

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

(COM(2004) 699 final — 2004/0242 (CNS))

(2005/C 221/15)

On 10 November 2004 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 January 2005. The rapporteur was **Mr Pezzini**.

At its 414th plenary session of 9 and 10 February 2005 (meeting of 9 February), the European Economic and Social Committee adopted the following opinion by 132 votes to 1 with 3 abstentions.

1. Introduction

1.1 Council Regulation (EC) No. 2501/2001 of 10 December 2001 ⁽¹⁾ applying a multiannual scheme of generalised tariff preferences (GSP) will expire on 31 December 2005. In July 2004, the Commission adopted guidelines ⁽²⁾ on the role of the GSP for the next ten-year period, from 1 January 2006 to 31 December 2015. It has now published its proposals ⁽³⁾ for the implementing regulation.

1.1.1 In 1994, the previous guidelines ⁽⁴⁾ for the ten-year period 1994-2005 and their implementing regulations introduced a number of important changes, such as tariff modulation according to product sensitivity, graduation and special incentive schemes. In 2001, a special arrangement for the Least Developed Countries (LDC), 'Everything but Arms' (EBA), was introduced for an unlimited period of time. Experience has shown that some of these measures work well in practice and should be continued while others would seem to require adjustment in the light of experience gained.

1.1.2 The Community has granted trade preferences to developing countries in the framework of its GSP since 1971. Trade policy plays a key role in the EU's relations with the rest of the world. The GSP scheme is part of that policy and must be consistent with and consolidate the objectives of development policy. To this end, it must comply with the WTO requirements and, in particular, with the GATT enabling clause of 1979. It must also be compatible with the Doha Development Agenda. A key priority is to help developing countries to benefit from globalisation, in particular by linking trade and sustainable development. In this context, it is understood that sustainable development comprises a variety of aspects, such as respect for fundamental human and labour rights, good governance and environmental protection. In addition, the fight against drugs is a shared responsibility of all countries.

1.2 The Commission has consulted widely on its guidelines for the next ten-year period since they were first published. However, because of the specialised statistics required, impact assessments have been conducted internally. The Commission will conduct an assessment of the impact on the outermost regions of the EU once the Regulation has come into force.

1.3 It is not envisaged that the changes put forward in the draft proposal would involve a significant change in the annual loss of customs revenue as compared to the present situation.

2. The Commission's proposals

2.1 The proposals constitute a simplification of the present system by reducing the number of arrangements from five to three; this has been achieved by the introduction of a single incentive arrangement to replace the three special incentives currently in place for the protection of labour rights, protection of the environment and combating the production and trafficking of drugs. Thus, the proposed scheme consists of:

- a general arrangement;
- a special incentive arrangement (SIA) for sustainable development; and
- a special arrangement (EBA) for the Least Developed Countries.

2.2 A further measure of simplification would be achieved by removing from the list of beneficiaries those countries that presently enjoy preferential access to the Community market under the terms of bilateral, regional or other free-trade agreements (FTA). The Community would ensure that no country would lose as a result of this measure by consolidating into the relevant FTA the benefits for any particular product that had previously received GSP treatment.

⁽¹⁾ OJ L 346 of 31.12.2001

⁽²⁾ COM(2004) 461 final

⁽³⁾ COM(2004) 699 final

⁽⁴⁾ COM(1994) 212 final

2.3 Preferences would continue to be differentiated according to the sensitivity of products. Common Customs Tariff (CCF) duties on products designated as non-sensitive would continue to be entirely suspended, except for agricultural components. The current flat-rate reduction of 3.5 percentage points for sensitive products would be maintained.

2.4 The general arrangement would be open to all countries except those which had been classified by the World Bank during a period of three consecutive years as high-income countries and where the five largest sections of GSP-covered exports to the Community represented less than 75 % of the total GSP-covered exports from that country into the Community. Any such countries that are currently beneficiaries under the GSP system would be removed from the scheme on the entry into force of the proposed Regulation. Beneficiary countries, which also benefit from a commercial agreement with the Community, covering at least all of the preferences provided by the present scheme for that country, would also be removed from the list of eligible countries.

