

BRIEF ON
REGULATION (EU) No 978/2012
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 25 October 2012
applying a scheme of generalised tariff preferences and
repealing Council Regulation (EC) No 732/2008

The EU's Generalised Scheme of Preferences (GSP) helps developing countries (DC) by making it easier for them to export their products to the European Union. This is done in the form of reduced tariffs for their goods when entering the EU market. Through the additional export revenue which is generated, GSP fosters growth in their income and supports economic growth and job creation.

The GSP is subject to WTO law which allows for an exception to the WTO "most-favoured nation" principle (i.e. equal treatment should be accorded to all WTO Members).

According to the current GSP regulation, 176 countries are eligible which are divided in 3 groups:

- 'Standard' GSP (generous preferences)
- GSP+ (enhanced preferences because countries ratify and implement international conventions relating to human and labour rights, environment and good governance)
- Everything But Arms (EBA, duty-free quota-free access for all goods except arms to least developed countries)

According to the new GSP rules 89 countries have been shortlisted which need GSP trade preferences the most:

- 49 least developed countries under EBA

- 40 'Low income' and 'lower middle income' countries, as classified by the World Bank. These countries may benefit from standard GSP and/or GSP+

New countries which can now apply for GSP+ are Philippines, Pakistan, Ukraine.

In order to qualify for GSP DC countries have to ratify 27 conventions which include human rights, good governance, climate change, etc. For GSP+, the DC countries must show binding commitment to ratify all conventions, to accept monitoring, and to cooperate with the EU. DC countries must commit to accept without reservations conventions' reporting requirements and must not formulate reservation over any of those conventions. The countries must also show that there is no serious problem of implementation of these conventions. All countries which wish to enter the new GSP+ (including current GSP+ beneficiaries) must make a formal application showing that the requirements of the new regulation are met.

Under GSP+, there will be Zero import duties in EU for 66% tariff lines for countries which implement core human rights, labour rights and other sustainable development conventions. There are currently 16 beneficiaries which exported in 2011 € 4 billion. This is 5% of all GSP preferences.

Full duty free, quota free access for all products except arms (Everything But Arms, or "EBA") for Least Developed Countries (LDCs). There are 49 beneficiaries which exported in 2011 products under GSP worth € 10.5 billion — 12% of all GSP preferences.

The EU has given more than 1 year for economic operators to adapt to the new system until new preferences apply on 1 January 2014. According to the new legislation, EBA scheme will no longer end every three years, as it is the case now. Rather, it will last 10 years.

The new GSP legislation has set enhanced monitoring of the conventions. Monitoring will be more frequent (every 2 instead of 3 years) and with scrutiny not only by Council, but also by the European Parliament.

The new GSP regulation has put the onus on the beneficiaries to prove positive record. The EU has set applicable legal benchmark of 'effective implementation' and more sources of information have been allowed (broader than UN, ILO, etc.). To complement the reports of international monitoring bodies, the EU may use other sources of accurate information. Also, the burden of proof will be reversed: when evidence points to problems with implementation, it will be up to the country to show a positive record. The new rules also incorporate specific role for "third parties" (e.g., civil society). Rights of parties are specified and enhanced (GSP+ entry, withdrawal, safeguards).

According to the new General safeguards, EU producers have right to seek action if they suffer deterioration of their situation. Clothing also can be subject to general safeguards. While the special safeguards for clothing have been maintained and extended to plain textiles and to ethanol. Thresholds have been adjusted to 13,5% for annual increase of imported volumes; 14,5% of share of imports from GSP beneficiary countries (new graduation threshold); de minimis share 6%. Safeguard measures may be applied where imports from beneficiary countries cause or threaten to cause "serious difficulty" to a Union producer.

Under new rules, Graduation no longer applies to GSP+ or GSP+ countries will no longer be "graduated" by sections. Graduation means that imports of particular groups of products and originating in a given GSP beneficiary country lose GSP preferences. Under the current scheme, graduation applies when the average imports of a section from a country exceed 15% of GSP imports of the same products from all GSP beneficiary countries during three years (the trigger is 12.5% for textiles and clothing).

Graduation applies when the average imports of a section from a country exceed 15% of covered imports of the same products from all beneficiary countries during three years (the trigger is 12.5% for textiles and clothing). This is a proxy for those country-sector combinations which are sufficiently competitive and so no longer need the scheme to boost their exports to the EU.

Any of the GSP arrangements may be temporarily withdrawn for serious and systematic violations of core principles laid down in core human and labour rights conventions and on a number of other grounds such as unfair trading practices and serious shortcomings in customs controls.

