

Soltész Kinga¹: Least Developed Countries and the Generalised System of Preferences scheme from 2006 to 2015

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I. Introduction

An important part of the European Community's external trade policy is the Generalised System of Preferences scheme. The system facilitates trade with developing countries, providing that imports originating from those countries are not subject to customs duties normally charged.² Today the importance of trade as a factor for development and growth is becoming more and more evident, trade policies can provide opportunities for promoting economic development and tackling poverty reduction. Development is also a fundamental tenet of the EU trade strategy which aims to support the gradual integration of developing countries in the world economy and the multilateral trading system. EU trade policy aims to contribute to this goal through coherent action on different levels. In addition to the multilateral and bilateral level, the EU has, for many years, operated unilateral preferential market access schemes under the Generalised System of Preferences (GSP) to provide developing countries with an added advantage on its market.

II. Definition of GSP

In 1968 the United Nations Conference on Trade and Development (UNCTAD) recommended the creation of a „Generalised System of Tariff Preferences” under which developed countries would grant trade preferences to all developing countries. The EU was the first to implement a GSP scheme in 1971. The EU Generalised System of Preferences by definition is the system of preferential trading arrangements through which the European Union provides preferential access to its markets for developing countries. The core of this system is consists of a combination of preferential arrangements. The general one ensures a complete or partial reduction or suspension of customs duties as laid down in the Common Customs Tariff, and there are also special types of arrangements, which are providing for additional advantages.³

III. Legal background

The EU's GSP is implemented following cycles of ten years, for which general guidelines are drawn up. Guidelines for the period 2006 - 2015 were adopted in 2004. In practice, the GSP is implemented by means of Council regulations, during the ten-year cycle. Based on the guidelines of 2004, a new GSP scheme was adopted on 27 June 2005, through Council Regulation (EC) No 980/2005.⁴ This regulation applies from 1.1.2006 to 31.12.2008, but the provisions concerning the special incentive scheme for sustainable development and good governance (the "GSP-plus" incentive) applied already from 1.7.2005. The special arrangements to combat drug production and trafficking provided for by Regulation No. 2501/2001 are repealed from that same date.

III.1. General guidelines for the GSP scheme

In the Communication on "Developing countries, international trade and sustainable development: the function of the Community's generalised system of preferences for the ten-year period from 2006 to 2015"⁵ the Commission sets out the principles for regulations

between 2006 and 2015 in this field. It improved the previous GSP scheme for the period 2002-2005 in several areas by simplifying the GSP (it reduced the five existing arrangements to three), targeting the system on the developing countries that need it most, encouraging regional cooperation and increasing the additional preferences.⁶ The main provisions of this Communication can be summarized as follows:

III.1.1. Maintaining generous tariff rates

The Guidelines extends the GSP to some products not covered by the previous system, under which almost one tenth of taxable products in the Customs Tariff was not covered. Some products classed as sensitive before, were also be transferred to the category of non-sensitive products. Preferential margins (previously 3.5% for sensitive products and 100% for non-sensitive products) was maintained and also increased in some cases.

III.1.2. Targeting the GSP on the countries that most need it

The Guidelines suggest that the GSP should target the countries that need it most, such as the least developed countries (LDCs) and the most vulnerable among the other developing countries (small economies, land-locked countries and low-revenue countries) to help them to play a greater part in international trade.

III.1.3. A simpler GSP with easier access

The process of simplification, already started under the replaced GSP, is enhanced. The Commission decreased the previous five GSP arrangements to three: the general arrangement, the special arrangement for the least developed countries and a new special arrangement (GSP+) to encourage sustainable development and good governance.

III.1.4. Making graduation more transparent and targeting it on the prime beneficiaries

The Guidelines made graduation (withdrawal from the GSP) more transparent by withdrawing the most competitive product groups of certain beneficiary countries from the GSP. This means that the beneficiaries no longer need the GSP to increase their exports of those products to the EU. The smaller beneficiaries will not be graduated and so can enjoy a greater share of the benefits of the GSP. The previous criteria for graduation (share of preferential imports, development index and export-specialisation index) was replaced with a single straightforward criterion: share of the Community market, expressed as a share of preferential imports.