2.5 The SIA for sustainable development is targeted at those developing countries most in need. The additional preferences would be granted immediately (subject to the submission of an application) to developing countries that have ratified and effectively implemented all of the sixteen core conventions on human and labour rights set out in **Appendix 1** and at least seven of the conventions relating to good governance and the protection of the environment set out in **Appendix 2**. At the same time, the beneficiary countries would be required to commit to ratifying and effectively implementing those international conventions, which they had not yet ratified. A deadline of 31 December 2008 would be set for the completion of this process.

2.5.1 The conventions chosen are those with mechanisms, which can be used by the relevant international organisations to evaluate on a regular basis how effectively they have been implemented. The Commission will take these evaluations into account before deciding which of the applicant countries will be selected to benefit from the SIA. Based on the applications from the developing countries, the Commission would later produce a list of the beneficiaries under the arrangement.

2.5.2 The applications from countries wishing to benefit from the SIA would be required to be submitted within three months of the date of publication of the Regulation.

2.5.3 A further requirement is that the applicant countries should be vulnerable countries. The definition of a vulnerable country for this purpose is that the World Bank should not have classified it as a high-income country or that its GSP-covered exports to the Community should amount to less than 1 % of total GSP-covered imports to the Community.

2.6 The proposals include measures to reduce the impact on a beneficiary nation when the United Nations removes it from the list of LDCs. This would take the form of a transition period for the gradual withdrawal of that country from the EBA arrangement. At present, the country in question automatically suffers immediate loss of all the GSP advantages that it enjoyed as a LDC. The new mechanism allows for this process to take place over a transitional period.

2.7 The graduation mechanism has been retained but has been modified to make it simpler in operation. As at present, it would be applied to groups of products from countries that are competitive on the Community market and no longer need the GSP to boost their exports but the current criteria (share of preferential imports, development index and export-specialisation index) would be replaced by a single straightforward criterion: share of the Community market, expressed as a share of preferential imports. Groups of products are defined by reference to the 'sections' in the Combined Nomenclature. As only those countries that are competitive for all the products in a section would be graduated, small beneficiary countries would not be graduated solely on the basis of a few competitive products in a section.

2.7.1 Graduation would be applied to any beneficiary country in respect of products of a section when the average of Community imports from that country of products included in the section concerned exceeds 15 % of Community imports of the same products from all countries over a period of three consecutive years. For certain textile products, the threshold is reduced to 12.5 %.

2.8 Where the rate of an *ad valorem* duty reduced in accordance with the provisions of the Regulation was 1 % or less, that duty would be entirely suspended. Similarly, where a specific duty amounted to EUR 2 or less per individual amount, the duty would be entirely suspended.

2.9 The proposals include provisions for the temporary withdrawal of preferential arrangements in respect of all or of certain products of a country in certain specified circumstances. These do not represent a significant departure from the *status quo*. The Commission has indicated that these provisions are still intended for use only in exceptional circumstances.

2.9.1 When a product originating in a beneficiary country is imported on terms which cause, or threaten to cause, serious difficulties to a Community producer of like or directly competing products, normal CCF duties might be reintroduced at any time at the request of a Member State or on the Commission's initiative.

2.10 The Commission would be assisted in its task of implementing the Regulation by a Generalised Preferences Committee, composed of representatives of the Member States and chaired by the Commission. The Committee would receive reports from the Commission on the operation of the system and could examine any matter relating thereto but, in particular, it would be involved in determining such matters as the eligibility of an applicant country for access to the SIA for sustainable development, the temporary withdrawal of benefits, the re-imposition of CCF duties in cases of hardship to a Community producer and the establishment of transitional periods for the loss of EBA benefits for countries removed from the United Nations' list of LDCs.

3. General comments

3.1 The GSP is an important element of the EU's foreign trade policy, which has far-reaching repercussions; it exerts a considerable influence on events in the developing world, it impacts the EU budget, it affects relationships with the EU's trading partners in such organisations as the WTO and it has significant consequences for European industry, particularly manufacturing industry. It is one of the few matters that is managed at the European level in a federal rather than a non-federal manner; the Commission has exclusive competence in this area. Globalisation has enhanced the importance of GSP; the EU has utilised this regime to help developing countries benefit from the globalisation process. At the same time, it has enabled the EU to promote the practice of sustainable development by granting preferential terms of access to the European market to those countries which show respect for the fundamental principles of human rights.