In addition, GSP+ benefits may be temporarily withdrawn if the national legislation of a GSP+ beneficiary country no longer incorporates the relevant conventions or if that legislation is not effectively implemented - in other words if the underlying balance in GSP+ between additional trade preferences in the EU market and beneficiaries' acceptance and implementation of international sustainable development and good governance rules and standards is no longer properly respected. In this regard, the Commission monitors the situation in beneficiary countries on an ongoing basis primarily by drawing on material available from the relevant international monitoring bodies.

Important Points from Text of Legislation:

(6)the scheme should continue to apply for a period of 10 years from the date of application of the preferences provided for in this Regulation, except for the special arrangement for the least-developed countries, which should continue to be applied without any expiry date.

(14)every two years, the Commission should present to the European Parliament and the Council a report on the status of ratification of the respective conventions, the compliance of the beneficiary countries with any reporting obligations under those conventions, and the status of the implementation of the conventions in practice.

(19) Common Customs Tariff duties on non-sensitive products should continue to be suspended, while duties on sensitive products should enjoy a tariff reduction, in order to ensure a satisfactory utilisation rate while at the same time taking account of the situation of the corresponding Union industries.

(20) Such a tariff reduction should be sufficiently attractive, in order to motivate traders to make use of the opportunities offered by the scheme. Therefore, the *ad valorem* duties should generally be reduced by a flat rate of 3,5 percentage points from the 'most favoured nation' duty rate, while such duties for textiles and textile goods should be reduced by 20 %. Specific duties should be reduced by 30 %. Where a minimum duty is specified, that minimum duty should not apply.

(21) Duties should be suspended totally, where the preferential treatment for an individual import declaration results in an *ad valorem* duty of 1 % or less or in a specific duty of EUR 2 or less, since the cost of collecting such duties might be higher than the revenue gained.

(22) Graduation should be based on criteria related to sections and chapters of the Common Customs Tariff. Graduation should apply in respect of a section or subsection in order to reduce cases where heterogeneous products are graduated. The graduation of a section or a subsection (made up of chapters) for a beneficiary country should be applied when the section meets the criteria for graduation over three consecutive years, in order to increase predictability and fairness of graduation by eliminating the effect of large and exceptional variations in the import statistics. Graduation should not apply to the beneficiary countries of the special incentive arrangement for sustainable development and good governance and the beneficiary countries of the special arrangement for the least-developed countries as they share a very similar economic profile rendering them vulnerable because of a low, non-diversified export base.

(33) The Commission should also adopt immediately applicable implementing acts where, in duly justified cases relating to safeguard investigations, imperative grounds of urgency relating to the deterioration of the economic and/or financial situation of Union producers which would be difficult to repair so require.

Article 7

2. Common Customs Tariff *ad valorem* duties on products listed in Annex V as sensitive products shall be reduced by 3,5 percentage points. For products under GSP sections S-11a and S-11b of Annex V, this reduction shall be 20 %.

4. Common Customs Tariff specific duties, other than minimum or maximum duties, on products listed in Annex V as sensitive products shall be reduced by 30 %.

5. Where Common Customs Tariff duties on products listed in Annex V as sensitive products include *ad valorem* duties and specific duties, the specific duties shall not be reduced.

Article 8

1. The tariff preferences referred to in Article 7 shall be suspended, in respect of products of a GSP section originating in a GSP beneficiary country, when the average value of Union imports of such products over three consecutive years from that GSP beneficiary country exceeds the thresholds listed in Annex VI. The thresholds shall be calculated as a percentage of the total value of Union imports of the same products from all GSP beneficiary countries.

3. The Commission shall, every three years, review the list referred to in paragraph 2 of this Article and adopt an implementing act, in accordance with the advisory procedure referred to in Article 39(2), in order to suspend or to re-establish the tariff preferences referred to in Article 7. That implementing act shall apply as of 1 January of the year following its entry in force.

Article 11

1. The products included in the special incentive arrangement for sustainable development and good governance are listed in Annex IX.

Article 12

1. The Common Customs Tariff *ad valorem* duties on all products listed in Annex IX which originate in a GSP+ beneficiary country shall be suspended.

2. Common Customs Tariff specific duties on products referred to in paragraph 1 shall be suspended entirely, except for products for which the Common Customs Tariff duties include *ad valorem* duties. For products with Combined Nomenclature code 1704 10 90, the specific duty shall be limited to 16 % of the customs value.