III.1.5. Devising a new incentive to encourage sustainable development and governance

The Guidelines introduced a new incentive for sustainable development and good management of public affairs by replacing the separate "drugs", "social" and "environment" special arrangements with a single new category, the GSP+. It will provide special incentives for countries which have signed up to the main international agreements on social rights, environmental protection, governance and combating the production of and trafficking in illegal drugs. The Commission has to take account of the evaluations by the international organisations responsible for each international agreement concerned before deciding which of the applicant countries will be selected to benefit from the GSP+.

III.1.6. The rules of origin

The Guidelines improved the rules of origin by changing their form (simplifying them), their substance (adjusting the origin criteria and cumulation rules) and their procedures (formalities and controls). The new rules of origin are flexible in order to encourage development. One of the objectives is to facilitate acquisition of origin to optimise the benefits of preferences.

III.1.7. Temporary withdrawal instruments, safeguard measures and anti-fraud measures

The Guidelines redefined the GSP temporary withdrawal arrangements and the safeguard clause to take account of the new graduation focused on the most competitive beneficiary countries. Even though they are still used in exceptional circumstances only, those arrangements must be made more credible, which simplifies them and makes the way they use more flexible, particularly in cases of unfair trade practices. It is also essential that the Commission and Member States responsible for applying the GSP should apply these rules unwaveringly where fraud is detected. As the beneficiary countries also have GSP management responsibilities, they have to establish effective and appropriate management structures to guarantee the validity of certificates of origin.

III.2. *The GSP Regulation*

The 980/2005 Regulation implements the Generalised System of Preferences (GSP) for the period 2006 - 2008. The GSP sets out preferential arrangements for duties on Community imports of goods originating in the beneficiary countries. The GSP therefore applies to the countries and territories listed in Annex I to the Regulation. The products affected by the GSP are set out in Annex II. The arrangements for originating products conform to the rules set out in Regulation (EEC) No 2454/93. Regional cumulation is also possible, provided the regional groups are respected.

III.2.1. Products covered

Products are divided into two categories: sensitive products, and non-sensitive products. Sensitivity is determined in relation to the effect that imports into the Community could have on Community products. Common Customs Tariff specific and ad valorem duties are fixed for such products. They are, however, suspended where the rate of an ad valorem duty reduced in accordance with the provisions of the GSP is 1% or less and the rate of a specific duty is EUR 2 or less.

III.2.2. Types of arrangements

For the period 01.01.2006 - 31.12.2008, there are three types of arrangement in force for beneficiary countries:

- I. General scheme all beneficiary countries enjoy the benefit of the general arrangement; product coverage increases from about 6900 to about 7200. It incorporates 300 additional products mostly in the agriculture and fishery sectors, of interest for developing countries
- II. the special incentive arrangement for sustainable development and good governance (the "GSP+") provides additional benefits for countries implementing certain international standards in human and labour rights, environmental protection, the fight against drugs, and good governance. It covers around 7200

products which can enter the EU duty free. The beneficiaries must meet a number of criteria including ratification and effective application of 27 key international conventions on sustainable development and good governance.

- III. the special arrangement for the least-developed countries (LDCs), also known as the "Everything But Arms" (EBA) initiative, provides for the most favourable treatment of all, in the aim of granting the LDCs "duty-free and quota-free" access to the EU's market.

