and Development of 1992, the ILO Declaration on Fundamental Principles and Rights at Work of 1998, the UN Millennium Declaration of 2000 and the Johannesburg Declaration on Sustainable Development of 2002. Consequently, developing countries which due to a lack of diversification and insufficient integration into the international trading system are vulnerable while assuming special burdens and responsibilities due to the ratification and effective implementation of core international conventions on human and labour rights, environmental protection and good governance should benefit from

(7) The special arrangement for sustainable development and good governance is based on an integral concept of sustainable development as recognized by international conventions and instruments such as the UN Declaration on the Right to Development of 1986, the Rio Declaration on Environment and Development of 1992, the ILO Declaration on Fundamental Principles and Rights at Work of 1998, the UN Millennium Declaration of 2000 and the Johannesburg Declaration on Sustainable Development of 2002. Consequently, developing countries which due to a lack of diversification ***and means of economic development*** and to insufficient ***appropriate*** integration into the international trading system are vulnerable, while assuming special burdens and responsibilities due to the ratification and effective implementation of core international conventions on human and labour rights, environmental protection and

additional tariff preferences. These preferences are designed to promote further economic growth and thereby to respond positively to the need for sustainable development. Under this arrangement tariffs are therefore suspended for the beneficiary countries.

good governance, should benefit from additional tariff preferences. These preferences are designed to promote further economic growth and thereby to respond positively to the need for sustainable development. Under this arrangement tariffs are therefore suspended for the beneficiary countries.

Amendment 4  
Recital 16 a (new)

***(16a) The threshold for the graduation of section 11 for a beneficiary country should be no lower than 12,5%.***

Amendment 5  
Recital 17 a (new)

***(17a) Regulation (ECC) No 2454/93 laying down the system of rules of origin will be reviewed in the near future in order to better serve the purpose of promoting economic and industrial development.***

***The review will be completed at the latest one year prior to the expiry of this Regulation and will cover the form, substance and procedures of the system of origin of rules, based on best international practice and with a view to harmonising existing systems within the EU.***

***The new system of rules of origin will consider, amongst other issues, cross-regional cumulation and global cumulation, the elimination of the requirement of a double transformation process for certain products, and the consideration of a country as eligible for GSP and EBA preferential treatment even if it is not the final country for export, provided that significant value is added to the goods in that country.***

#### *Justification*

*The current rules of origin are stricter than necessary to meet their objective. Consequently, utilisation rates of GSP preferences, including EBA, remain unacceptably low. The Commission should adapt the rules of origin as soon as possible so that these rules better serve the purpose of promoting economic and industrial development.*

#### Amendment 6

##### Recital 21 a (new)

***(21a) According to Article 37(6) of the ACP-EU Partnership Agreement, the revision of this Regulation in 2008 shall take into account the interests of the ACP countries, including non-LDC countries, not willing or able to conclude an Economic Partnership Agreement (EPA) in the context of the Cotonou Agreement, so that the GSP becomes a valuable alternative ‘safety net’ for these countries.***

#### *Justification*

*In June 1998, in setting the mandate for the negotiation of EPAs in the context of the Cotonou agreement, the Council and Commission stated that the 2004 review of the GSP would provide non-LDC ACP countries that are not in a position to join such EPAs with a new framework for trade which would be equivalent to that available to them under the Lomé Convention. The current GSP regulation does not provide an adequate alternative for these preferences and should therefore be subject to possible revision after future discussions with ACP countries.*

#### Amendment 7

##### Article 3, paragraph 5

5. When a beneficiary country benefits from a commercial agreement with the Community ***which covers at least all the preferences provided by the present scheme for this country, it is excluded from the list of beneficiary countries in Annex I.***

5. When a beneficiary country benefits from a commercial agreement with the Community, ***application of the commercial agreement shall take precedence provided it includes the preferences provided for by the present scheme for this country and the possibility of acquiring preferences equivalent to the special incentive***



***arrangement on the same conditions as under this Regulation. The commercial agreement will exclude the country concerned*** from the list of beneficiary countries in Annex I.

