Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council applying a scheme of generalised tariff preferences’

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Rapporteur: Mr PEEL

On 14 June 2011 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the Proposal for a Regulation of the European Parliament and of the Council applying a scheme of generalised tariff preferences


The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 November 2011.

At its 476th plenary session, held on 7 and 8 December 2011 (meeting of 8 December 2011), the European Economic and Social Committee adopted the following opinion by 120 votes to 7 with 7 abstentions.

1. Conclusions and Recommendations

1.1 The Committee strongly welcomes the Commission’s firm commitment in its review of the current Generalised Scheme of Tariff Preferences (GSP) to place even greater emphasis on supporting those countries most in need, through encouraging increases in their export earnings so as better to achieve real reduction in poverty. We are concerned that the competitive disadvantage for many poorer countries has worsened in recent years as a result of the emergence of a marked number of advanced developing countries; we fully support the intention to concentrate the use of EU preferences to where they are most needed, as tariffs continue to drop overall.

1.1.1 Therefore the Committee supports the Commission's intention to reduce the number of countries eligible for GSP, but not to widen significantly the number of tariff lines or products affected, so that those who need it most should be the main beneficiaries. As a result we note that even under GSP+ some 'sensitive' products, mainly agricultural products and textiles, will still not be available totally tariff free so that Least Developed Countries may retain those particular benefits under 'Everything But Arms'.

1.1.2 The Committee notes that GSP, and especially GSP+, as an incentive (rather than sanctions) based development tool, must remain sufficiently attractive for all eligible countries.

1.2 The Committee also strongly welcomes that this opportunity has been taken to encourage greater adherence to core human and labour rights, together with the core principles of sustainable development and good governance, whilst enhancing greater legal certainty and stability.

1.3 The Committee supports the Commission in its intention, as the basis for GSP+, not to expand the total number of designated Conventions, not least as those selected allow countries 'a realistic chance to focus on the essentials' (1), although we particularly welcome the inclusion of the UN Framework Convention on Climate Change (1992) here for the first time. A balance must be struck between gaining human rights, social, environmental, and political improvements and the technical and financial capacities of poorer countries to meet the added requirements, even where backed by technical assistance: ultimately the choice must be made by the recipient country in line with its own individual cultural and political conditions.

1.4 The Committee therefore stresses that these proposals must be accompanied by more clearly focussed capacity-building measures aimed at offering greater support to help countries meet the Conventions and ethical standards required. We urge the early inclusion of a specific EC programme to run alongside this Regulation detailing the support available for such capacity building for those GSP recipients that request this.

1.4.1 We further recommend that such capacity building should also be based on a dialogue that uses the experience of civil society to identify and target real needs. Even the CARIS (2) report, which carried out an official evaluation of GSP on behalf of the Commission with access to sophisticated analysis and analysts, finds it hard to come to conclusions when

[2] Centre for the Analysis of Regional Integration at (the University of) Sussex: Mid term GSP evaluation report, 2009.
reviewing trade advances under GSP, yet developing countries with little resources are expected to make policy decisions when they have very little capacity for accurate prognosis.

1.5 The Committee in turn particularly welcomes the Commission’s stated intention to involve civil society and in particular the Committee itself, due to our ability to take a broad overview on behalf of organised civil society, through including any information it considers appropriate under Article 14 with regard to compliance with the Core Conventions listed in Annex VIII. In this regard we look forward to the Commission bringing forward in due course a separate Regulation to implement procedures to be adopted to cover applications for GSP+, and in particular the withdrawal and reinstatement of GSP, GSP+, and EBA, in line with Articles 10.8, 15.2 and 19.12 of the proposed Regulation, together with Safeguards under Article 22.4.

1.5.1 Without wishing to prejudice the rights or ability of any interested party to make input with regards to compliance issues, the Committee nevertheless recommends to the Commission, the Council and the Parliament that a ‘monitoring’ or consultation mechanism be set up whereby civil society can make input over alleged violations by GSP beneficiaries of any of the designated Conventions and that the Committee, due to its existing expertise, itself should act as facilitator or co-ordinator for this, acting as a ready point of contact for complaints to be registered.

1.5.2 This we recommend should be based as appropriate on the anticipated precedents due to be established for civil society monitoring of the implementation of the EU – S Korea and other recently negotiated FTAs, especially arrangements to ensure specific EU input and/or to set up EU-level advisory groups to precede referral of issues to the formal joint bodies foreseen under these FTAs.

1.6 To this end we urge the Commission set up an early joint working group with the Committee with the remit to make firm recommendations.