III.2.2.1. General Arrangement

The general arrangement sets out the general rules for the GSP. The principle for non-sensitive products is the complete suspension of the Common Customs Tariff duties applicable to such products, except for agricultural components. For sensitive products, however, the Common Customs Tariff ad valorem duties applicable to the products are reduced by 3.5%. This reduction is limited to 20% for textiles and clothing. However, a tariff reduction of more than 3.5% laid down by the GSP in the preceding 2002 to 2005 period (Regulation (EC) No 2501/2001) still applies. Common Customs Tariff specific duties are reduced by 30%. Where Common Customs Tariff duties on products listed in Annex II as sensitive products include ad valorem duties and specific duties, the specific duties are not reduced. Agricultural products are subject to a special monitoring mechanism to avoid disturbances in the Community market. Agricultural products continue to be subject to safeguard clauses applied under the Common Agricultural Policy.

III.2.2.2. "GSP Plus"

To benefit from "GSP Plus" countries need to demonstrate that their economies are poorly diversified, and therefore dependent and vulnerable. They also have to have ratified and effectively implemented the 16 core conventions on human and labour rights and 7 (out of 11) of the conventions related to good governance and the protection of the environment. At the same time beneficiary countries must commit themselves to ratifying and effectively implementing the international conventions which they have not yet ratified. In any case, the 27 conventions have to be ratified by the beneficiary countries by 31 December 2008.

Under the special incentive arrangement for sustainable development and good governance, Common Customs Tariff ad valorem duties on products listed in Annex II are in principle suspended. Specific duties are also suspended, unless there is also an ad valorem duty. By contrast, specific duties on certain types of chewing gum are limited to 16% of the customs value. This arrangement replaces the special arrangements to combat drug production and trafficking in force under the previous GSP (Regulation (EC) No 2501/2001) and therefore enters into force, exceptionally, on 1 July 2005.

The countries that will benefit from this arrangement are those that are considered to be vulnerable due to their lack of diversification and insufficient integration into the international trading system. This applies to countries not classified by the World Bank as high income countries for three consecutive years. These are also countries where the five largest sections of GSP-covered imports to the Community represent more than 75% in value of their total GSP-covered imports, and where GSP-covered imports to the Community represent less than 1% in value of total GSP-covered imports to the Community.

These countries are listed in Annex I to the Regulation (column E). Such countries must have made a valid request to the Commission by 31 October 2005 in order to benefit from the arrangement as of 1 January 2006. The definitive list of beneficiary countries is published in the Official Journal after requests have been examined.

For the 2006-2008 period, the countries benefiting from the special incentive arrangement for sustainable development and good governance are Bolivia, Columbia, Costa Rica, Ecuador, Georgia, Guatemala, Honduras, Sri Lanka, the Republic of Moldova, Mongolia, Nicaragua, Panama, Peru, El Salvador and Venezuela.

To become beneficiaries, countries are also subject to a general obligation to ratify and effectively implement the international conventions listed in Annex III to the Regulation. Annex III distinguishes between two types of international convention:

- Core human and labour rights UN/ILO Conventions (Part A of Annex III). Ratification and effective implementation of these is in principle obligatory. If, however, a country is faced with specific constitutional constraints, and has neither ratified nor effectively implemented two of the sixteen conventions on the list, it must make a formal commitment to do so by 31 October 2005 at the latest, or 31 December 2006 if there is an incompatibility with its Constitution;
- Conventions related to the environment and governance principles (Part B of Annex III). Ratification and effective implementation of at least seven of the international conventions listed in Part B is required. The remaining international conventions must be ratified and effectively implemented by 31 December 2008 at the latest. The Commission monitors this obligation closely, to ensure that it has been respected and applied.

III.2.2.3. Everything but arms

Given the great number of developing countries, differences between them – in terms of level of development – are huge. The rationale of the GSP is that developing countries cannot compete with developed countries. At present, some developing countries cannot even face the competition of other developing countries. Thus, there is a need to target the tariff preferences available under the GSP to these least developed countries, which need them most. This initiative grants duty-free access to imports of all products from least developed countries and diminishes the quantitative restrictions. There are two exceptions above the main rule: the first consists of arms and munitions which are excluded entirely, and the second aims the phased liberalization of imports of fresh bananas, rice and sugar.⁷