#### *Justification*

*The current text of the Regulation differs from that of the explanatory memorandum in that the Regulation leaves the possibility that some FTAs with developing countries, such as EPAs, provide for a preferential access that is less favourable than this new GSP, whereas the explanatory memorandum states that EPAs will have to provide a preferential access that is similar to the one received before.*

*The special incentive arrangement is an essential part of the GSP as an incentive for sustainable development, good governance and the environment and should therefore have a place in any future commercial arrangements between the European Union and developing countries.*

#### Amendment 8

##### Article 3, paragraph 5 a (new)

***5a. When the Commission calculates graduation percentages, the level of imports formerly eligible for GSP of countries under Article 3, paragraph 5, will be included in the calculation.***

#### *Justification*

*When the European Union signs commercial agreements with developing countries these countries will therefore not be eligible for GSP anymore. This should not influence the graduation percentages of other developing countries.*

#### Amendment 9

##### Article 5, paragraph 2

2. For the purposes of the arrangements referred to in Article 1(2) of this Regulation, the rules of origin, concerning the definition

2. For the purposes of the arrangements referred to in Article 1(2) of this Regulation, the rules of origin, concerning the definition

of the concept of originating products, the procedures and the methods of administrative cooperation related hereto, are laid down in Commission Regulation (EEC) No 2454/93.

of the concept of originating products, the procedures and the methods of administrative cooperation related hereto, are laid down in Commission Regulation (EEC) No 2454/93. ***The form, substance and procedures of the system of origin rules will be subject to regular revision in order to evaluate its effect on GSP utilisation rates and to better serve the purpose of promoting economic and industrial development.***

#### *Justification*

*The current rules of origin are stricter than necessary to meet their objective. Consequently, utilisation rates of GSP preferences, including the 'Everything but Arms (EBA)' regime, remain unacceptably low. The Commission should regularly evaluate and revise the rules of origin system in order to improve utilisation rates and thus to better fulfil the purpose of promoting economic and industrial development.*

#### Amendment 10 Article 7, paragraph 2

2. Common Customs Tariff *ad valorem* duties on products listed in Annex II as sensitive products shall be reduced by **3,5** percentage points. For products of Section 11, this reduction shall be **20 %**.

2. Common Customs Tariff *ad valorem* duties on products listed in Annex II as sensitive products shall be reduced by **4** percentage points. For products of Section 11, this reduction shall be **30 %**.

#### *Justification*

*The draftsman thinks this percentage should be increased according to the objectives stated in Commission Communication COM(2004) 461.*

#### Amendment 11 Article 7, paragraph 4

4. Common Customs Tariff specific duties other than minimum or maximum duties on products listed in Annex II as sensitive products shall be reduced by **30 %**. ***For products of CN code 2207, the reduction***

4. Common Customs Tariff specific duties other than minimum or maximum duties on products listed in Annex II as sensitive products shall be reduced by **40 %**.

***shall be 15 %.***

*Justification*

*The draftsman thinks this percentage should be increased according to the objectives stated in the Commission Communication COM(2004) 461. There is no justification for applying a lower preferential margin to alcoholic beverages (CN code 2207).*

Amendment 12

Article 9, paragraph 1, indent 2 a (new)

***- for a specific reason and for a temporary period is not able to ratify all the required conventions, but has shown commitment to and subsequent compliance with the principles and rights enshrined in the conventions, provided that it will, in the foreseeable future, ratify the conventions, and***

*Justification*

*This amendment is inspired by the example of El Salvador, whose Constitution at present time does not allow ratification of Convention 87 relative to freedom of association and Convention 98 relative to collective negotiation. If El Salvador shows that is willing to reform its Constitution in the near future, and in practice respects the principles of the Conventions, it should temporarily be allowed to benefit from the GSP Special Incentive Arrangement.*

Amendment 13

Article 9, paragraph 1, last sentence

In any case, the 27 conventions have to be ratified by the beneficiary countries ***by 31 December 2008.***

In any case, the 27 conventions have to be ratified by the beneficiary countries ***within 4 years after first being granted the special incentive arrangement.***

*Justification*

*The special incentive arrangement is an essential part of the GSP as an incentive for*

*sustainable development and good governance. It should therefore not be limited to the countries that are sufficiently developed when this Regulation enters into force, but should remain an incentive in the years to come.*

Amendment 14  
Article 10, paragraph 1, point (a)

(a) a country or territory listed in Annex I made a request to that effect ***within three months after the date of publication of this Regulation***, and

(a) a country or territory listed in Annex I made a request to that effect, and

*Justification*

*The special incentive arrangement is an essential part of the GSP as an incentive for sustainable development and good governance. It should therefore not be limited to the countries that are sufficiently developed when this Regulation enters into force, but should remain an incentive in the years to come.*

Amendment 15  
Article 11, paragraph 1

1. Where the Commission receives a request accompanied by the information referred to in Article 10(2), the Commission shall examine the request. The examination shall take into account the findings of the relevant international organisations and agencies. It may ask the requesting country any question which it considers relevant and ***may*** verify the information received with the requesting country ***or any natural or legal person***. The Commission shall inform the requesting country of its assessment and invite to comment.

