

**UNICE Position on the Proposal for a COUNCIL REGULATION applying a scheme of generalised tariff preferences  
Brussels, 20.10.2004, COM(2004) 699 Final 2004/0242 (CNS)**

**EXECUTIVE SUMMARY**

UNICE welcomes the opportunity to comment on the draft regulation for the Generalised System of Preferences 2006-2015. However, it regrets that the Commission did not seize the opportunity afforded by the review of the GSP to conduct an overall assessment of the contribution of preferential trading arrangements to development and their effects on multilateral trade liberalisation negotiations. The 2004 *World Trade Report* of the WTO questions the extent to which preferences promote development. Therefore an international debate on the development benefits of GSP would be most welcome.

Regarding the proposals of the draft Regulation, UNICE's position can be summarised as follows:

**1) Simplification of GSP**

- Improving the **legal certainty** of the GSP should be a key objective for reform.
- **Reducing the number of GSP schemes from 5 to 3** is a step in the right direction but it does not fundamentally change the nature of the current GSP.
- **Binding GSP commitments into bilateral FTAs** will simplify trade over the long term but UNICE questions whether pre-existing FTAs can be easily renegotiated.
- **Simplifying the Rules of Origin requirements** would make trading simpler. Proposals to simplify the regional cumulation requirements are a step in the right direction.

**2) Functioning and Coverage of GSP**

- **Expanding the product coverage of the GSP** and reclassifying products will broaden export possibilities for GSP beneficiaries.
- **GSP should be targeted** on the countries that need it most (LDCs and weak and vulnerable developing countries).
- **Simplify the graduation scheme** to graduate countries with highly competitive exporting sectors that do not need GSP.
- **Strengthen the GSP safeguard mechanism.**

**3) GSP and Sustainable Development**

- While recognising the importance of sustainable development, the proposed **GSP+ would discriminate between developing countries** based on politicised criteria while contributing little to sustainable development.
- UNICE calls for more progressive approaches to supporting sustainable development.

UNICE will continue to examine this issue as and when it evolves and looks forward to participating in future dialogues with the EU institutions and other partners on the future of the GSP.

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UNICE welcomes the opportunity to comment on the draft regulation applying a scheme of generalised tariff preferences for the period 2005-2016.

### **Introductory Remarks**

Since 1971, the EU has offered preferential tariff rates for developing country products through the Generalised System of Preferences. The EU GSP is quite generous as over €50 billion worth of goods were imported under GSP in 2002. Around 50% of GSP goods enter the EU market duty free. The rest enter at reduced duty.

GSP schemes are tolerated under WTO trade rules so long as they are applied in an objective and non-discriminatory manner to developing countries – although least developed countries (LDCs) can benefit from additional preferences such as the Everything but arms (EBA) initiative. The aim of the GSP is to promote developing country exports. The EU GSP also provides further tariff incentives for countries to abide by certain environmental, labour and anti-drug trafficking rules.

While UNICE supports the development objectives of the GSP, the actual benefits are questionable. GSP schemes raise a number of questions:

- They derogate from the MFN principle and, in some cases, they discriminate between beneficiaries based on sustainable development criteria.
- It is questionable whether they encourage much needed domestic liberalization and economic reform in developing countries.
- They provide credibility to industrialised countries that maintain high peak tariffs.
- In contradiction with the spirit and letter of article 3(b) the Enabling Clause<sup>1</sup>, fears related to the “erosion of preferences” have undermined multilateral trade negotiations in the Doha Development Agenda.
- They can, at times, be politicised and used to pursue non-economic and non-trade related objectives.
- They are often complicated and are not always business friendly (i.e. problems with the rules of origin, suspension, graduation, etc.).

*For these reasons, UNICE would like to see an international debate involving countries with GSP schemes and beneficiaries to:*

- 1) *Assess how the GSP contributes to economic development.*
- 2) *Assess who benefits from the GSP.*
- 3) *Consider lowering high average peak tariffs on an MFN basis (Average tariffs for all products in the Quad range between 5-7% but peak tariffs range from 25-40%<sup>2</sup>).*
- 4) *Examine alternative approaches to promoting sustainable development objectives.*

Pending such a substantive review of the GSP, UNICE will focus its comments on the 20 October 2004 draft regulation.