3.2 When the Commission published the guidelines⁽⁵⁾ that form the basis of the present proposals, the EESC issued an Opinion⁽⁶⁾ commenting in detail on the issues raised. In that Opinion, it stated that simplification of the system should be a primary objective. It therefore welcomes those measures contained in the Commission's proposals that are aimed at simplifying the structure. In particular, it considers that the reduction in the number of arrangements from five to three will considerably facilitate the attaining of that objective.

3.3 The EESC also called for the number of participating nations to be reduced⁽⁷⁾ and proposed, *inter alia*, the exclusion of countries that currently benefit from preferential access to the Community under the terms of an FTA, with the safeguard that any preferences from which they benefited under the current GSP system should be subsumed into the relevant bilateral agreement. It is pleased to note that this recommendation has been adopted.

3.4 The EESC expressed concern⁽⁷⁾ that the bulk of Community assistance was going to the most affluent of the benefi-

ciary nations and not to those which stood most in need. It warmly welcomes the fact that the Commission has addressed this issue but wonders whether the proposals go far enough in this direction.

3.5 The EESC recommended⁽⁷⁾ that the graduation mechanism should be retained but that it should be simplified and rendered more transparent. It endorses the Commission's proposals in this area and considers that they will achieve a significant measure of improvement in both respects. In particular, the substitution of a single, clear criterion for the existing multiple criteria should both simplify the process and enhance its transparency.

3.6 The EESC urged⁽⁷⁾ that the opportunity be taken to harmonise, unify and streamline all the rules and procedures of the GSP system. It is of the opinion that the present proposals go a long way towards realising this ideal.

3.7 The EESC called⁽⁷⁾ for the publication of a detailed impact assessment with the Commission proposals. It is disappointed that this has not been done and would point out that conducting an assessment of the impact on the outermost regions of the EU after the event is a pointless exercise unless it is intended to modify the system in the light of this assessment, which would not satisfy the requirement that the regulations should be stable over time. A climate of uncertainty is inimical to the satisfactory operation of a GSP system.

3.8 The EESC approves the concept of incorporating the observance of human rights, protection of labour rights, protection of the environment, good governance and the curbing of drug production and trafficking within the definition of 'sustainable development'.

3.9 The EESC pointed out⁽⁷⁾ that the existing special incentive arrangements have been totally ineffectual in achieving their worthwhile objectives. Only two countries have qualified for the special incentive arrangement for the protection of labour rights and none at all for the special incentive for the protection of the environment; meanwhile, twelve nations have benefited from the special arrangement to combat the production and trafficking of drugs but without having any perceptible effect on the incidence of these activities.

3.9.1 The EESC considers that the new proposals, while introducing a welcome measure of simplification into the process, are unlikely to be any more efficacious. The size of the incentive has not been increased and there is no reason to suppose that the new arrangements will provide any greater inducement for beneficiary countries to embrace the principles and practice of sustainable development. Faced with the requirement to adopt twenty-seven international conventions they may well prefer to follow their own dictates and forego the benefits on offer.

⁽⁵⁾ Op. cit.

⁽⁶⁾ EESC opinion of 25 February 2004— OJ C 110 of 30 April 2004

⁽⁷⁾ Ibid

3.9.2 Given the difficulty of providing a worthwhile incentive within the confines of a continually reducing tariff barrier, consideration might be given to also linking the observance of these conventions to the provision of development aid.

3.10 The EESC observes that all the conventions with which the applicant countries are required to comply are those with mechanisms that the 'relevant international organisations' can use to regularly evaluate how effective the implementation has been. The EESC would advocate that the social partners should have a role in this evaluation.

3.11 The EESC notes that the conditions for temporary withdrawal of benefits are little changed from those prevailing under the existing regime. Given that they have only been invoked in the case of one country (Myanmar), which represents an extreme example of the flouting of international conventions, their usefulness in promoting sustainable development is questionable. A sanction which is applied only in such rare circumstances can have little deterrent effect. The EESC would have preferred to see a wider application of this mechanism in order to reinforce the SIA for promoting sustainable development, which it fears is likely to fall into desuetude.

3.12 The EESC questions whether the new system would provide a more effective deterrent to fraud than that which it replaces. It would have preferred to see a more proactive approach to this issue. In particular, it would have liked to see the creation of mechanisms for closer cooperation between agencies in the EU and their counterparts in the beneficiary countries. It is difficult to avoid the conclusion that in this area the Commission has adopted a policy of *festina lente*.