In February 2001, the Council adopted the so-called "EBA (Everything But Arms) Regulation"⁸, granting duty-free access to imports of all products from least developed countries without any quantitative restrictions, except to arms and munitions. At present, 49 developing countries belong to the category of LDC's. The provisions of the EBA Regulation have been incorporated into the GSP Regulation 980/2005. Only imports of fresh bananas, rice and sugar are not fully liberalised immediately. Duties on those products will be gradually reduced until duty free access will be granted for bananas in January 2006, for sugar in July 2009 and for rice in September 2009. In the meantime, there will be duty free tariff quotas for rice and sugar.⁹

These countries are listed in Annex I to the Regulation (column D). In line with the "Everything But Arms" initiative, Common Customs Tariff duties are entirely suspended for all products except arms and ammunition. By contrast, a gradual reduction in Common Customs Tariff duties, culminating in their total suspension, is planned for certain products, namely husked rice, some banana varieties, and white sugar. During the lead-up to total suspension, husked rice and white sugar are to benefit from a global tariff quota at zero duty. The Commission will be assisted by the management committees for the relevant common market organisations in administering these quotas. The list of least developed countries is drawn up by the United Nations, which may also decide to remove countries from the list. In such cases the Commission removes the country in question from the list of countries

benefiting from the arrangement. Removal is progressive, and involves a transitional period of at least three years.

The EBA Regulation foresees that the special arrangements for LDC's should be maintained for an unlimited period of time and not be subject to the periodic renewal of the Community's scheme of generalised preferences. Therefore, the date of expiry of GSP Regulation 980/2005 does not apply to its EBA provisions.

The success of this initiative depends on a number of factors, and it is by no means automatic. The factors of the success are related to the ability of the least developed countries to respond, especially by the diversification of their exports. It also illustrates in an excellent way the interrelationship between trade and non-trade interests, moreover it demonstrates the various possible methods of adjusting Community trade policy to non-trade concerns.¹⁰

III.2.3. Temporary withdrawal

Temporary withdrawal from the preferential arrangements may affect some or all of the products from the country in question. It is mainly a consequence of the behaviour of the country concerned, and may result from:

- serious and systematic violations of the international conventions listed in part A of Annex III;
- serious and systematic unfair trading practices;
- trade in drugs, or failure to comply with international conventions on money-laundering;
- serious and systematic infringements of the rules governing fisheries and fishery resources;
- export of goods made by prison labour.

A temporary withdrawal decision may be made if there are sufficient grounds for an investigation to be opened. The investigation is carried out by the Commission in liaison with the Generalised Preferences Committee, which assists the Commission in implementing the Regulation, the beneficiary country, and international organisations and agencies. Withdrawal therefore follows an enquiry and investigation procedure, and measures, and is decided by the Council. A withdrawal decision, in principle, enters into force six months after its adoption.

Failure to comply with rules of origin or provide administrative cooperation are also grounds for a Commission decision to suspend preferences. Administrative cooperation mainly concerns the information that beneficiary countries are obliged to supply regarding rules of origin and the respect thereof. As well as information supplied to the Commission, it may also involve missions or enquiries carried out by the Commission itself.

Beneficiary countries may be removed from the scheme (graduation) if the World Bank classifies them as high-income countries, or if they are bound to the Community by a preferential commercial agreement.

Tariff preferences for all products from countries benefiting from the general arrangement and the special incentive arrangement for sustainable development and good governance may also be removed. Removal may be justified by the volume of Community imports of the product concerned from the beneficiary country, i.e. if it reaches 15% of the total volume of Community imports of the same product from countries that are beneficiaries of one of these two arrangements.