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<sup>1</sup> “Any differential and more favourable treatment provided under this clause: (...) (b) shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis.” DIFFERENTIAL AND MORE FAVOURABLE TREATMENT, RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES, Decision of 28 November 1979 (L/4903).

<sup>2</sup> Bernard Hoekman, Francis Ng and Marcelo Olarreaga (2001) “Tariff Peaks in the Quad and Least Developed Country Exports”, Development Research Group, World Bank, February, p.8.

**UNICE Remarks on the draft regulation on the GSP2005-2016**

**1) Simplification of GSP**

**a. Legal Certainty for Traders**

The overall thrust of the draft regulation is to simplify the GSP to make it easier to use and to target the weakest and most vulnerable developing countries.

*UNICE fully supports the simplification and targeting objectives of the draft regulation to make the GSP more user-friendly and to help developing countries most in need.*

**b. Five to three GSP schemes**

The draft regulation proposes a simplification of GSP by reducing the number of preferences from five to three.

<u>Current EU GSP</u>	<u>Proposed 2006-2015 GSP</u>
1. General GSP scheme for all developing countries	1. <i>General GSP scheme for all developing countries</i>
2. Everything But Arms: duty free treatment for LDC exports	2. <i>Everything But Arms: duty free treatment for LDC exports</i>
3. Additional GSP benefits for respecting certain social criteria	3. <i>GSP+: duty-free treatment for countries that ratify and implement a set of international social, environmental and anti-drug trafficking treaties</i>
4. Additional GSP benefits for respecting certain environmental criteria	
5. Additional GSP benefits for contributing to the fight against illicit drug trafficking.	

*This proposal is a step in the right direction, although it does not fundamentally change basic structure of the current GSP. The GSP+ could be difficult to manage unless significant resources are devoted to monitoring the implementation.*

**c. The FTA Exclusion Clause**

The draft regulation proposes to exclude bilateral FTA partners from the GSP. However, should the GSP tariff rate be lower for certain products than the bilateral FTA governing trade between the EU and its partner, the Commission proposes to renegotiate the FTA to bind the lower GSP rate in the FTA.

*The FTA exclusion clause would simplify trade relations by applying one set of rules in bilateral trade and should be included as an EU commitment in current and future FTA negotiations. Regarding the renegotiation of pre-existing FTAs, UNICE questions what incentive EU FTA partners would have to renegotiate when they automatically benefit from the GSP tariff rate.<sup>3</sup> Unless it receives new commitments from its FTA partners, the EU should not bind GSP rates into its existing FTAs.*

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<sup>3</sup> Article 5 of the WTO Enabling Clause prevents the EU from requesting reciprocal commitments. “The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries (...)” DIFFERENTIAL AND MORE FAVOURABLE TREATMENT, RECIPROCITY AND FULLER PARTICIPATION OF DEVELOPING COUNTRIES, Decision of 28 November 1979 (L/4903).

#### **d. Improving the rules of origin (ROO)**

The draft regulation proposes to “relax” the ROO by facilitating regional cumulation and by harmonizing preferential ROO.

*UNICE is concerned that the proposals to simplify and harmonize the GSP ROO are too vague. The current GSP ROO are complex and difficult to follow. The required documentation to demonstrate that a change of HS tariff heading, the value or ad valorem criteria have been met or that the product has undergone a specific process change is too complicated. With respect to the Commission Green Paper on Preferential ROO, UNICE is concerned about the proposed treatment for importers and would like to see substantial improvements.<sup>4</sup> **UNICE calls for improved simplification and harmonization of the ROO for all trade agreements and for all products.***

*With respect to regional cumulation, UNICE recognises the importance of ROO in the promotion of regional (south-south) trade. Cumulation rules should be flexible enough to avoid creating unnecessary obstacles to countries benefiting from GSP – notably for LDCs. Moreover, some reflection should be given to developing cumulation rules to promote foreign direct investment in the LDCs and other weak and vulnerable countries. However, the Commission should clarify how regional cumulation will apply to countries that have been graduated from GSP.*