1. Where the Commission receives a request accompanied by the information referred to in Article 10(2), the Commission shall examine the request. The examination shall take into account the findings of the relevant international organisations and agencies. It ***should*** verify the information received with the requesting country ***and other relevant sources, including the European Parliament and relevant representatives of civil society, such as social partners***, and may ask the requesting country any question which it considers relevant. The Commission shall inform the requesting country of its assessment and invite to comment.

*Justification*

*The European Parliament and other 'relevant sources', such as representatives of civil society, including National Parliaments, should be taken into account when verifying the implementation of most of the conventions included in Annex III, such as the conventions related to human rights and labour standards. The draftsman has also added 'social partners' which includes Trade Unions, since their contribution may be highly relevant to verify implementation of ILO conventions.*

Amendment 16

Article 15, paragraph 1, point (e a)

***(e) bis serious and systematic unfair trading practices not covered under (e) but which have adverse effects to the Community interest and can not be addressed under (e) or Article 20;*** ***deleted***

*Justification*

*Suspension of the arrangements granted to the countries concerned should be justified on the grounds of social and environmental dumping and not of the Community interest per se. It is therefore proposed that these aspects of dumping be covered in point 15 b. Moreover, protection is also afforded to especially vulnerable sectors under Article 20.*

Amendment 17

Article 16, paragraph 1

1. Where the Commission or a Member State receives information that may justify temporary withdrawal and where the Commission considers that there are sufficient grounds for an investigation, the Commission shall inform the Committee.

1. Where the Commission, ***the European Parliament*** or a Member State receives information that may justify temporary withdrawal and where the Commission considers that there are sufficient grounds for an investigation, the Commission shall inform the Committee ***and the European Parliament.***

*Justification*

*The role of the European Parliament should be reinforced.*

Amendment 18  
Article 17, paragraph 3

3. The Commission shall seek all information it considers necessary and may verify the information received with economic operators and the beneficiary country concerned. The available assessments, comments, decisions, recommendations and conclusions of the various supervisory bodies of the UN, the ILO and other competent international organizations, shall serve as the point of departure for the investigation as to whether temporary withdrawal is justified for the reason referred to in point (a) of Article 15(1).

3. The Commission shall seek all information it considers necessary and may verify the information received with economic operators, ***relevant representatives of civil society, including social partners***, and the beneficiary country concerned. The available assessments, comments, decisions, recommendations and conclusions of ***other EU institutions and*** the various supervisory bodies of the UN, the ILO and other competent international organizations, shall serve as the point of departure for the investigation as to whether temporary withdrawal is justified for the reason referred to in point (a) of Article 15(1).

*Justification*

*Since the withdrawal of preferences may be decided now not only on the basis of economic considerations, as before, but also on the basis of violations of principles laid down in the conventions listed in Annex III, the consultation with the civil society (including social partners such as Trade Unions) and the other EU institutions (including the European Parliament) is obligatory.*

Amendment 19  
Article 26, paragraph 2 a (new)

***2a. The Commission shall prepare an impact assessment study of the effects of the GSP covering the period from 1 July 2005 to 1 January 2007. The study shall be transmitted to the Committee, the European Parliament and the Economic and Social Committee by 1 March 2007.***

*Justification*

*In order to adequately review the Regulation in 2008, a good impact-assessment study on the*

*functioning of the system during the period 2005 to 2007 is necessary.*

Amendment 20  
Article 26, paragraph 2 b (new)

***2b. The Committee will set the contents of the impact-assessment study which will in any event cover at least the following points:***

***- a comparative study of GSP utilisation rates under this Regulation and the previous ones, in order to identify the positive and negative trends;***

***- an evaluation of the effects of the graduation in the poverty indicators of the countries affected;***

***- a preliminary assessment (by extrapolation) of the effects of future graduation on the countries likely to be graduated in the next regulation;***

***- a comparative study of the preferential treatment offered by the GSP and the ACP-EU Cotonou Agreement to ACP countries, with a view to incorporating into a revised regulation those changes necessary to take into account the specificity of some ACP economies.***

*Justification*

*In order to adequately review the Regulation in 2008, a good impact-assessment study on the functioning of the system during the period 2005 to 2007 is necessary. There are some elements that should be included in it, and they are listed here.*

Amendment 21  
Article 26, paragraph 3

3. The Committee shall examine the effects of the Community scheme of generalised tariff preferences, on the basis of ***a report from the Commission covering the period 1***

3. The Committee shall examine the effects of the Community scheme of generalised tariff preferences, on the basis of ***the impact-assessment study referred to in Article***

***July 2005 to 31 December 2008. This report shall cover all preferential arrangements referred to in Article 1(2).*** 26(2a).