2. Background| the new Proposal

2.1 The proposed Regulation will replace the current Generalised Scheme of Tariff Preferences (GSP), due to expire at the end of 2011, but extended for two years to make the change seamless. The Regulation would also bring GSP into line with the Lisbon Treaty with necessitated changes including greater EP involvement. The opportunity is being taken to propose radical changes, in particular to sharpen focus and concentrate GSP on those countries most in need, but also to promote simplicity, predictability and stability, essential if importers are to be encouraged to use the system. To that end, GSP will then only be due for review, rather than replacement, at the end of a further five years.

2.2 As part of the Common Commercial Policy (CCP) the EU has been granting trade preferences, in line with WTO rules, to developing countries through GSP since 1971, when it was developed out of UNCTAD recommendations. GSP has been one of the EU’s key instruments used to help developing countries to reduce poverty by generating revenue through increased trade, whilst at the same time encouraging such countries to make greater efforts to ensure core human and labour rights, reduce poverty and promote both sustainable development and good governance.

2.3 As Annexes V and IX of the draft Regulation show, the GSP Scheme works by designating those Customs (CN) codes where EU import tariffs for trade in goods are to be reduced or eliminated. Thus it is not a primary instrument to help climate change or food security – or help secure raw materials. CN codes run to eight figures (which to a layman may appear incomprehensible) differentiating for example between roasted, caffeinated coffee (0901 21 00) and decaffeinated (0901 22 00). GSP operates through being taken up by importers who wish to take advantage of the reduced or zero tariffs thus offered: for the system to be used it must be straightforward, stable and sufficiently predictable. We note that not all importers who could do so source automatically from GSP beneficiary countries: only some 69 % of the potential tariff reductions available to Least Developed Countries (LDCs) through ‘Everything But Arms’ are taken up, this figure rising to 85 % for GSP+.

2.4 As tariffs worldwide fall, the overall scope for GSP is declining. GSP imports only account for 4 % of total EU imports (9.3 % of imports from developing countries) and in 2009 the net loss of customs revenue for the EU as a result of GSP was just EUR 2,97bn (net loss EUR 2,23bn after deduction of collection costs). This will now be reduced to some EUR 1,77bn. Some Member States have therefore questioned whether the proposed technical reductions go too far in a time of economic crisis, trade uncertainty and the ever present threat of a resort to protectionism as a tempting means of dealing with economic problems. The Committee, having looked into these technicalities, however believes that any weakening of the proposed changes, both in graduation and in strict eligibility criteria for some countries, would benefit those better placed. The key point of GSP is to help those who need it most.
2.5 Since 2004, when the Committee last examined GSP (1) and the scheme was last revised, there have been three types of preferential agreement available, namely:

- The general GSP scheme, open to all eligible countries (currently 176), offering preferences through reduced or abolished duties for some 6 200 tariff lines out of some 7 100 where tariffs are above zero (2). Most (3 800) of these lines are designated ‘sensitive’, where fixed-rate reductions are offered - mainly agricultural, but including textiles and clothing. In 2009 EUR 48bn worth of products was imported to the EU through GSP (open to some 111 countries) - 81 % of the overall GSP total.

- ‘GSP+': an incentive mechanism for smaller, ‘vulnerable' poorer countries with a narrow tax base, but which do not qualify as LDCs, whose exports to the EU are heavily concentrated in a few products (the 5 largest sections of imports representing over 75 % of the total), where additional preferences are offered, mostly duty-free, for some ‘sensitive' products, but only includes a further 70 tariff lines in addition to the 6 200 covered by GSP. GSP+ also includes special incentives to encourage sustainable development and good governance for participating countries that have to commit to embracing a wider range of core universal values on human, labour rights, environment and good governance – see 4 below. In 2009, 15 countries exported EUR 5bn worth of goods to the EU through GSP+ (9 % of GSP total).

- ‘Everything But Arms', or Duty Free Quota Free (DFQF) Access to the EU for all imports from the 49 UN classified LDCs, with the exception of arms and ammunition, (and originally sugar, rice and bananas too). Added to the GSP scheme in 2004, this was originally an EC initiative related to the Doha negotiations. Despite the 2005 WTO Ministerial agreement to include similar DFQF measures within Doha, the EU still remains the only trading region to put such generous terms into effect. In 2009 EBA accounted for EUR 6bn worth of EU imports (10 % of GSP total).