Article 14

1. By 1 January 2016, and every two years thereafter, the Commission shall present to the European Parliament and to the Council a report on the status of ratification of the relevant conventions, the compliance of the GSP+ beneficiary countries with any reporting obligations under those conventions and the status of the effective implementation thereof.

(b) specify the period, which may not exceed six months from the date of publication of the notice, within which a GSP+ beneficiary country shall submit its observations.

10. Where the Commission decides on temporary withdrawal, such delegated act shall take effect six months after its adoption.

Article 19

(b) export of goods made by prison labour;

(c) serious shortcomings in customs controls on the export or transit of drugs (illicit substances or precursors), or failure to comply with international conventions on anti-terrorism and money laundering;

(d) serious and systematic unfair trading practices including those affecting the supply of raw materials, which have an adverse effect on the Union industry and which have not been addressed by the beneficiary country. For those unfair trading practices, which are prohibited or actionable under the WTO Agreements, the application of this Article shall be based on a previous determination to that effect by the competent WTO body;

(e) serious and systematic infringement of the objectives adopted by Regional Fishery Organisations or any international arrangements to which the Union is a party concerning the conservation and management of fishery resources.

2. The preferential arrangements provided for in this Regulation shall not be withdrawn under point (d) of paragraph 1 in respect of products that are subject to anti-dumping or countervailing measures under Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (1) or Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (2), for the reasons justifying those measures.

Article 21

6. The period of temporary withdrawal shall not exceed six months. At the latest on the conclusion of that period, the Commission shall decide in accordance with the urgency procedure referred to in Article 39(4) either to terminate the temporary withdrawal or to extend the period of temporary withdrawal.

Article 22

1. Where a product originating in a beneficiary country of any of the preferential arrangements referred to in Article 1(2), is imported in volumes and/or at prices which cause, or threaten to cause, serious difficulties to Union producers of like or directly competing products, normal Common Customs Tariff duties on that product may be reintroduced.

2. For the purpose of this Chapter, 'like product' means a product which is identical, i.e. alike in all respects, to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

4. An investigation, including the procedural steps referred to in Articles 25, 26 and 27, shall be concluded within 12 months from its initiation.

Article 28

Common Customs Tariff duties shall be reintroduced as long as necessary to counteract the deterioration in the economic and/or financial situation of Union producers, or as long as the threat of such deterioration persists. The period of reintroduction shall not exceed three years, unless it is extended in duly justified circumstances.

Article 29

(a) increases by at least 13,5 % in quantity (by volume), as compared with the previous calendar year; or

(b) for products under GSP sections S-11a and S-11b of Annex V, exceeds the share referred to in point 2 of Annex VI of the value of Union imports of products in GSP sections S-11a and S-11b of Annex V from all countries and territories listed in Annex II during any period of 12 months.

2. Paragraph 1 of this Article shall not apply to EBA beneficiary countries, nor shall it apply to countries with a share for the relevant products referred to in Article 29(1) not exceeding 6 % of total Union imports of the same products listed in Annexes V or IX, whichever is applicable.

Article 30

Without prejudice to Section I of this Chapter, where imports of products included in Annex I to the TFEU cause, or threaten to cause, serious disturbance to Union markets, in particular to one or more of the outermost regions, or these markets' regulatory mechanisms, the Commission, on its own initiative or at the request of a Member State, after consulting the committee for the relevant agriculture or fisheries common market organisation, shall adopt an implementing act in order to suspend the preferential arrangements in respect of the products concerned in accordance with examination procedure referred to in Article 39(3).

Article 34

1. Where the rate of an *ad valorem* duty for an individual import declaration is reduced in accordance with this Regulation to 1 % or less, that duty shall be suspended entirely. EN L 303/14 Official Journal of the European Union 31.10.2012

2. Where the rate of a specific duty for an individual import declaration is reduced in accordance with this Regulation to EUR 2 or less per individual euro amount, that duty shall be suspended entirely.

3. Subject to paragraphs 1 and 2, the final rate of the preferential duty calculated in accordance with this Regulation shall be rounded down to the first decimal place.

Article 36

3. The delegation of powers referred to in Articles 3, 5, 6, 8, 9, 10, 11, 15, 16, 17, 19, 20 or 22 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Article 43

3. The scheme shall apply until 31 December 2023. However, the expiry date shall neither apply to the special arrangement for the least-developed countries, nor, to the extent that they are applied in conjunction with that arrangement, to any other provisions of this Regulation.