Opinion of the European Economic and Social Committee on the ‘generalised system of preferences (GSP)’

(2004/C 110/10)

On 20 January 2003 the Commissioner for Trade, Mr Pascal Lamy, asked the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, to draw up an opinion on the Generalised System of Preferences.

The Section for External Relations, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 6 February 2004. The rapporteur was Mr Pezzini.

At its 406th plenary session (meeting of 25 February 2004) the European Economic and Social Committee adopted the following opinion by 117 votes to one with no abstentions.

1. Introduction

1.1 Over the last few decades, the EU has consistently adjusted and updated its policy on trade preferences for developing countries in the light of developments in the situation. The latest major revision of the Generalised System of Preferences (GSP) came into force on 1 January 1995 to cover the ten-year period starting on that date. It is, therefore, due to expire on 31 December 2004 and this necessitates a further revision.

1.2 The existing guidelines introduced a number of important changes. They replaced the traditional approach of granting duty-free market access for limited quantities with the concept of modulation, which provides limited preferences for unlimited quantities. At the same time, new rules were introduced on graduation, allowing for the exclusion of certain sectors of exports from specific beneficiary countries.

1.2.1 Subsequently, additional preferences were offered in the form of special incentive arrangements. These were intended to promote the objectives of:

— achieving sustainable development;
— assisting the Least Developed Countries;
— suppression of drug production and trafficking;
— protection of labour rights;
— environmental protection.

1.2.2 Provisions exist for the temporary withdrawal of benefits from countries which are in breach of human rights, have committed serious and systematic violations of core labour standards, have exhibited shortcomings in customs controls, have connived at drug trafficking, have been involved in fraudulent behaviour or unfair trading practices, have infringed international conventions concerning the conservation and management of fishery resources or have contravened one or more of a number of other requirements. However, this sanction has been invoked so infrequently as to be largely ineffective; the only country presently being disciplined in this way is Myanmar.

1.3 In 1998, in order to facilitate the application of the GSP, the Commission introduced proposals (COM(1998) 521 final) bringing together the widely differing provisions for industrial and agricultural products in a new Regulation to come into effect on 1 January 1999 and remain in force until 31 December 2001. The EESC gave its approval to these proposals. (1) They were subsequently embodied in Council Regulation (EC) 2820/98.

1.4 In 2001, the Commission introduced proposals (COM(2001) 293 final) for a modified regime to cover the period from 1 January 2002 to 31 December 2004. The EESC also gave its approval to these proposals. (2) which were enacted as Council Regulation (EC) 2501/2001.

2. The Commission proposals

2.1 The Commission originally envisaged publishing a document in September 2003 to set out its proposals for the new regime to come into effect on 1 January 2005. Subsequently, it decided to delay the introduction of the new system for a period of one year and to put forward a proposal for an interim arrangement in the intervening period, which would continue the existing guidelines with some relatively minor modifications, primarily of a technical nature.

2.1.1 The decision to delay the introduction of fundamental changes to the system has been attributed inter alia to a wish to await the results of the Doha round of WTO negotiations and a desire not to prejudice the outcome of these talks. An additional factor was the complaint brought against the EU at the WTO by India. It was also considered that it would be advantageous to postpone the introduction of the new guidelines until some time after the enlargement of the Union had taken place, in order to give the new Member States more time to adjust; one of these (Cyprus) is currently a GSP beneficiary.

2.1.2 The ten-year period for the new regime is now expected to commence on 1 January 2006; even in the event that implementation of the Doha round of negotiations has not been achieved by that date, the Commission has now decided that it will not seek a further prolongation of the status quo. The relative failure of the Cancun talks does not bode well for a successful conclusion of the Doha round within this timescale.


2.2 The Commission proposals for the interim period were published in September 2003 (COM(2003) 634 final) and the EESC duly gave its approval to these arrangements. (\*)

2.3 In accordance with the request received from Mr Lamy, the EESC now sets out its observations and recommendations on the form which the guidelines for the new definitive GSP regime, to be introduced at the end of this interim period, should take.