2.6 Only 9 % of tariff lines remain totally outside GSP and GSP+ (but these are included in EBA) – mostly agricultural products. To include these in GSP or even GSP+ would mean that some of the advantages of EBA (and GSP+ in turn) would disappear and that the poorest countries would lose out (3). However these involve areas, in agricultural products, where some of the most intractable problems have arisen in the Doha negotiations. Sugar products are possibly the most sensitive example here. After more than two centuries of distortion (4) sugar is a very sensitive import for the EU, a crop Mozambique (an LDC) can produce at a market rate but which in turn would be highly vulnerable to full open competition from an Upper Middle Income (UMI) country like Brazil. Such considerations also apply to textiles and clothing, another very sensitive area for imports into the EU as well as for competition between LDCs and their neighbours.

2.7 The key effect of the proposed changes will be a redistribution of the origin of some imports into the EU. The draft Regulation proposes to remove over half the countries now qualifying for GSP in order to focus and target GSP better on those countries most in need, which in principle is to be welcomed. As the Commission's Explanatory Memorandum explains, ‘thanks to increased trade, many developing countries and export sectors have successfully integrated within the global marketplace … (and) are able to continue to expand unaided'. These more developed countries ‘are putting pressure on … much poorer countries that genuinely need help'.

2.7.1 However, we note in passing a key concern of EU importers that changes already in hand over Rules Of Origin may lead to a major decrease in the take-up of the scheme by 2017, when requirements for certification of proof of origin by public authorities are due to be replaced by statements by registered exporters. This is seen by many SMEs to be too risky. Here the Committee considers that the proposed system of self-certification must be supervised, audited and accredited by independent professional institutions acting on an international basis. In the recent past there have been too many examples of fraud or 'bypass' constructions for EU imports, notably in sugar.

2.8 High Income countries (as classified by the World Bank) will continue to be excluded, but without the previous exemptions. It is now also proposed to omit all 33 overseas countries and territories (OCTs), i.e. those connected to the EU, US, Australia and New Zealand, where GSP is only used marginally. These include Greenland, Bermuda and American Samoa.

2.8.1 Also excluded will be:

- All FTA partners and any others benefitting from a preferential market access arrangement with the EU on the same or better tariff terms (although these countries will remain eligible should such arrangements fail) – here two years' notice will be given. Previously the distinction was messy

(1) OJ, C 110 of 30/4/2004, p. 34.
(2) A further 2 300 tariff lines already have a standard tariff of zero.
(3) CARIS report.

Dating back to the Napoleonic wars and the cessation of imports of sugar cane into continental Europe.
but now the potential major increase in the number of ratified EU FTAs over the next few years needs to be taken into account as well, as that could lead in time to a significant reduction in eligible countries.

Countries classified by the World Bank as high or upper middle income (UMI) countries (based on Gross National Income per capita) for the previous three-year period – here one year’s notice will be given. This is covered further in chapter 3 below.

2.9 The current system of graduation, designed to ensure that preferences are removed from sectors that no longer require them, will be amended. The previous limits whereby if any one country’s exports to the EU exceeded 15 % of the total imports covered by GSP over three consecutive years these then cease to qualify (unless this section or group of products accounts for over 50 % of that country’s total GSP covered exports), will now be 17,5 % due to the sharper focus of GSP, although in reality a slight tightening. For clothing and textiles the limit will be raised from 12,5 % to 14,5 %.

2.10 Likewise the number of designated product sections will be widened from 21 to 32 to ensure greater objectivity and sensitivity but not so tightly targeted as to remove crucial simplicity, stability and predictability. That is a key consideration despite the fact that this tool is rarely used – currently it only applies to seven counties, notably China, but also including Brazil, India and other Asian countries. It has also been used but then reversed in the past, with both Russia and India benefitting.

2.10.1 Graduation will now no longer apply to GSP+ countries – it never has for EBA.

2.10.2 For GSP+, the requirement for participating countries to account for less than 1 % of the total GSP covered imports into the EU will now be increased to 2 % due to the more targeted and restricted coverage of GSP, although effectively this will only open GSP+ to Pakistan (where levels of textile imports to the EU is an issue not least as Pakistan is thought by some as likely to gain at the expense of nearby LDCs) and the Philippines, provided they meet the conditions and wish to avail of it.

3. Future GSP/GSP+ eligibility

3.1 With the general decline in tariffs worldwide (except those mainly in agriculture and textiles) and with the likely increase in the EU’s FTAs coming into effect, the scope for GSP is declining. After the anticipated changes and omissions outlined above, it is estimated that:

— Overall some 80 countries will still be eligible for GSP, depending on who will meet the criteria at the time.

— Of these 49 are LDCs and eligible for EBA.

