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EUROPEAN COMMISSION

Brussels, 15.12.2009
COM(2009)671 final

2009/0179 (NLE)

Proposal for a

COUNCIL REGULATION

temporarily withdrawing the special incentive arrangement for sustainable development and good governance provided for under Council Regulation (EC) No 732/2008 with respect to the Democratic Socialist Republic of Sri Lanka

EXPLANATORY MEMORANDUM

1. The special incentive arrangement for sustainable development and good governance (“GSP+”), granted within the Community’s generalised system of preferences, provides additional tariff preferences for vulnerable developing countries which ratify and effectively implement certain core international conventions on human and labour rights, environmental protection and good governance.
2. The Democratic Socialist Republic of Sri Lanka ("Sri Lanka") is a beneficiary country of the GSP+.
3. The granting and maintenance of GSP+ benefits is conditional on beneficiary countries fulfilling the conditions for eligibility set out under Article 8 of the GSP Regulation (Council Regulation (EC) No 732/2008, the applicable Regulation for the period 1 January 2009 to 31 December 2011). Pursuant to Article 15(2) of the GSP Regulation, GSP+ benefits may be withdrawn temporarily, in respect of all or of certain products originating in a beneficiary country "in particular if the national legislation no longer incorporates those conventions referred to in Annex III [of the GSP Regulation] which have been ratified in fulfilment of the requirements of Article 8(1) and (2) or if that legislation is not effectively implemented.” In accordance with Article 18 of the Council Regulation (EC) No 980/2005 (the GSP Regulation for the 2005-2008 period), where the Commission receives information that may justify temporary withdrawal and where the Commission considers that there are sufficient grounds for investigation, the Commission may decide to open an investigation.
4. The Commission adopted a Decision providing for the initiation of an investigation pursuant to Article 18(2) of Council Regulation (EC) No 980/2005 with respect to the effective implementation of certain human rights conventions in Sri Lanka on 14 October 2008.
5. The Commission conducted the investigation and adopted a Report containing its findings on 19 October 2009. In the Report, the Commission reviewed a number of distinct aspects of effective implementation of the three conventions, with a particular focus on those obligations which are amongst the most important and fundamental human rights obligations established in those conventions, and where in light of the information available to the Commission, most of the problems in effective implementation were concentrated. On the basis of the facts and information available, including relevant materials and information provided by Sri Lanka (although outside the formal context of the investigation), this Report concluded that the national legislation of Sri Lanka incorporating the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child is not being effectively implemented. Temporary withdrawal of the additional tariff preferences under GSP+ with respect to all products originating in Sri Lanka is thus necessary.
6. In accordance with the procedure set out in Article 19(4) of the GSP Regulation, where the Commission considers temporary withdrawal to be necessary, it shall submit a proposal to the Council, which shall decide within two months by a qualified majority on the proposal from the Commission. If the Council decides in

favour of the temporary withdrawal, the Regulation will enter into force six months after the decision is taken. If the situation changes sufficiently before then so that the reasons justifying the temporary withdrawal no longer prevail, the Council, acting on the basis of a Commission proposal, may decide to revisit the decision.

7. The situation should therefore be kept under review, to enable the re-establishment of GSP+ benefits for products originating in Sri Lanka if the failings of effective implementation identified during the investigation are sufficiently addressed. In the period covered by the current GSP Regulation (i.e. until 31 December 2011), re-establishment of GSP+ benefits would be possible through a further decision of the Council, based on a proposal from the Commission.
8. Following completion of the investigation, the Government of Sri Lanka provided the Commission with a number of observations in respect of the Commission Report. The Commission services have reviewed the factual material and arguments presented and came to the conclusion that they do not affect the validity of the findings of the investigation that the three Conventions are not presently effectively implemented. This conclusion, including an assessment of the points raised by Sri Lanka, will also be communicated to Sri Lanka at the latest by the time the Council decides on the present proposal. Further, the material provided can be considered to be a useful input to further bilateral dialogue with Sri Lanka on the actions and measures called for to address the problems of effective implementation identified in the investigation.

Proposal for a

COUNCIL REGULATION

temporarily withdrawing the special incentive arrangement for sustainable development and good governance provided for under Council Regulation (EC) No 732/2008 with respect to the Democratic Socialist Republic of Sri Lanka

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007¹, and in particular Article 19(4) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Pursuant to Council Regulation (EC) No 732/2008, in particular Articles 9 and 10(6) thereof, the Democratic Socialist Republic of Sri Lanka (hereinafter "Sri Lanka") is a beneficiary country of the special incentive arrangement for sustainable development and good governance granted within the Community's scheme of generalised system of preferences.
- (2) Commission Decision 2008/938/EC of 9 December 2008², which includes Sri Lanka in the list of countries beneficiary to the special incentive arrangement for sustainable development and good governance for the period from 1 January 2009 to 31 December 2011, noted that Sri Lanka's fulfillment of the qualifying criteria for the arrangement relating to the three human rights conventions was the subject of an investigation initiated under Council Regulation (EC) No 980/2005³.
- (3) Reports, statements and information of the United Nations as well as other publicly available reports and information from other relevant sources, including non-governmental organisations, available to the Commission indicated that the national legislation of Sri Lanka incorporating the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child, was not being effectively implemented. The three conventions mentioned are listed as core

¹ OJ L 211, 6.8.2008, p. 1.