3. EESC comments

3.1 The EESC believes that the objectives of the present system (as set out above) are worthwhile and should form the basis of any new system which is designed to replace the current arrangements.

3.2 The challenge must now be to design a system that will ensure effective implementation of the EU’s policies in these areas.

3.3 In this context, the EESC notes that the special incentive arrangements have largely failed to have the desired impact. At the latest count, only one country (the Republic of Moldova) had been included in the special incentive arrangements for the protection of labour rights (a second country, Sri Lanka, is due to be included in February 2004) and none at all in the special incentive arrangements for the protection of the environment; this is a clear indication that the special incentive arrangements have not transpired to be incentives. The EESC therefore considers that a fundamental review of these mechanisms should form part of the revision process.

3.3.1 In a previous opinion on this subject, (\*) the EESC commented that the Commission’s proposals to improve these arrangements might not have gone far enough to make the incentives attractive to the beneficiary countries. This raises the issue of whether it is possible, within the restrictions of the modulated system, with its limited preferences, to offer incentives to the countries concerned to adopt the desired modes of behaviour.

3.3.2 The additional flat-rate reduction of 3.5 percentage points, giving a total reduction of 7.0 percentage points, might well constitute an inadequate incentive compared to the enormous sums of money involved in drug trafficking or the daunting cost to the national coffers of the beneficiary countries of implementing environmental projects.

3.3.3 There is also the question of how the incentive can best be structured; whether it is better to grant the reduction on an ex-post basis in recognition of the fact that a beneficiary country has complied with the requirements or whether it is preferable to offer the incentive on an ex-ante basis in order to encourage the countries concerned to adopt the required policies. However, neither of these approaches will have the desired effect unless the preferences are of sufficient magnitude to constitute a worthwhile inducement.

3.4 The EESC considers that, whatever measures are adopted, they should be transparent, coherent, objective and non-discriminatory. They should be based on internationally agreed standards and internationally-recognised criteria, where these exist, including the eight core ILO labour standards. They should also be compatible with WTO regulations and other treaty commitments.

3.5 In its previous opinion, (\*) the EESC observed that the revision introduced at that time stopped short of fully harmonising and unifying all the rules and procedures of the GSP and expressed the hope that advantage would be taken of the major revision in 2004 to simplify, harmonise, streamline, codify, reduce and unify the entire system. It now reiterates this statement and stresses the importance which it attaches to this issue: simplification is fundamental to the improved operation of the GSP and to any prospect of realising its objectives. The existing arrangements are characterised by a lack of clarity, concision and structure.

3.6 One of the factors which is contributing to the complexity of the present arrangements is the system of graduation, whereby specific sectors of exports from individual beneficiary countries can be excluded on the grounds that support for those particular industries in those territories is no longer required and its prolongation cannot be justified in the context of aid to developing nations, even though the continuance of support for other industries in the same nation is envisaged. While the EESC gave its approval (\*) for retaining the system of graduation in the context of the interim arrangements for the period from 1 January 2002 to 31 December 2004, it feels that this process should be reviewed as part of the more thorough-going revision which is now to take place.

3.7 In a number of recent opinions, (\*) the EESC has laid emphasis on the essential need for legislative proposals to be accompanied by a detailed impact assessment. It hopes that the Commission will prepare such an impact assessment of its proposals to revise the GSP system.

4. The views of civil society

4.1 On 10 June 2003 the EESC conducted a hearing of civil society representatives at its Brussels headquarters. The views set out in this section reflect the written submissions received and the interventions made at the hearing.


(\*) Ibid.

4.2 In general there was a feeling that the present system was not working as well as it might. Several respondents said that they had serious doubts about the efficacy of the preferential tariffs but they lacked any means to substantiate them. Evaluations of the success of the system were difficult to make because of the paucity of available data. Others pointed to an imbalance in the distribution of benefits; 75% of the total volume of tariff reduction goes to Eastern countries, of which one third is to China. Concerns were expressed that the preponderance of benefits went to the most advanced of the developing countries and not to the Least Developed Countries. Frequently, international traders rather than nation states are the major beneficiaries. It was felt that the impact of the GSP was often outweighed by other factors, such as non-tariff barriers.