#### **e. A new GSP Users Manual**

*Although not included in the draft Regulation, UNICE would like to emphasise the importance of publishing a comprehensive and easy to understand GSP Users’ Manual and Manual for GSP Rules of Origin as soon as the Regulation comes into force (or before if possible) to ensure that companies can make practical use of the GSP. These manuals should be regularly updated to keep companies informed of new developments.*

## **2) Functioning of the GSP**

### **a. The Product Scope/Coverage**

Approximately 7000 products (or tariff lines) out of approximately 11000 are covered by the current EU GSP. Of those products, 3250 are classified as “non-sensitive” and benefit from a zero-duty rate, while 3750 are classified as “sensitive” and benefit from a 3.5% flat rate reduction<sup>5</sup>. In addition, the EBA offers duty-free treatment for all products except arms (but with a phase-in for bananas, sugar and rice) while the labour rights incentive provides an additional 5% reduction for “sensitive” products, the environment incentive provides an additional 5% reduction for tropical forest products and anti-drug trafficking incentive provides duty-free access to “sensitive” products and certain agricultural products not covered by the general scheme.

The draft regulation proposes to expand the product coverage for the 2006-2015 GSP scheme to 300 additional products (mainly fish and agricultural products) and to offer duty-free access for all GSP products to countries that qualify for GSP+.

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<sup>4</sup> See the 27 February 2004 UNICE Preliminary Reaction to the Green Paper on the Future of Rules of Origin in Preferential Trading Arrangements. <http://wto.unice.org>.

<sup>5</sup> There are also special cases such as a 20% percentage reduction for textiles & clothing or a 30% reduction for items subject to a specific duty as opposed to ad valorem duty.

*The expansion of GSP product coverage will diversify the export possibilities for GSP beneficiaries. However, if the GSP+ is accepted as proposed, it will be very similar to the EBA and thus could undermine the advantage given to the LDCs. UNICE also notes that EBA beneficiaries would not have an incentive to sign up for the GSP+ (and ratify the conventions) as they already benefit from duty-free access to the EU market.*

## **b. Graduation from GSP**

The Commission proposes a simplified graduation scheme for the GSP that would graduate “groups of products” (tariff sections) exported from a country that has a certain share of the EU preferential import market and would be reviewed every three years. For countries that lose their LDC status, the Commission proposes a gradual phase-out of EBA benefits.

*Industry supports a non-political and stable graduation mechanism for GSP. The simplified three year graduation mechanism based on EU market share is therefore a welcome development. In addition, the proposal to exclude the most competitive exporters from the GSP makes common sense once it is amply demonstrated that they do not need the GSP to access the EU market.*

*However, UNICE has some concerns regarding the use of tariff sections (groups of products) in the calculation of the graduation threshold. For many industries, tariff sections cover too broad a selection of goods. It would therefore be preferable to adapt the mechanism more closely to industry needs by selecting a smaller grouping of products.*

*While broadly supportive of a simplified graduation mechanism, UNICE supports the added flexibility for weak and vulnerable countries included in the draft regulation.*

*Regarding graduation from EBA for countries that lose LDC status, a clearly defined gradual phase-out period makes sense but should be notified to the WTO. The phase-out period should include a specific calendar for the phasing out of EBA to provide more predictability for exporters and importers.*

## **c. Reinforced Safeguard Mechanism**

*UNICE supports the strengthening of the GSP safeguard and anti-fraud mechanisms.*

## **3. GSP and Sustainable Development**

The draft regulation proposes to create a GSP+ in support of sustainable development objectives. The main thrust of the proposal is to combine the current labour, environmental and drug GSP schemes into a single GSP+, which would offer duty-free treatment for most products. To benefit from the GSP+, developing countries would have to ratify and implement a list of international conventions relating to sustainable development. The list of 27 conventions includes 16 human rights and labour rights conventions that must be ratified and 10 environmental and anti-drug trafficking treaties from which countries can choose to ratify 7 to qualify for GSP+. However, the beneficiary countries will be expected to ratify all 27 treaties by December 2008 to continue to benefit from the GSP+ thereafter. The GSP+ could be suspended for failure to implement the conventions on the basis of a Commission investigation.

The draft regulation also imposes limitations on the countries that can benefit from the GSP+. Only small trading countries (less than 1% of total EU GSP imports) and poorly diversified countries (its five largest sections of GSP exports to the Community must represent more than 75% of its total GSP exports) can qualify for the GSP+.