3.13 The EESC welcomes the fact that the Commission has consulted widely, both in the EU and in the beneficiary countries, before formulating these proposals.

3.14 The EESC notes that the Commission would continue to be assisted in the administration of the GSP system by a General Preferences Committee, acting within the framework of the 'Regulatory Committee' procedure.

4. Specific comments

4.1 The EESC notes that the countries to be excluded from the general arrangement will be limited to those which have been classified by the World Bank as high-income countries and if they are not sufficiently diversified in their exports. It is of the opinion that the number of countries meeting these criteria will be limited. It has proposed ⁽⁸⁾ that the new guide-

lines should exclude, *inter alia*, countries with nuclear weapons programmes and those which operate as tax havens. It regrets that many of these nations would appear to continue to be eligible for inclusion in the list of beneficiaries.

4.2 One of the criteria for inclusion in the SIA promoting sustainable development is that a country should be a 'vulnerable country'. Article 9(2) defines this as being a country which has not been excluded from the general arrangement under the terms set out in point 4.1 above or whose GSP-covered exports to the Community represent less than 1 % of total GSP-covered imports to the Community. The EESC considers that this article should be redrafted to replace the word 'or' with 'and'; otherwise, the article will have an effect which was surely not intended.

4.3 The EESC has pointed out ⁽⁸⁾ that, under the existing system, the graduation point is too far removed from the updating point. It therefore welcomes the fact that, in future, graduation would take place in the year following the third consecutive year which constitutes the reference period for any given country and sector.

4.4 The EESC supports the Commission's proposal to maintain regional cumulation within the meaning of Regulation (EEC) No. 2454/93 when a product used in further manufacture in a country belonging to a regional group originates in another country of the group which does not benefit from the arrangements applying to the final product, provided that both countries benefit from regional cumulation for that group. It would point out that, in the past, these provisions have been the source of a considerable level of fraudulent manipulation.

4.5 The EESC reiterates its opinion ⁽⁸⁾ that the preferential rules of origin should be simplified, and the compliance burden on EU importers correspondingly reduced, by bringing them into line with the current rules of origin on non-preferential imports.

4.6 The EESC reiterates its call ⁽⁹⁾ for dialogue between the EU and the LDCs to improve the implementing rules for the special arrangements for LDCs in certain specific cases, especially by adapting the transition period.

4.7 The EESC welcomes the proposal to eliminate duties where preferential treatment results in an *ad valorem* duty of 1.0 % or less or a specific duty of EUR 2 or less. It considers that this will constitute an appreciable measure of simplification.

⁽⁸⁾ Ibid

⁽⁹⁾ CESE 1646/2004 - Communication from the Commission to the Council and the European Parliament - Accomplishing a sustainable agricultural model for Europe through the reformed CAP - sugar sector reform - COM(2004) 499 final

4.8 The EESC notes that the temporary withdrawal of benefits is limited to a period of three months, renewable once. The Commission may extend this period in accordance with Articles 3 and 7 of Decision 1999/468/EC, as has already been done in the case of Myanmar. The EESC would have preferred a provision whereby the temporary withdrawal of benefits, once applied, would be maintained until such time as the offending nation had removed the cause for withdrawal by remedying the breach of international conventions which had given rise to the withdrawal in the first place.

4.9 The EESC feels that the requirement for countries or territories wishing to benefit from the SIA for sustainable development to submit a request to that effect within three months of the date of entry into force of the Regulation is somewhat onerous and likely to be self-defeating by limiting the degree of uptake. There might well be a number of countries at that point in time that did not meet the criteria and therefore saw no point in submitting an application. After the expiration of the three-month deadline, such countries would then have no incentive to ratify and effectively implement the international conventions set out in appendices 1 and 2. The EESC would have considered it preferable to have left the door open for the admission of these countries at a later date provided that they had then met the criteria for inclusion.

4.10 The EESC pointed out⁽¹⁰⁾ that the GSP system is one element of the EU's trade policy and that, as such, it must be compatible with the other elements of that policy. In order to achieve a coherent trade policy it is essential that other Directorates-General in the Commission should be involved in the process. In particular, there should be close, continuous and effective cooperation between the Directorates-General for Trade and for Enterprise.