4.3 Several problems were identified:

— Tariff erosion is undermining the impact of the GSP. As tariffs in general are reduced, the scope for giving preferential treatment on a significant scale to selected countries is diminished. The conclusion of the Doha negotiations is expected to produce further across-the-board reductions.

— The system is susceptible to fraud. It is relatively easy for unscrupulous traders established in countries that are not eligible for preferential tariff rates to export their goods to an eligible country and thence re-export them to the EU under the guise of products of that country.

— Even where fraud is not involved, the process of verifying country of origin is complex, particularly for manufactured articles containing a number of materials or sub-components; in many cases, this imposes unacceptable compliance burdens on the EU importer.

— The rules, especially in relation to graduation, are too complex and lead to confusion and controversy.

— There is a lack of cohesion between the GSP system and other EU instruments. In some instances, countries can benefit from quotas under:

a) a bilateral agreement with the EU;

b) autonomous product-specific quotas granted every year in favour of all third countries, irrespective of origin; and

c) preferential tariffs granted under the GSP system.

4.4 Views were sharply divided on the question of which objectives the GSP system should be designed to pursue for the next ten-year period. The trade union organisations were firmly of the opinion that core labour standards, environmental protection and the suppression of drug production and trafficking should remain an essential part of the system; even to the extent of excluding countries which did not comply with these requirements, regardless of their economic status. Conversely, the trade associations, while recognising the great importance of these issues, felt that the GSP was not a suitable instrument for dealing with such problems and that including them made the application of the preferential scheme more difficult, as well as resulting in some legal uncertainty.

4.5 Some respondents felt that the current list of beneficiary countries was inconsistent because:

a) the range of development stages comprised in the list is too wide;

b) developing economies and transitional economies are intermingled;

c) several beneficiary countries also have preferential status via bilateral or regional trade agreements.

Others felt that GDP per capita should not be the defining criterion because some countries with a low per-capita GDP had a strong, or even dominant, position in the world trade in particular industrial sectors. Trade union representatives argued that adherence to core labour standards, environmental protection and combating drug trafficking should be the sole criteria. Many respondents held the view that the list of beneficiaries should be restricted to the 49 nations on the UN list of Least Developed Countries.

4.6 There was general agreement that basic preferences should be granted on an ex ante basis, but that special preferences – if granted at all – should be awarded on an ex post basis.

4.7 Suggestions for simplification included:

— reducing the list of beneficiary countries

— reducing the number of industrial sectors and product categories

— excluding countries which have a bilateral agreement with the EU

— excluding countries which benefit from a regional trade agreement

— abolishing special preferences or reducing their number

— simplifying the rules regarding the country of origin

— simplifying or deleting the graduation clause

— eliminating all ad valorem duties of 3% or less and all specific duties of EUR 5 or less.

Proponents of limiting the beneficiaries to the 49 Least Developed Countries pointed out that this would ipso facto result in a major simplification of the system.

4.8 There was a general feeling that the operation of the graduation clause was not working satisfactorily and had led to a great deal of controversy. One respondent went so far as to say that ‘the current system of graduation is totally blind and untransparent’. It was noted that loss of GSP status often led to the curtailment of FDI in the country concerned because the investment had been predicated on the existence of the preferential tariffs; the countries excluded therefore suffered a double penalty. Another problem is that the period of reference used for updating the graduation is too far removed from the updating point; for example, the reference period for 2003 is 1997-1999.
4.9 It is generally considered that there is not only a lack of coherence in the general trade and development policies of the EU but that these are sometimes contradictory. Rectifying this situation and achieving a proper balance between the various factors to be taken into consideration will require a coordinated approach from all of the EU institutions and the active involvement of a number of Directorate Generals within the Commission.

5. The views of third countries

5.1 The same questionnaire was sent to the governments and representative organisations in a number of the beneficiary countries. Regrettably, very few replies were received and the results have been excluded from this survey as it is considered that the response is too low to represent a statistically significant sample. However, the EESC continues to be actively engaged in assisting the developing countries to build their capacities to respond to requests of this nature.