## **What is the value of the proposed GSP+ for sustainable development?**

*While UNICE strongly supports sustainable development, the proposed GSP+ raises a number of concerns.*

- a. The GSP+ could discriminate between trading partners based on a set of EU selected conventions. As it is currently proposed, UNICE questions whether the GSP+ would contribute to the development, financial or trade needs of its beneficiaries or whether the GSP+ could be considered an adequate and proportionate response to support those needs as is required by the Enabling clause.*
- b. The GSP+ could be seen as a form of trade sanction against countries that do not respect certain international (labour & environmental) standards because non-ratifying or “violating countries” would be subject to a higher tariff. This approach could generate resentment towards the EU, if it is perceived to be using access to the EU market as an instrument to compel developing countries to ratify certain international treaties.*
- c. The GSP+ would offer no reward to LDCs for ratifying the international treaties because they already benefit from duty-free treatment under EBA.*

*The participation in negotiations and the ratification of international treaties remains the sovereign responsibility of nations. At the same time, the international trading system should be rules-based rather than power-based. Consequently, UNICE does not support using trade preferences as a tool of “soft power” to pressure countries into ratifying international conventions. Should the EU wish to help developing countries ratify international conventions in the economic, social, developmental, environmental or other fields, it would be preferable to use instruments that do not introduce trade distortions such as financial or technical support for implementation or adaptation.*

## **Conclusion**

UNICE has long stressed the importance of trade to improve the economic development of developing countries. Consequently, UNICE remains a strong supporter of the multilateral, rules-based, trading system. Although the GSP is an exception to the most-favoured nation principle, UNICE recognises that the 10 October 2004 draft regulation is a step in the right direction because it will simplify the GSP and focus tariff preferences on the poorest and most vulnerable countries. It therefore calls on the EU to further pursue this approach by:

- 1) Making the GSP as simple to use as possible (list of products, ROO, administration, etc.).*
- 2) Making the GSP accessible to the weak and vulnerable countries that need it most through an objective graduation mechanism.*
- 3) Not using trade preferences (GSP+) to pressure countries into ratifying international treaties.*

UNICE will continue to examine this issue as and when it evolves and looks forward to participating in future dialogues with the EU institutions and other partners on the future of the GSP.

## ANNEX: COMPARISON OF CURRENT GSP WITH PROPOSED 2006-2015 GSP

Current GSP			<i>Proposed 2006-2015 GSP</i>		
	Goods covered	Preference		<i>Goods covered</i>	<i>Preference</i>
<b>1. General GSP</b>	Non-sensitive products: 3250/10000 lines  Sensitive products: 3750/10000 lines	Duty-free  -3.5% flat rate cut - 20% percentage cut for textiles & clothing -30% for specific duties	<b>1. General GSP</b>	<i>Expanded non-sensitive products: &gt;3250 lines Expanded sensitive products: &gt;3750 lines  300 new products added to GSP.</i>	<i>Duty-free  -3.5% flat rate cut - 20% percentage cut for textiles &amp; clothing -30% for specific duties</i>
<b>2. EBA</b>  <b>EBA delays</b>	All products but arms: 8200 lines for least developed countries  Bananas (Jan. 2006) Sugar (July 2009) Rice (Sept. 2009)	Duty-free  Phase-in to duty-free treatment	<b>2. EBA</b>  <b>EBA delays</b>	<i>All products but arms: 8200 lines for least developed countries  Sugar (July 2009) Rice (Sept. 2009)</i>	<i>Duty-free  Phase-in to duty-free treatment</i>
<b>3. Drugs regime</b>	All sensitive industrial products except arms + some agricultural products not covered by the General GSP: >3750 lines	Duty-free	<b>3. GSP+</b>	<i>All sensitive industrial products except arms + some agricultural products not covered by the General GSP: &gt;3750 lines for small, poorly diversified traders</i>	<i>Duty-free</i>
<b>4. Labour regime</b>	Sensitive products	Additional -5% for a total of -8.5% Additional 20% percentage cut for textiles and clothing and additional 30% for specific duties			
<b>5. Environment regime</b>	Sensitive tropical forest products	Additional -5% for a total of -8.5% and additional 30% for specific duties			