— Of the 30 or so countries that qualify for GSP or GSP+ but not for EBA, all but seven or eight should be eligible for GSP+. However, it is far from clear whether GSP+ will be sufficiently attractive for most of these to take up. Many currently choose not to do so. GSP+ could therefore be reduced to just three or five countries (1), even assuming the higher 2 % figure (see 2.10.2.) is established, especially if EU FTAs are established fully with both Central America (yet to be ratified) and the relevant Eastern Partnership countries.

— On the other hand, most of those eligible for GSP alone may soon cease to be so. They include India, China, Ukraine and three ASEAN countries, all developing quickly, and some of these are negotiating FTAs with the EU as well.

— This potential further decrease in the numbers of countries likely to be eligible therefore begs the question as to whether in time the EU should retain both GSP and GSP+.

3.2 The Committee recognises that the Commission is very wary of widening the eligibility for GSP+ following losing a WTO dispute with India in 2004 on GSP in relation to drugs. If the EU was faced with further WTO disputes it could lose them, as legally discriminating between developing countries can only be done in very specific conditions.

3.3 The Committee understands that on the other hand, to increase the numbers eligible for GSP alone, then all those countries, classified by the World Bank as Upper Middle Income (UMI, or above US$3,976 pa), would have to be included, although numbers are small. These include Russia, Brazil, Argentina and Malaysia (all with per capita annual incomes above Romania and Bulgaria). The key point remains that GSP is there to help those who need it most.

3.4 To the Committee therefore it appears that the key difference in most cases between take up of GSP and GSP+ is based on the choice by the eligible countries. The issue then becomes whether or how far the GSP+ scheme can be made attractive enough to include as many of these as possible, likely

(1) Bolivia, Ecuador and Mongolia, with possible extension to Pakistan and Philippines.
to include Central Asia and Nigeria (which already choose not to use GSP+), Syria, Iran, and a number of island states. By encouraging more of these to take up GSP+ and therefore greater adherence to and compliance with the principles set out in the designated 27 Conventions should lead to a greater ‘win-win’ situation.

4. Core Conventions - human and labour rights, the environment and good governance

4.1 The key feature of GSP+ for the Committee is the undertakings based on universal rights that are made by the beneficiary countries in return. To qualify for GSP or EBA, an applicant must not have committed serious and systematic violations of the principles set out in the Conventions listed in Part A of Annex VIII of the proposed Regulation, which include the UN core human and labour rights Conventions – and the 8 core ILO Conventions. The only proposed change in the draft Regulation is to remove that on Apartheid.

4.2 To qualify for GSP+, however, all countries must have ratified, maintain and adhere to the Conventions listed in Part A of Annex VIII, as well as a further 12 conventions (listed in Part B). Here it is proposed to add the UN Framework Convention on Climate Change (1992), which we strongly welcome.

4.2.1 For GSP+ it is proposed that beneficiaries will now have to display deeper levels of commitment, give greater emphasis to adherence to the Conventions as well as reinforce the mechanisms to ensure implementation. To this end:

— Beneficiaries must now give an undertaking to maintain the ratification of the conventions, the accompanying legislation and other methods of implementation, not to have serious failings identified by the relevant monitoring bodies and must accept regular monitoring and reviews,

— Given that GSP+ is a system based on incentives (rather than sanctions), there will be regular dialogue between the Commission and each beneficiary not least to ensure implementation both improves over time and does not deteriorate,

— Monitoring will be reinforced, with reports every two (instead of 3) years to both the Council and now the EP,

— Lack of cooperation will lead to swift exclusion, without an investigation,

— The burden of proof will be reversed – it will now lie on the recipient country,

— The Commission will now be able to use other sources of reliable information, including importantly input from civil society.

4.3 This for many GSP+ recipients will be a major demand both technically and financially, so support from the EU will be essential. The draft Regulation is silent here. The Committee urges the early inclusion of a EC programme alongside this Regulation detailing the support and financial backing available for such capacity building for any GSP recipient that request this. Ultimately the choice is made by the recipient country in line with its own conditions.

4.4 The Committee supports the retention of 27 Conventions with the two changes as proposed. The Commission stresses that those selected allow countries ‘a realistic chance to focus on the essentials’ (8). As an incentive-based development tool GSP+ has to be sufficiently attractive to the relevant countries for them to pursue it. A balance has to be struck between gaining human rights, social, environmental, and political improvements and the capacities of poorer countries to meet the added requirements, even when backed by trade related technical assistance (TRTA). As the CARIS report points out, the gains so far are still marginal.

4.4.1 Not every eligible country wishes to avail itself of GSP+, for one of three reasons:

— key exports are non ‘sensitive’, so little to be gained,

— Governments do not want to have to meet the requirements,

— internal problems, including wars, conflicts and/or lack of administrative capability making the requirements non viable.