6. Specific comments

6.1 It seems likely, given its inauspicious start, that the Doha round of GATT negotiations will be as protracted as its predecessors. The EESC therefore endorses the Commission’s decision to proceed with the introduction of the new system with effect from 1 January 2006 and not to await the outcome of the Doha round at some uncertain time in the future.

6.2 The initiative which the EU has launched under its Everything But Arms deal for the 49 Least Developed Countries means that they are effectively removed from the GSP regime. As they are entitled to export all other products (with some transitional exceptions in the agricultural field) to the EU in unlimited quantities on a duty-free basis, the GSP no longer applies to them, since you cannot reduce by preferences that which has already been set at zero.

6.3 The GSP is one element in the EU’s development policy. As such, it must not be out of kilter with the other elements of this policy. Changes to the GSP system have to be considered in the light of the overall development strategy. This will require a close degree of coordination between the relevant Directorates-General of the Commission.

6.4 The EESC hopes that when the new system is introduced the opportunity will be taken to harmonise all the rules and procedures of the scheme.

6.5 The GSP is primarily aimed at assisting developing countries to develop their economies. It cannot be a panacea for all the problems faced by those countries.

6.6 Various criticisms have been levelled at the existing GSP system, viz:

— there are too many countries covered by the scheme;
— the special incentive arrangements have failed;
— there is an imbalance in the distribution of benefits;
— the graduation system is too complex;
— the scheme is susceptible to fraud;
— the impact of the scheme has been diminished by tariff erosion.

6.6.1 The EESC agrees that there are too many countries covered by the GSP scheme. The current list of eligible nations extends to 174 and within that figure there are wide discrepancies in state of development, volume of trade, per-capita GDP, level of industrialisation, level of poverty and adherence to internationally accepted standards of social responsibility.

6.6.1.1 On the one hand, it includes major trading nations such as China, India, the Russian Federation and South Africa, who are formidable competitors of the EU in many market sectors; at the other end of the scale, it embraces remote island territories with miniscule economies such as Christmas Island, Heard Island, the McDonald Islands, South Georgia and the South Sandwich Islands; in between these two extremes fall tax havens such as the Cayman Islands, oil-rich nations like Kuwait, countries with well-developed economies such as Egypt and those with totalitarian regimes such as Zimbabwe.

6.6.1.2 The EESC agrees with the proposition that per-capita GDP cannot be the sole criterion used to determine eligibility for inclusion in the GSP arrangements. It also shares the concerns which have been expressed in many quarters that an undue proportion of the benefit is going to those nations which have least need of it. In order to ensure that assistance under the GSP system is concentrated on those countries with the greatest need, the EESC recommends that the new guidelines should exclude the following categories from participation:

— those nations which are not designated by the United Nations Organisation as ‘developing countries’;
— those nations which have bilateral or regional trade agreements with the EU;
— those nations which are members of OPEC;
— those nations which have a nuclear weapons programme;
— those nations which act as tax havens.

6.6.1.3 In order not to disadvantage nations with existing bilateral or regional trade agreements with the EU, it should be possible to modify the existing agreements in such a way as to consolidate in those agreements any benefits to which they may currently be entitled under the GSP arrangements.

6.6.2 The EESC attaches prime importance to promoting the observance of core labour standards, protecting the environment and combating drug trafficking but it has to be said that the present GSP regime has been totally ineffective in achieving any of these aims. Only one country has been included in the special incentive arrangements for the protection of labour rights and none at all in those for the protection of the environment while there is no evidence that the special incentive arrangements for combating the production and trafficking of drugs, from which twelve countries have benefited, has had any impact whatsoever on the drug trade.