4.11 The EESC considers it advisable that, in the case of serious market disturbances for goods covered by Annex 1 of the Treaty, the safeguard clause could also be invoked at the request of a Member State to the Commission, which would then consult the relevant management committee.

4.12 According to the Commission proposal, the special arrangement for the Least Developed Countries (LDCs) is to be incorporated into the GSP and the other arrangements (including that for sugar) are to be taken over in accordance with Regulation 416/2001. The fears of the LDCs are well-founded namely that there will be considerably more disadvantages than advantages following the reform of the EU sugar regime, with a sharp drop in prices arising from the proposed

moves to open up the EU market fully to these countries as of 1 July 2009. The Committee refers in this regard to its Opinion of 15 December 2004⁽¹¹⁾ on the proposed CMO/sugar reform. This called on the Commission, in line with the express wishes of the LDCs, to negotiate preferential import quotas for sugar for the period after 2009, with periodic reviews that take into account the link between the reform of the European sugar market and the development objectives of least developed countries (LDCs). The EESC is in favour of prohibiting 'swap' practices (three-way trade).

4.13 Generally speaking, the EESC believes that, for the products under consideration, the application of Article 12(1) should be clearly defined within the framework of the relevant common market organisations.

5. Conclusions

5.1 The EESC has advocated that the existing system should be simplified and rendered more transparent and that the opportunity should be taken to harmonise, unify and streamline all the GSP rules and procedures. It considers that the proposed scheme would be a material improvement in this respect and to this extent it endorses the Commission's proposals.

5.2 The EESC approves the fact that the number of beneficiary countries would be reduced but fears that the reduction might not be of sufficient proportions.

5.2.1 The EESC considers that the Generalised System of Preferences should be reserved for least developed countries and countries most in need, in order to ensure that they are the primary beneficiaries of the new GSP regime. The graduation threshold for textile and clothing products should therefore be lowered to 10 percent⁽¹²⁾.

5.3 The EESC considers that the new SIA for promoting sustainable development will have little more impact on the behaviour of beneficiary nations than those which it replaces.

5.4 The EESC is concerned that the issue of fraud in the existing system does not appear to have been effectively addressed and considers that more could have been done in this respect.

5.5 The EESC is disappointed that detailed impact assessments on these proposals have not been published or apparently, in some cases, conducted.

Brussels, 9 February 2005.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

⁽¹⁰⁾ Ibid

⁽¹¹⁾ CESE 1646/2004 - Communication from the Commission to the Council and the European Parliament - Accomplishing a sustainable agricultural model for Europe through the reformed CAP - sugar sector reform - COM(2004) 499 final

⁽¹²⁾ Proposal for a Council Regulation COM(2004) 699 final, Article 13

APPENDIX 1

Core human and labour rights UN/ILO Conventions

1. International Covenant on Civil and Political Rights
2. International Covenant on Economic Social and Cultural Rights
3. International Convention on the Elimination of All Forms of Racial Discrimination
4. Convention on the Elimination of All Forms of Discrimination Against Women
5. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
6. Convention on the Rights of the Child
7. Convention on the Prevention and Punishment of the Crime of Genocide
8. Minimum Age for Admission to Employment (No. 138)
9. Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182)
10. Abolition of Forced Labour Convention (No. 105)
11. Forced Compulsory Labour Convention (No. 29)
12. Equal Remuneration of Men and Women Workers for Work of Equal Value Convention (No. 100)
13. Discrimination in Respect of Employment and Occupation Convention (No. 111)
14. Freedom of Association and Protection of the Right to Organise Convention (No. 87)
15. Application of the Principles of the Right to Organise and to Bargain Collectively Convention (No. 98)
16. International Convention on the Suppression and Punishment of the Crime of Apartheid.

APPENDIX 2

Conventions related to environment and governance principles

17. Montreal Protocol on Substances that deplete the Ozone Layer
18. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
19. Stockholm Convention on persistent Organic Pollutants
20. Convention on International Trade in Endangered Species
21. Convention on Biological Diversity
22. Cartagena Protocol on Biosafety
23. Kyoto Protocol to the UN Framework Convention on Climate Change
24. UN Single Convention on Narcotic Drugs (1961)
25. UN Convention on Psychotropic Substances (1971)
26. UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
27. Mexico UN Convention against Corruption.