III.2.4. Safeguard clause

The safeguard clause entails restoring the Common Customs Tariff duties. It is generally implemented when imports of a product cause serious difficulties or create direct competition

with similar products from a Community producer. Serious difficulties are assessed using criteria measuring Community producers' market share, production, stocks, production capacity, bankruptcies, profitability, capacity utilisation, employment, imports and prices. Investigations are opened at the request of a Member State or on the Community's own initiative, and must in principle be completed within six months, unless an extension decision is granted. As with the withdrawal procedure, the Commission decision is made on the basis of an information meeting establishing the facts, and on exchanges between the parties. Preventive measures may be taken if they are justified by exceptional circumstances.¹¹

III.3. The rules of origin in preferential trade agreements

The Commission issued furthermore a communication on the rules of origin, which follows the consultation launched by the Commission Green Paper on the future of rules of origin in preferential trade arrangements. It shows that the preferential rules of origin need to be reviewed. The review is also important because of the goal of integrating developing countries into the world economy. The review should also be accompanied by an adjustment of the procedures for their management and control.

The Commission proposed actions in three areas:

- a revision of the conditions for a product to be considered as originating in a country;
- a change in the customs procedures necessary for the proper implementation and the control of the use of the preferences by the economic operators;
- the development of instruments ensuring that the beneficiary countries comply with their obligations.¹²

IV. In practice

The EU GSP is the most widely used of all developed country GSP systems. The EU's GSP grants products imported from the 178 GSP beneficiary countries and territories either duty-free access or a tariff reduction, the volume of imports to the EU from developing countries under the GSP is greater than the volume of imports under the US, Canadian and Japanese GSP systems combined. In 2003 EU imports under GSP totalled €52 billion. In comparison, under the equivalent American scheme – which is the world's second most widely used GSP imports totalled €16 billion. Today, the EU is the largest trading partner for the world's poorest countries: 40 % of EU imports originate in developing countries, amounting to €362 billion worth of trade. The EU is the world's most open market for poor countries: in 2003 around 80% of developing countries' exports entered the EU duty free or at reduced rates of duty. The EU has the most open regime vis-à-vis Sub-Saharan Africa and the other African, Caribbean and Pacific countries: in 2003 African Caribbean and Pacific countries paid full duty on only 3% of their imports to the EU. The remaining 97% entered at zero duty or at reduced rates of duty. The EU is also the most open market in the developed world for the world's 50 poorest countries. In 2003 the EU absorbed 63% of exports from Least Developed Countries to Japan, EU, US and Canada. In the case of agriculture, this figure is more than 70%. The EU is the main importer of agricultural products from developing countries, absorbing more than the US, Japan and Canada put together.

¹ Dr. Soltész Kinga, Miskolci Egyetem Állam- és Jogtudományi Kar, Európa-jogi és Nemzetközi Magánjogi Tanszék, I. éves nappali tagozatos PhD hallgató, témavezető: Dr. Fazekas Judit egyetemi tanár.

² Panos Koutrakos: EU International relations law. Hart Publishing, Oxford and Portland, Oregon, 2006. 334.

³ U.o. 334.

⁴ [2005] OJ L 169/L.

⁵ Communication of 7 July 2004 from the Commission to the Council, the European Parliament and the European Economic and Social Committee on "Developing countries, international trade and sustainable development: the function of the Community's generalised system of preferences (GSP) for the ten-year period from 2006 to 2015" [COM(2004) 461 final - Official Journal C 242 of 29.9.2004]

⁶ www.europa.eu6SCADPlus/Scheme of preferences from 2006 to 2015 – Guidelines.htm

⁷ Koutrakos: i.m. 335.

⁸ Council Regulation (EC) No 416/2001 of 28 February 2001. [2001] OJ L 60/1.

⁹ The latest regulations are for rice quotas Commission Regulation 1401/2002 [2002] OJ L 203/42, and raw sugar cane quotas Commission Regulation No 1381/2002 [2002] OJ L 200/14.

¹⁰ Koutrakos: i.m. 335.

¹¹ www.europa.eu/SCADPlus/Generalised System of Preferences 2006 - 2008.htm

¹² Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - The rules of origin in preferential trade arrangements - Orientations for the future [COM(2005) 100 final]