*Justification*

In order to adequately review the Regulation in 2008, a good impact-assessment study on the functioning of the system during the period 2005 to 2007 is necessary.

Amendment 22  
Article 30, paragraph 1 a (new)

***1a. The provisions of Council Regulation (EC) No 2501/2001 contained in Title II, Sections 2 and 4, Title III, Sections 1 and 2 and Title IV shall be maintained for the countries that are eligible under the preferential treatment provided for in Section 2 of this Regulation but which, due to lack of time, have not been able to comply with the administrative procedures.***

*Justification*

*The objective of this amendment is to maintain the preferential treatment of the countries currently benefiting from GSP special incentives (drugs, labour rights or environment) until they are ready to comply with the heavy administrative procedure necessary to benefit from the GSP plus. The Commission claims that everything will be ready by 1 July 2005. The draftsman does not have strong arguments to disbelieve the Commission, and therefore maintains the date of entry into force of the new Regulation (1 July 2005). The draftsman withdraws, in consequence, his previous amendments 2, 3 and 7.*

*However, in order to respect the need for predictability for economic operators, the need for customs administrations to prepare themselves to apply a new system, and in order to avoid the risk of creating a dangerous legal vacuum if the previous regime is repealed by 30 June 2005 but the new regime is not yet in place, the rapporteur proposes this amendment.*

*This new formulation of the entry into force of the current Regulation is more respectful with the WTO ruling but at the same time avoids damaging beneficiary countries and economic operators, given the high degree of predictability.*



Amendment 23  
Article 30, paragraph 3 a (new)

***3a. The proposal for a revised regulation covering the period 1 January 2009 to 31 December 2011 shall be transmitted by the Commission to the Council, the European Parliament and the Economic and Social Committee by 1 June 2007. The new proposal shall duly take into consideration the results of the impact-assessment study referred to in Article 26(2a).***

*Justification*

*In order to comply with the requirement of one-year predictability requested by beneficiary countries and economic operators, the revised Regulation should be approved by 1 January 2008. In order to allow for a meaningful consultation with the European Parliament and relevant stakeholders, the proposal should be issued at least six months in advance (1 June 2007). This timing enables the Commission to incorporate the findings of the impact-assessment study, which shall be published by 1 March 2007. Ideally this timing of reporting and revision should be incorporated in future Regulations.*

## PROCEDURE

<b>Title</b>	Proposal for a Council regulation applying a scheme of generalised tariff preferences
<b>References</b>	COM(2004)0699 – C6-0001/2005 – 2004/0242(CNS)
<b>Committee responsible</b>	INTA
<b>Committee asked for its opinion</b>	DEVE 11.1.2005
<b>Enhanced cooperation</b>	Yes
<b>Draftsman</b> Date appointed	Margrietus van den Berg 2.12.2004
<b>Discussed in committee</b>	2.12.2004      19.1.2005
<b>Date amendments adopted</b>	19.1.2005
<b>Result of final vote</b>	for:                          32 against:                    0 abstentions:               0
<b>Members present for the final vote</b>	Alessandro Battilocchio, Margrietus van den Berg, Danutė Budreikaitė, Marie-Arlette Carlotti, Nirj Deva, Koenraad Dillen, Alexandra Dobolyi, Fernando Fernández Martín, Michael Gahler, Jana Hybášková, Glenys Kinnock, Wolfgang Kreissl-Dörfler, Ģirts Valdis Kristovskis, Maria Martens, Miguel Angel Martínez Martínez, Luisa Morgantini, Józef Pinior, José Javier Pomés Ruiz, José Ribeiro e Castro, Toomas Savi, Frithjof Schmidt, Jürgen Schröder, Feleknaš Uca, María Elena Valenciano Martínez-Orozco, Anna Záborská, Jan Zahradil, Mauro Zani
<b>Substitutes present for the final vote</b>	Fiona Hall, Alain Hutchinson, Manolis Mavrommatis, Zbigniew Zaleski, Gabriele Zimmer
<b>Substitutes under Rule 178(2) present for the final vote</b>	