6.6.2.1 The EESC regards it as pointless to prolong a system which, while admirable in its objectives, has so patently failed in practice. It believes that consideration should be given to devising more effective ways of meeting these worthwhile objectives; if it is felt that the GSP system should be employed to this end, then this can best be achieved by making greater use of the temporary withdrawal mechanism. To date, this has been invoked against only one of the countries in the list of 174, despite the fact that breaches of the required standards can readily be found passim. In many cases, this is because it is deemed impolitic to offend or antagonise the regimes of the countries concerned; the EESC cannot condone the subordination of matters of principle to political expediency.
The EESC recommends that, as part of the new guidelines, the Commission should lay down clear standards for the protection of labour rights, the protection of the environment, the suppression of drug trafficking, the observance of fundamental human rights, sustainable development and other areas of concern such as consumer protection and animal welfare. Countries which are seen to be in serious and systematic breach of these standards should, in the first instance, have their attention drawn to their degradations and be required to correct them; where this is ignored, a public warning should be issued that failure to meet the required standards by a specified date will result in the temporary withdrawal of all GSP benefits; countries which do not respond to these warnings should then have all preferences withdrawn until such time as they have complied with the requirements. In order to produce the desired effect, this must be regarded as a measure to be applied routinely, where necessary, and not as a weapon of last resort, to be used only in extremis.

Where internationally-accepted standards exist, as in the case of the core ILO labour standards, these should form the basis of the applicable EU standards. However, the absence of such international standards should not be an impediment to the formulation and application of relevant EU standards. The EU is entitled to impose conditions on the conduct of trade on preferential terms at its absolute discretion. The temptation to connive at drug-trafficking, turn a blind eye to violations of human rights and plunder the environment are strong and it is necessary to provide a countervailing force of sufficient weight. At the same time, it is essential to stress the moral imperative in these issues in order to counter the accusation that these requirements are merely another form of non-tariff barrier in disguise.

The EESC accepts that there is an imbalance in the current distribution of benefits, with the major beneficiaries being the more advanced of the developing countries and not those which stand most in need of assistance. It feels that the elimination of the categories set out in 6.6.1.2 above would go some way towards redressing the balance. In order to promote economic development in the poorer countries, preferences for products must be fixed primarily according to the export interest of the beneficiary country. It would simplify the process considerably if there were to be some rationalisation of the industrial sectors and product categories covered by the scheme.

The EESC accepts that there is too great a degree of complexity in the present system of graduation and that it has led to considerable controversy and discontent, particularly from those countries which have been subjected to it; some improvement is obviously desirable but the EESC does not agree with those who postulate that graduation should be discontinued. Graduation should not be seen as a sanction; it is, rather, a recognition of the fact that the preferences have worked and that a particular industrial sector has advanced to the point where it no longer requires preferential assistance. That this is indeed the case, is demonstrated by the fact that eight of the nine industries which have been graduated to date have continued to increase the volume of their exports to the EU after graduation. The assumption that sectors, and nations, will eventually reach this stage is inherent in the GSP system.

The EESC recommends that the graduation system should be simplified, rendered more transparent and should combine a statistical economic assessment based on a formula of market indicators with a serious market evaluation of the sector concerned. It would be advantageous for DG Enterprise to be involved in this exercise and the views of European industry should also be canvassed. In addition, the interval between the graduation point and the reference period should be reduced.

The EESC recommends that the provision introduced in the interim arrangements whereby the graduation process should not be applied to any beneficiary country whose exports to the EC account for less than 1% of total Community imports of products covered by the Community preference scheme in at least one of the reference years, should be retained in the guidelines for the new definitive system. Indeed, it feels that consideration could well be given to increasing this threshold limit.

The EESC is concerned by the incidence of fraud and considers that every possible measure should be introduced to reduce it. The rules of origin are too complex and are difficult to apply; they are easily misunderstood and require in-depth knowledge of a huge quantity of legal texts; consequently they act both as a constraint on trade and an incitement to fraud. Too often, beneficiary countries are merely serving as conduits for the products of non-beneficiary nations. The incidence of GSP Form A Certificates incorrectly issued or falsified in certain countries of origin in the 1990s is a case in point. There must be an effective system of inspection, verification and enforcement. This will require the strengthening of customs services within the EU and better coordination between them.

Beneficiary countries must also be required to improve their controls; those beneficiaries who connive at fraud by operating ineffectual control mechanisms should suffer temporary withdrawal of their benefits. The EU is incurring an annual cost in excess of EUR 2.2 billion by way of lost customs revenue in order to fund the GSP scheme. Conversely, the participating countries are receiving a collective annual benefit of that amount; if the EU is to give advantages of that magnitude, it is entitled to impose terms and conditions on the receipt of those advantages.

There is also a need for closer contact and cooperation between the customs services of the EU and those of the originating countries. This may require financial commitments at Community level to provide liaison between EU customs officials and their counterparts in developing countries; in addition, it may require training facilities to be provided to the customs services of those nations. There is also a security aspect to this situation; in the current climate, it has to be recognised that, in reality, the external frontiers of the EU lie not only at the boundaries of its Member States but increasingly in the territories of the countries from which its imports emanate. The EESC is currently preparing an opinion on this topic. (7)


6.6.6 The EESC recognises that the effectiveness of the GSP preferences is constantly being eroded by progressive across-the-board tariff reductions as a result of successive rounds of the GATT negotiations. It regards this situation as being inevitable and not necessarily undesirable. It has been clearly demonstrated that global tariff reductions have been very effective in stimulating world trade and increases in global commercial activity can only be to the benefit of all trading nations. Indeed the evolution of this process is such that the new guidelines, which are envisaged to remain in force for a ten-year period, may well be the last application by the EU of a conventional reduced-tariff system.

6.7 The EESC considers that the present rules of origin applied to preferential trading are too complex. As a result, they create unnecessary compliance burdens for EU importers and produce a system which is characterized by opacity and confusion. Such a system can only be conducive to fraud. The EESC would like to see these rules replaced by new rules drawn up on the lines of those currently in force for non-preferential goods.

6.8 A further measure of simplification would be to eliminate duties where preferential treatment results in: ad valorem duties of 3.0% or less; specific duties of EUR 5 or less.

6.9 In order to give the governments of the developing countries and EU importers time to adjust their planning, any changes in the preferential treatment of a country should be made public one year before entry into force.

6.10 The EESC considers that the new guidelines should be: simple; predictable; easy to administer; consistent; transparent; equitable; stable over time.

7. Conclusions

7.1 The EESC endorses the Commission’s decision to introduce the new system of GSP with effect from 1 January 2006.

7.2 The EESC urges that advantage should be taken of the opportunity to harmonise, unify and streamline all the rules and procedures of the GSP system in the new guidelines.

7.3 The EESC considers that the Commission should issue a detailed impact assessment with its proposals for the new guidelines.

7.4 The EESC accepts that the existing special incentive arrangements have been ineffectual and advocates that they should be withdrawn; instead, the Commission should lay down internationally acceptable standards based on the fundamental principles of European society; countries that violate any of those standards should have their access to all preferential tariffs temporarily suspended.

7.5 The EESC agrees with the view that there are too many participating nations in the GSP system and argues that these should be reduced as outlined in the text.

7.6 The EESC recommends that the graduation mechanism should be retained but that it should be simplified and rendered more transparent.

7.7 The EESC is concerned by the incidence of fraud in the present system and calls for tighter controls to be introduced.

7.8 The EESC regards the existing preferential rules of origin as being too complex and suggests that they could be simplified on the lines of the current non-preferential rules of origin.

7.9 The EESC believes that simplification of the system should be a primary objective for the new guidelines. It hopes that the proposals which it has made to, inter alia, reduce the number of beneficiary countries, replace the special incentive arrangements by application of the temporary withdrawal mechanism based on clearly-defined standards, replace the current rules of origin by rules based on the non-preferential rules of origin, reduce the interval between the graduation point and the reference period and rationalise the industrial sectors and product categories covered by the scheme will go some way towards achieving this goal.

7.10 This opinion, prepared at the request of Mr Lamy, is an important first step in the consultation of civil society on this issue. The EESC feels that the introduction of the new guidelines should be preceded by further wide-ranging and timely consultation on the proposals with the stakeholders, both in the EU and in the developing countries.


The President
of the European Economic and Social Committee
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