² OJ L 334, 12.12.2008, p. 90.

³ OJ L 169, 30.6.2005, p. 1.

human rights conventions respectively in points 1, 5 and 6 of Annex III, Part A, of Regulation (EC) No 732/2008.

- (4) Article 15(2) of Regulation (EC) No 732/2008 provides for the temporary withdrawal of the special incentive arrangement for sustainable development and good governance granted pursuant to that Regulation, in particular where the national legislation incorporating the conventions referred to in Annex III of the Regulation, which have been ratified in fulfilment of the requirements of Article 8(1) and (2), is not effectively implemented.
- (5) By Commission Decision 2008/803/EC⁴, an investigation was initiated in order to establish "whether the national legislation of the Democratic Socialist Republic of Sri Lanka incorporating the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child is effectively implemented."
- (6) Throughout the course of the investigation the Commission provided Sri Lanka with every opportunity to cooperate in the investigation, including by providing Sri Lanka with the opportunity to comment on the comprehensive findings of experts entrusted by the Commission to provide an independent legal assessment of the matters under the investigation. Despite the fact that Sri Lanka decided not to cooperate with, or participate in, the investigation, the Commission maintained regular contact with Sri Lanka outside the framework of the investigation so as to enable Sri Lanka to bring to the Commission's attention any information relevant to the investigation. The information received in this context from Sri Lanka has been taken by the Commission fully into account and has contributed to inform its assessment as contained in the Commission Report.
- (7) On 19 October 2009, the Commission approved a Report containing its findings. This Report concludes that the national legislation of Sri Lanka incorporating international human rights conventions, specifically the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child, is not effectively implemented.
- (8) Sri Lanka was provided with the Report containing the findings of the investigation and reminded that those findings constituted the basis on which the Commission intended to decide whether to recommend the temporary withdrawal of the special incentive arrangement for sustainable development and good governance. Sri Lanka was also granted a period within which it could make representations on this matter or specifically in relation to the Commission Report.
- (9) Sri Lanka provided the Commission with a number of observations in respect of the subject-matter of the Report and conduct of the investigation. These observations covered also facts and findings on which Sri Lanka was given the opportunity to comment during the investigation but did not do so. The Commission nevertheless considered Sri Lanka's observations carefully and in particular those relevant in the context of a decision on temporary withdrawal. The Commission's assessment, of

⁴ Commission Decision (2008/803/EC) of 14 October 2008 providing for the initiation of an investigation pursuant to Article 18(2) of Council Regulation (EC) No 980/2005 with respect to the effective implementation of certain human rights conventions in Sri Lanka (OJ L 277, 18.10.2008, p. 34).

which Sri Lanka was informed, led to the conclusion that none of Sri Lanka's arguments would substantively alter the findings of the investigation.

- (10) The Commission has submitted the Report on the findings of the investigation to the Generalised Preferences Committee on 17 November 2009, in accordance with Article 19(1) of Council Regulation (EC) No 732/2008.
- (11) In the light of the foregoing, the special incentive arrangement for sustainable development and good governance should be withdrawn temporarily for all products originating in Sri Lanka, until it is decided that the reasons justifying the temporary withdrawal no longer prevail.
- (12) This Regulation should enter into force six months after its adoption, unless it is decided before then, upon a proposal from the Commission, that the reasons justifying it no longer prevail,

HAS ADOPTED THIS REGULATION:

Article 1

The special incentive arrangement for sustainable development and good governance for products originating in Sri Lanka provided for in Regulation (EC) No 732/2008 is withdrawn temporarily.

Article 2

With respect to the period of application of Regulation (EC) No 732/2008, the Council, acting by qualified majority, on a proposal from the Commission, shall re-establish the special incentive arrangement for products originating in Sri Lanka, if the reasons justifying the temporary withdrawal no longer prevail.

Article 3

This Regulation shall enter into force six months after the date of its adoption, unless the Council before then, on a proposal from the Commission pursuant to Article 19(5) of Regulation (EC) No 732/2008, decides otherwise.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE

1. NAME OF THE PROPOSAL:

COUNCIL REGULATION temporarily withdrawing the special incentive arrangement for sustainable development and good governance provided for under Council Regulation (EC) No 732/2008 with respect to the Democratic Socialist Republic of Sri Lanka

2. BUDGET LINES:

Chapter and Article: Chapter 12, Article 120

Amount budgeted for the year concerned: 14.079.700.000 €

3. FINANCIAL IMPACT

- Proposal has no financial implications
- Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(€ million to one decimal place)

Budget line	Revenue ⁵		2010
Chapter 12	<i>Impact on own resources</i>		+24.3

Situation following action					
	2011				
Chapter 12	+58.2				

4. ANTI-FRAUD MEASURES

...

⁵ Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs

5. OTHER REMARKS

This estimate of the budgetary impact is based on trade data for 2008 and assumes that standard GSP rather than GSP+ preferences would apply to imports from Sri Lanka from August 2010 and that there would be no significant change in volume and value of affected imports. If this had been the case in 2008, an additional €77.6 million would have been paid in duties.