4.4.2 Previously the EU merely placed emphasis on ratification of conventions and on a clear understanding that countries will ensure effective implementation. To demand that at the start would ensure that on these grounds alone probably none but Norway and Switzerland could ever qualify. CARIS points out that ‘GSP+ appears to be effective

(8) INFO PACK Regarding the European Commission’s proposal on a new GSP, DG TRADE, page 8, point 5.
in promoting ratifications of the 27 Conventions’ but that ‘de facto effects are more difficult to identify’. However GSP adds internal incentives for effective implementation where stakeholders would lose significantly if later withdrawn.

4.5 Any of the GSP arrangements may be temporarily withdrawn for serious and systematic violations of the relevant core principles as well as on a number of other grounds such as unfair trading practices, fraud or serious short-comings in customs controls.

4.5.1 Hitherto, GSP benefits have been withdrawn for reasons of violations of labour rights in both Myanmar (1997) and Belarus (2006), and not yet reinstated. Sri Lanka’s GSP+ benefits were withdrawn (2010) over non-effective implementation of human rights conventions. For some countries however, such as El Salvador, the actual opening of investigations has been sufficient catalyst for change.

4.5.2 The key question for the Committee is whether, particularly under the revised, tougher, system, the launching of the full investigation procedure – and many countries still have significant outstanding work ahead of them –would then inevitably lead to withdrawal of preferential treatment, if a positive solution cannot readily be reached. That would benefit no one. There must be a balance between stick and carrot. For some very poor countries, faced with potential starvation and other difficulties, these targets may be unachievable in the short term. Although the Commission is due to report to Parliament every two years, the Committee understands that intermediate dialogue will take place and that the Commission will monitor the situation in beneficiary countries on an ongoing basis, including through the use of material produced by the relevant international monitoring bodies. The Committee looks to the Commission to be as transparent as possible at this stage, when real areas of concern are identified.

4.5.3 A particular question arises over Uzbekistan (which otherwise qualifies for GSP+ but does not choose to avail of it), where there is deep concern about the use of child labour in the cotton harvest. The stated aim of GSP+ is to encourage beneficiary countries to keep on improving their record. A balance therefore has to be found between encouraging positive change and driving a country into greater isolation, thereby delaying or even reversing progress, perhaps for several years.

5. Role for Civil Society

5.1 In connection with the extra capacity building referred to in 4.3 above, the Committee recommends that this needs to be based on a dialogue which uses the experience of civil society to identify and target real needs. As mentioned, even the CARIS report which has access to sophisticated analysis and analysts finds it hard to come to conclusions when reviewing trade advances under GSP, yet developing countries with little resources are expected to make policy decisions when they have very little capacity for accurate prognosis.

5.2 Article 14 of the proposed Regulation states that, with regard to compliance with the Core Conventions listed in Annex VIII, the Commission ‘may include any information (it) considers appropriate’. The Commission makes it clear that ‘beyond the reports of international monitoring bodies, we will be able to use other sources of accurate information’ (10), which would need to be both proven and reliable.

5.3 The Commission foresee the Committee as one such source, to be welcomed as ‘more balanced’ due to its ability to take a broad overview on behalf of organised civil society. Other potential sources include companies and business organisations, trades unions and other organisations that can demonstrate active involvement.

5.4 The Committee also notes that the Commission intends to bring forward in due course a separate Regulation on procedures to be adopted to cover applications for GSP+, and withdrawal and reinstatement of GSP, GSP+, and EBA, in line with Articles 10.8, 15.2 and 19.12 of the proposed Regulation, together with Safeguards under Article 22.4. We look forward to commenting on this whilst it is under consideration and consultation.

5.4.1 Without wishing to prejudice the rights or ability of any interested party to make input with regards to compliance issues, the Committee nevertheless recommends to the Commission, the Council and the Parliament that a ‘monitoring’ or consultation mechanism be set up whereby civil society can make input over alleged violations by GSP beneficiaries of any of the designated Conventions. We urge too that the Committee itself should act as facilitator or coordinator for this, acting as a ready point for complaints to be registered, based as appropriate on the anticipated precedents about to be established for civil society monitoring of the implementation of the EU – S Korea and other FTAs, especially those arrangements concerning specific EU input and/or EU-level advisory groups to precede referral of issues to the formal joint bodies foreseen under these FTAs.

INFO PACK Regarding the European Commission’s proposal on a new GSP, DG TRADE, page 8.
5.4.2 To this end we urge the Commission set up an early joint working group with the Committee in the near future with the remit to make firm recommendations.

Brussels, 8 December 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON