

EUROPEAN COMMISSION

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**Summaries of contributions to the Public Consultation on:**  
***‘The revision and updating of the European Union’s scheme of  
Generalised System of Preferences (the GSP scheme)’***

This document does not present the official position of the European Commission. It is designed to summarise the views of interested parties who gave comments on the GSP scheme. The suggestions in this document in no way prejudge either the form or the content of any future proposal by the European Commission.

## INTRODUCTION

The current EU Generalised System of Preferences operates on the basis of [Council Regulation \(EC\) No 732/2008 of 22 July 2008](#), which expires on 31 December 2011. In the absence of new legislative action to keep GSP beyond that point, imports from developing countries under the scheme would revert to standard Most Favoured Nation (MFN) treatment, except for those from Least Developed Countries (LDCs) which would still be covered by the open-ended Everything But Arms (EBA) regime. The purpose of this consultation was to seek comments from interested parties that could provide inputs for the Commission's work on preparing a proposal to the Council and Parliament for a Regulation to succeed the one currently in force. The Commission proposal should take into account all relevant considerations on the effectiveness of the current GSP in achieving its objectives and should incorporate amendments that would ensure its continued effectiveness in future.

### The objectives of the current GSP

The GSP scheme is an important element in the EU's active support for the sustainable development of developing countries. Preferential access to the EU market under the scheme supports developing countries in their own efforts to reduce poverty and to promote good governance and sustainable development. It helps them to generate additional revenue through international trade, which can then be re-invested in their own development.

Both the current GSP Regulation and its immediate predecessor for 2006-2008 (Council Regulation (EC) No 980/2005 of 27 June 2005) were envisaged as building blocks for a 10-year vision for the GSP over the years 2006-15. This was based on a Commission Communication adopted on 7 June 2004<sup>1</sup>, after an extensive debate at that time. The Communication set out the main objectives and the new implementing instruments for the GSP schemes which were intended to apply over the years 2006-2015, with a view to providing more continuity and stability, thereby making GSP more attractive to beneficiary countries.

### The revision of the scheme

The preparation of a successor GSP Regulation provides an opportunity:

- to take stock of the achievements of the current scheme and to fine-tune it as appropriate. In the light of the new legislative framework provided by the Lisbon Treaty, it is also necessary to consider how to ensure that the next GSP Regulation is designed in a way that will enable responsiveness to changing circumstances in the EU and global markets, while ensuring stability and predictability for beneficiary countries and economic actors, both traders and investors, thus avoiding the need for multiple changes to the legislation.

- to ensure that what is offered under the special incentive arrangement to encourage sustainable development and good governance (GSP+) is linked to the most relevant international conventions and that provisions for monitoring ongoing implementation are refined.

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<sup>1</sup> ('Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, on the function of the Community's generalised system of preferences for the ten year period from 2006-2015' — COM(2004) 461 final))

- to review and update the scheme's objectives in the light of new challenges and the changing requirements of the economic environment and development needs

- to consider whether implementing measures remain appropriate and relevant for achieving these objectives effectively. The implementing measures were set out in the 2004 Communication and cover:

- simple and easy access to preferences
- continuity of generous tariff rates to enable access to the EU market
- preferences for the countries that most need them
- a transparent graduation mechanism targeting the prime beneficiaries
- a special incentive arrangement to encourage sustainable development and good governance
- reinforced temporary withdrawal instruments, safeguard measures and antifraud measures.

This consultation exercise did not cover issues related to the rules of origin applied under GSP, as these are set out in a separate legal instrument. There was a public consultation on these in 2006, and the rules are currently being reformed.

## THE PUBLIC CONSULTATION

The public consultation ran from 27 March 2010 to 4 June 2010. An on-line questionnaire, hosted by the European Union's Europa web site, was open to all stakeholders interested. In all, 143 exploitable answers were received from representatives of beneficiary and non-beneficiary countries, business associations, trade unions, research centres, non-governmental organisations (NGOs), private companies and individuals.

The full list of respondents and answers can be found at:  
<http://trade.ec.europa.eu/doclib/html/146463.htm>.

To coincide with the consultation, specific outreach activities were organised to inform the public and to receive their observations. Several meetings took place in Brussels and Geneva, with the participation of Member States representatives, beneficiary countries and civil society. There was also a meeting to exchange information with the European Parliament Committee on International Trade.

Date	WHAT
16 March	Trade Commissioner launches public consultation period at the Conference on EU Trade Policy towards Developing Countries
27 March	Start of online consultation
26 April	Member Country GSP Working Group Informal meeting on ' Exchange of views on the future new comprehensive Regulation on GSP'
5 May	Information session on the EU GSP review consultation, Geneva WTO (room D tbc) 13:00-15:00
18 May	Information session on EU GSP review consultation with beneficiary countries, Brussels Borschette Salle: AB / 1.A 15.00 – 16.30
26 May	Civil Society ad hoc Meeting on the Next Generalised System of Preferences (GSP) Scheme, Brussels Borschette, Room AB-3B, 10:30 – 12:30
2 June	Exchange of Information Meeting with European Parliament Committee on International Trade, Brussels, European Parliament Room ASP 5G1, 15.00 – 16.00
4 June	End of public consultation

Moreover, EU Delegations abroad were asked to disseminate information on the GSP review process in their respective countries, and some of them (in Paraguay, Madagascar, Costa Rica, Singapore, Yemen, India, Argentina, Vietnam, Philippines, Jordan) also carried out activities to raise awareness about the review.

In **Yemen**, the initiative was welcomed, as some stakeholders said the current system had hindered rather than helped developing countries, particularly LDCs, in their efforts to boost international trade. There was broad consensus among participants at a meeting organised by the EU Delegation on the need to have more flexible rules of origin and to allow LDCs a reasonable margin of accumulation, with a system similar to that applied by Canada. Other participants said the new system should offer a more efficient procedure for importers. Some said there was a need to harmonise the new GSP with other rules that are deemed to be discriminatory, such as Sanitary and Phytosanitary (SPS) requirements. Finally, the EU was

asked to make sure that these preferential agreements were well publicised and well understood by producers and exporters in developing countries.

In **Vietnam**, the EU Delegation received a request to switch some categories of products from the sensitive to the non-sensitive list.

In **India**, some stakeholders contacted asked for more information and one of them plans to carry out a more detailed study.

From the **Philippines**, there was a proposal for a three-step approach for applying the GSP+ regime: 1. Initial benefit upon signature of relevant conventions; 2. Additional benefit once implementation starts; 3. Full benefit once implementation reaches a certain threshold.

## THE QUESTIONNAIRE

### Who took part in the consultation?

The Commission received **143** exploitable answers from a variety of stakeholders:

<i>Citizens</i>	<b>9</b>
<i>Business Associations</i>	<b>51</b>
<i>Companies</i>	<b>34</b>
<i>No profit organisations</i>	<b>24</b>
<i>Others</i>	<b>25</b>

Almost half the respondents were from within the EU (71), and half from outside the EU (72).

**32** in Belgium/Brussels

**11** Argentina

**10** in Malaysia and Germany

**9** in United Kingdom

**8** in Bolivia

**5** in Spain

**4** each in Myanmar, India, and Paraguay

**3** each in Uruguay, Ecuador, Finland, Qatar, Philippines, Sweden, France and Italy

**2** each in Austria, Cambodia, Brazil and Colombia

**1** each in Thailand, Vietnam, Portugal, Syria, Panamá, Lithuania, Bangladesh, Switzerland, former Yugoslav Republic of Macedonia, Mauritius, Uganda and St Vincent and Grenadines.

**65** respondents *do not make use of the GSP scheme*.

Of the **78** that *do use it*, the breakdown is as follows:

**54** standard regime; **20**: GSP+ regime; **4**: EBA regime

### Technical Problems

Some respondents contacted the Commission to report problems in accessing the questionnaire and with links in the consultation web page. The Commission's technical services report that in the few cases in which such difficulties were recorded, they were related to the browser's version in use.

Some participants also had difficulties in submitting the completed questionnaire and, in some cases, it was not possible to send the contribution on-line. An alternative solution was found in almost all cases.

In future, the Commission should make efforts to guarantee the widest possible access and should give users information regarding the software requirements to gain access to the pages concerned.

## **SUMMARY of ANSWERS**

NB the present report summarizes the inputs received; however, the full text of all answers is available at <http://trade.ec.europa.eu/doclib/html/146463.htm>

NBB The public consultation is a qualitative, rather than a quantitative exercise. References to the approximate proportion of answers in favour of a particular option are merely intended to present the answers received as clearly and accurately as possible.

### **Objectives of GSP:**

#### **Q1: Do you consider that the GSP is a valid trade instrument for development and should be continued?**

Almost all respondents agreed that GSP was still a valid trade instrument for developing countries. Respondents from several different beneficiary countries confirmed that the GSP scheme had played a role in the expansion and diversification of their trade sector.

Among the comments received were the following:

- Some respondents said the system should focus only on countries that really need it, and should not benefit advanced economies.
- For others (mainly trade union associations), the focus should be on working conditions and workers' rights.
- Some respondents said the rules of origin and their implementation should be less complicated and more transparent.
- Finally, some business associations said that multilateral elimination of all tariffs — maintaining the EBA regime for LDCs — would be more effective in achieving the objectives of development and sustainable economic growth.

A German company explicitly disagreed, arguing that GSP could not be an instrument to create a level playing field given that the same conditions are not mirrored in all countries. Other critics remarked that GSP had not created the amount of trade needed to foster economic growth in poor developing countries, particularly for Africa.

#### **Q2: Do you consider that the stated current objectives of the EU GSP to contribute to the reduction of poverty in developing countries by generating revenue through international trade and giving support to sustainable development and good governance — as set out in the Commission Communication of 2004 and reflected in the current GSP Regulation 732/2008 — remain valid? If not, how should they be modified?**

Once more, almost all respondents considered that the objectives of GSP were still valid. Some added: *valid but not sufficient*, calling for a stronger reference to factors such as modernisation of developing countries, domestic liberalisation, respect for intellectual property rights, environmental protection, core labour standards and the decent work agenda.

One respondent remarked: *The objectives are valid, but not met.*

The response posted from Brazilian Ministry of External Relations said that there was no international basis for applying the criteria of sustainable development and good governance in the selection of beneficiary countries.

From Spain, a fisheries association suggested adding an objective on support for investment. Others asked for the coverage of preferences to be extended.

One respondent said that for some sectors, only a few (competitive) countries benefit from the GSP scheme. Several respondents called for focus on the poorest countries.

On the positive side, some participants said that GSP allowed beneficiaries to have access to European markets for added-value products, not just raw materials ; and that the system encouraged the development of industrial sectors that would not otherwise be competitive.

**Q3: Apart from the objective to contribute to the reduction of poverty by generating revenue through international trade and giving support to sustainable development and enhanced good governance, are there any other specific development, financial and trade needs relevant for developing countries to which the GSP scheme could respond positively? How could these needs be addressed?**

Several additional needs were suggested. They included:

- Fight against corruption;
- Regional integration;
- Elimination of tariff and non-tariff barriers;
- Support for value-added exports;
- Economic diversification;
- Foreign investments;
- Fight against drug trafficking;
- Companies' competitiveness;
- Animal welfare.

The business community highlighted the importance of complementary programmes offering Aid for Trade.

Trade unions said they wanted to take part in assessing the performance of countries seeking preferential treatment.

The Brazilian Ministry of External Relations warned that the EU should avoid defining development priorities for developing countries, or use the priorities that countries themselves set unilaterally as conditions for granting preferences. Moreover: *Trade preferences should not be used as a tool for developed countries to achieve their foreign policy goals regarding beneficiary countries.*

One NGO said the GSP system had to remain unilateral, not demanding reciprocity, and that imposing market opening, access to raw materials, stringent intellectual property standards, as well as standards for investment and government procurement on developing countries could negate any positive effects that GSP might have for the development of less advanced countries.

One trade association recommended not overloading the system, which should remain simple, stable and predictable to work properly.

#### **Q4: Should the objectives of the GSP be adjusted in the light of the newly-adopted Lisbon Treaty?**

Answers to this question were split down the middle.

About half of the respondents, representing different types of stakeholders, said there was no need to change the objectives, and that continuity was the most important factor.

The other half said that modifications were needed, and referred to:

- stronger control and verification on requirements to ensure that preferences go to the neediest countries;
- standards for food quality and security;
- competitiveness of EU industries;
- support for investment in developing countries;
- focus on abolishing restrictions on international trade and lowering of custom duties and other barriers.

One respondent said that applications for GSP+ should now be debated and decided with the European Parliament; and another hoped that the system would not become more complicated as a result of the Lisbon Treaty.

#### **Q5: Do you consider that GSP could contribute to address the challenges of the 21st century such as climate change and food security? Do you see ways to take account of these challenges in the next GSP regulation?**

Opinions were divided on this question.

Those agreeing stressed that climate change and food security should be addressed by the GSP, and that the new Regulation should include criteria related to these areas. At the same time, they said there should be more emphasis on trade liberalisation and facilitation, the abolition of export taxes, access to raw materials, protection of intellectual property rights and safeguards for foreign investment.

Some respondents suggested finding a system to promote 'eco-friendly' products.

One respondent said that climate change and food security issues should be considered, but they were not sure if they could be efficiently addressed. Others said the role of GSP should not be overestimated.

Those who were not in favour of addressing these issues, often coming from beneficiary countries, warned that the system might become too complicated.

The Thailand Department of Foreign Trade said the most appropriate forum for deciding these on-going controversial issues had not yet been decided, and the Brazilian FA Ministry said that measures to face the challenges of climate change should not constitute *a means of discrimination or a disguised restriction on international trade*.

## Simple and easy access to the GSP

**Q6: Does the parallel co-existence of different preferential regimes (for example GSP and a bilateral trade agreement) for imports into the EU from the same developing country support or hinder effective use of the preferences by that country? To what extent does the co-existence of parallel import regimes create other incoherences that need to be addressed?**

Some respondents (mainly from beneficiary countries and NGOs) said the coexistence of differential regimes was not a problem. Some added that coordination was needed regarding rules of origin, and others that, in cases of coexistence, the regime most favourable to beneficiary countries should prevail.

Others (mostly from the European business community) said that coexistence generated confusion and should be avoided or limited. One said GSP should be withdrawn from countries that had other agreements with the EU.

One UK-based organisation said that alternative trade agreements should not be used by the EU or member states to *prise open* the markets of developing countries.

**Q7: Should the current architecture of GSP — with three regimes, GSP, GSP+ and EBA — be changed? If so, how? Does the existence of three sub-arrangements under the scheme affect the effectiveness or transparency of the EU's GSP scheme?**

Most respondents said the current architecture should not be changed.

Some called for a single regime, or simplification, at any rate.

Others warned that changes could cause disruption of the system and unpredictability.

Almost all agreed that the EBA regime should be kept in place.

**Q8: How far in advance of its entry into force should a GSP Regulation be published in order to provide economic operators and other interested parties with enough time to become aware of it and adjust to any changes?**

All respondents agreed that it was crucial to give plenty of notice for the *workability* of the system. Ideas about how long this should be varied widely, depending on the role of the respondent (beneficiary country/exporter/importer/observer), and ranged from two weeks to five years, but a significant number favoured a minimum of one year.

The indications expressed in detail:

<i>2 weeks</i>	<i>1</i>
<i>2-3 months</i>	<i>1</i>
<i>3 months</i>	<i>4</i>
<i>4 months</i>	<i>1</i>
<i>3-6 months</i>	<i>5</i>

<i>6 months</i>	<i>16</i>
<i>8-9 months</i>	<i>3</i>
<i>Several months</i>	<i>3</i>
<i>1 year</i>	<i>30</i>
<i>18 months</i>	<i>2</i>
<i>2 years</i>	<i>5</i>
<i>30 months</i>	<i>1</i>
<i>3 years</i>	<i>9</i>
<i>5 years</i>	<i>1</i>

Several respondents said there should also be plenty of notice ahead of changes such as graduation or withdrawal, and that major changes should be announced with even more notice.

The Thailand Trade Department and others proposed early warning mechanisms and dissemination of information ahead of any changes, and a respondent from Syrian customs asked for workshops to be organised ahead of major modifications to the system.

**Q9: Are there any aspects of the current GSP Regulation which you consider to be particularly significant as either (a) incentives or (b) obstacles to access to the GSP by beneficiary countries?**

Regarding incentives, some respondents acknowledged improvements implemented over the past decade: no more annual graduation, GSP specific product classification replaced with Harmonized System chapters, a simpler incentive regime (GSP+) instead of the former social, environmental etc. incentive clauses, and publication of the GSP more than six months prior to its entry into force.

Among obstacles pointed out were the following:

- *the tariff reduction is often very small and not sufficiently attractive;*
- *the list of sensitive/non sensitive products does not always serve the cause of development;*
- *absence of a consistent definition of GSP product scope (e.g. for ferro-alloy sector);*
- *unclear articles in the legal texts.*

For several respondents, complicated or contradictory rules of origins are a major obstacle.

Other possible measures suggested by some respondents included:

- *simplifying the system;*
- *more publicity about the aim of the regulation;*
- *timely communication on changes;*
- *removal of preference restrictions in case of mixed tariffs (ad valorem or specific);*
- *electronic certificates;*
- *tariff reduction favouring the export of processed goods rather than raw materials.*

## **Maintaining generous and appropriate preferential tariff rates under the standard GSP**

**Q10: Under the current standard GSP regime, ‘non-sensitive’ products are given duty-free treatment. ‘Sensitive’ products are subject to a fixed-rate reduction from MFN rates (in general 3.5 percentage points on ad valorem duties but for products from Sections XI textiles — by 20 % and for specific duties -by 30 %) but still remain subject to duties and certain other products are excluded from the regime altogether, so remain subject to MFN duties. Should the new Regulation adjust the balance between these three categories? Should the treatment of ‘sensitive’ products be adjusted?**

Several respondents, mostly from the European business community, thought the current regime should be maintained, but about the same number proposed changes.

An Austrian business association said keeping the category of ‘sensitive’ goods with reduced residual duties was essential for EU industry.

Another respondent said that the EU's GSP does not give clear justification for including some tariff lines, but not others, adding that there was no definition, or indeed mention, of the criteria for ‘sensitivity’ in the text.

Several respondents said that objective, transparent, scientifically-based parameters should be defined in advance to designate a product as ‘sensitive’, so as to improve predictability and transparency in trade preferences, and to reduce the subjectivity of the revised scheme.

Others said the current list was out of date. The Colombian Trade Ministry identified a list of tariff items recommended for exclusion from the category of sensitive products for standard GSP. Moreover, some respondents said the ‘sensitive’ list should be limited to certain sectors *that will provide the building blocks for future competitiveness and not be based on historic business models*.

An association of agriculture traders suggested that *the distinction between ‘sensitive’ and ‘non sensitive’ products should be coordinated with the WTO established category*.

There were some specific requests on: tuna, flowers, fertilisers, textiles, wood, sugar, steel, chemicals, fruit, and agricultural products in general.

A fruit trade organisation said sensitivity should take into consideration parallel existing import regimes, so as not to create obstacles to accessing the market (when the other regimes provide for minor or zero tariffs).

Several respondents wanted bigger cuts in tariffs and a longer list of non-sensitive products, as GSP should focus on helping developing countries overcome poverty, for which tariff cuts are essential. The interests of European industry would already be sufficiently protected through the graduation mechanism and multilateral trade defence instruments, they said.

A business association operating in the wood sector called for more rigorousness in managing the sensitive products list, to avoid distorting competition with other major actors.

Similar preoccupations were expressed for the textiles and clothing sector with reference to countries with higher rates of GSP utilisation (eg. India, Brazil, Bangladesh, Vietnam,

Pakistan, Sri Lanka). An organisation operating in the leather sector suggested that EU industry interests at sector level needed to be checked before tariff protection was fully removed from a product.

One respondent called for the deletion of all duties of 3% or lower when a customs duties reduction of 3.5% was given. It was, he said, not administratively justifiable to keep what he called '*nuisance duties*'.

A respondent from Sweden thought the notion of sensitive products should simply be dismantled. In his view, good rules of origin and limiting the system to LDCs and countries eligible for GSP would be enough, and would enable the system to shed *all these precaution regulations, all protectionist regulations, and superficial bureaucratic regulations*.

Finally, a policy research centre observed that tariff preferences for non-sensitive products were less generous than for sensitive products, and said that to get comparable benefit, most non-sensitive products should in fact enjoy a negative duty (refund).

### **GSP targeted on countries that most need it**

**Q11: What could be the major characteristics of countries that 'most need GSP preferences' considering that preferences must be 'generalised and non-discriminatory'?**

The criterion most frequently cited was income (defined as BNP, GDP, GNI, etc.).

Among other criteria cited were:

- *Poverty;*
- *Trade deficit;*
- *Poor infrastructure;*
- *Lack of diversification of exports;*
- *Respect for international law and trade regulations;*
- *Natural disasters;*
- *Countries with fewer trade agreements;*
- *Land-locked countries;*
- *Countries combating drugs and terrorism.*

Other respondents referred to the World Bank classification of LDCs and low-income countries. One respondent said that all countries less developed than the EU should be eligible for preferences.

**Q12: Some but not all high-income countries are currently not eligible for GSP. Should this exclusion be extended to all high-income countries? If not, should the current criteria be changed at all?**

Almost two-thirds of respondents were in favour of excluding all high-income countries. Some suggested that bilateral agreements were the most appropriate instrument for EU trade relations with those countries.

The remaining third was in favour of maintaining preferences for high-income countries, so as to support diversification and because they thought that the twin criteria income+diversification worked well in practice.

Some respondents suggested that the graduation mechanism should be reinforced. Others commented that objective, understandable criteria should determine which countries qualify.

**Q13: The current Regulation already establishes the principle that countries that have concluded contractual preferential trade agreements with the EU (eg Free Trade Agreements) should be removed from the GSP (it can be expected that a reciprocal FTA will incorporate and go beyond the autonomous preferences provided under GSP). Should this principle be reinforced and made more operational? If so, how?**

There was broad consensus on the principle of removing countries with a new trade agreement from the GSP. However, some respondents thought that reinforcement of the actual rules was desirable, while others thought the current arrangement was satisfactory.

Some respondents, in most cases from beneficiary countries, thought there were good reasons for keeping two different regimes, as GSP and FTAs can have different product coverage and grant different preferential treatment. Furthermore, GSP interregional cumulation may not be possible within an FTA.

A Belgian NGO said that under no circumstances should developing countries be pressured to sign a FTA just to keep their access to the European market.

A British trade union association recommended including sustainable development and good governance chapters in all FTAs and other trade agreements with the EU.

**Q14: The current Regulation includes a wide range of beneficiaries, including countries that have become major global actors in international trade with very significant and wide-ranging exports to the EU and participation in global markets (eg the emerging economies such as Brazil, China and India). Should GSP continue to be available to such major traders (albeit with their individual benefits under the scheme effectively modulated as a result of the graduation mechanism) or should they be excluded altogether on the grounds that they no longer need preferential access under GSP to support their effective participation in EU markets or their broader development? If the latter, then what general, horizontal indicators should be considered as relevant to determine continued participation in the scheme?**

For some respondents, often from specific economic sectors, emerging countries should be excluded from the GSP scheme, as they are fully competitive, at least in certain sectors. They felt that the system should focus on the countries most in need.

For others, the emerging countries named still had serious problems of inequality and poverty, and keeping them in the system would contribute to internal development, while excluding them could affect entire production sectors, with negative social impacts. An agro-supply trade association stressed that keeping these countries in the list would also ensure competitiveness and adequate supplies of raw materials for European importers.

Other respondents said the graduation mechanism guaranteed the withdrawal of preferences for sectors in which a country was strongly competitive.

Some answers suggested that for emerging countries, strengthening the rules for meeting the criteria to be eligible for GSP and implementing relevant conventions was the way ahead.

One respondent said that reassessing the list of beneficiary countries should take into account: *the actual industrial weight of beneficiary countries in the various sectors, in terms of both their respective share of global production and global trade but also their positioning in relation to EU production and trade; the policies operated by beneficiary countries domestically and on export, which are having a systemic and distorting impact on global competition; the competitive pressure that recourse to the GSP by beneficiary countries imposes on EU markets.*

Another said the countries best able to use trade preferences for development were the emerging countries, so they were the ones probably most relevant for GSP as they still had to contend with high levels of poverty. He added: *It is only on the protectionist criteria of countries which provoke domestic industry in the EU that they would be excluded. They should be included as long as their incomes per capita make them eligible.*

**Q15: Is it appropriate to maintain access to GSP for transition economies that share many of the same characteristics as developing countries but generally do not self-declare themselves as such? If yes, should any such transition economies nonetheless be excluded from GSP and what criteria should be used to determine this?**

Answers were more nuanced than to the previous questions.

Several respondents questioned the definition of ‘transition economies’ and suggested that general development criteria should be used.

One respondent said transition economies had a variety of very different characteristics and that generalisations did not work.

Others said that in some countries which declared themselves as developing, this did not always reflect the reality.

Opinion was divided as to whether or not transition countries should be excluded from GSP.

### **Graduation mechanism**

**It can be expected that ‘graduation’ (ie the modulation of benefits available under GSP and GSP+ in light of a beneficiary country’s relative performance on the EU market for certain groups of products) will remain an important feature of the EU GSP and a key instrument in ensuring that benefits under the scheme are targeted on those countries most in need of them in order to expand their exports to the EU and thereby support their own development.**

**Q16: Should graduation be linked to any other economic indicators instead of or as well as the current indicator (relative share in GSP-covered imports)?**

Most respondents favoured keeping the current indicators.

Other suggestions for indicators were:

- *export concentration;*
- *manufactured exports / capital;*
- *raw material export dependency;*
- *conditions of the least advantaged population within the country;*
- *coverage of domestic demand, non-dependence on imports;*
- *export ratio of local production;*
- *availability of new technologies to secure and improve competitiveness;*
- *availability of sound local suppliers;*
- *export concentrations in the beneficiary country of the section that under the current regime would be excluded from GSP.*

One respondent from South America said there should be no graduation at all for developing countries.

A respondent from a business association said competitiveness with EU industry should be the criterion for graduation, complemented with import volumes.

Some respondents said the relative share in GSP-covered imports was not the optimal indicator for graduating a country for particular products, and proposed the relative share of global exports of the products instead.

One respondent was strongly in favour of including indicators relating to democracy, governance and human rights.

**Q17: Should graduation continue to be calculated on the basis of product sections, which typically cover a large group of products and thereby makes qualification for graduation less likely to be achieved, or should it rather be based on a more detailed product grouping, and if so at what level?**

Opinion was split on this. One side said the graduation mechanism should be based on product sections, possibly covering a larger quantity of products, to take account of sector-specific situations and to ensure graduation was predictable and fair by eliminating the effect of large and exceptional variations in the import statistics.

The other side, including several German companies, called for a system based on individual products to avoid exclusion of tariff lines which are essential for the development, financial and trade needs of developing countries and which represent less than 15 % of total exports to the EU of one beneficiary country. Single products could thus be excluded if they are part of a section which, as a whole, exceeds such a threshold.

There were also respondents proposing mixed systems or, in one case, a calculation based on sections but with exclusion limited to specific products.

One business association said: *Product sections as used in the current system have the advantage to simplify the assessment and to create a ‘mass’ effect. However, the ‘mass’ effect can be detrimental in cases where it prevents graduation for products where GSP beneficiaries are highly competitive.*

Finally, some respondents suggested that graduation should be calculated on the basis of customs Harmonized System chapters instead of product sections.

**Q18: Should the present thresholds for triggering graduation (15% or 12.5% for textiles and clothing) or statistical reference periods (most recent 3-year period before the entry into force of the Regulation) be adjusted? If so, how?**

Most respondents said the system should not be changed. Others said the current threshold was either too low or too high.

For one respondent, the present thresholds, connected with the share in GSP-covered imports, were very low and should be raised. This would reduce *the likelihood of graduation coming too early for developing countries that have focused their industrial development resources on certain sectors.*

A business association based in Belgium warned that just 1% volume of the EU market sold at low or dumped rates could transform a market, as was recognised in the previous GSP scheme with tariff-free quota arrangements.

An organisation of clothing retailers said that all sectors should be treated equally and thresholds for all, including textiles and clothing, should be set at 15 percent rather than the current 12.5 percent.

Regarding the reference period, some respondents suggested considering a longer period, up to five years. Others said it should be reduced to one year.

Several respondents (among them, companies and organisations based in Argentina) said it was not necessary to introduce any amendments in the statistical periods.

Some respondents said the current thresholds for triggering graduation should be adjusted based on development criteria. In their view, a single threshold value would not be always compatible with the objectives of the GSP, i.e. to contribute to the reduction of poverty and the promotion of sustainable development and good governance.

One business association called for a socio-economic impact assessment before suspension of trade preferences for specific economic sectors.

Other organisations said the ‘type’ of country should also be taken into account and better conditions should match the lower level of development.

On similar lines, some suggested that a possible way to deal with the economic dominance of certain countries among GSP beneficiaries could be to set different thresholds for graduation depending on the global market position of a country in a specific sector or depending on its

overall degree of development (e.g. the threshold level should be lower for emerging economies -if these are kept in the system- than for developing economies).

**Q19: How frequently should graduation be calculated? Should de-graduation (ie the re-establishment of benefits if a beneficiary's relative share drops below the reference threshold) continue to be possible? If yes, then should there be any adjustment in how that operates?**

Most respondents were in favour of a three-year period, or making recalculation coincide with the entry into force of a new regulation.

In the case of a regulation with a long duration, some suggested a mid-term calculation.

Other respondents said the current system should not be changed. About a dozen respondents proposed a one-year term, and a few others a shorter term (six months) or a longer term (between five and 15 years).

There were more respondents in favour of permitting de-graduation than of removing it.

### **Sustainable Development and Good Governance**

**Q20: Under the current Regulation, benefits can be suspended in the event of 'the serious and systematic violation of principles' laid down in 8 ILO core labour rights conventions and 8 UN core human rights conventions. Should any consideration be given to building on this as regards areas beyond labour and human rights such as protection of the environment and promotion of good governance? Should this provision be strengthened eg by introducing appropriate benchmarks in these areas that beneficiary countries of the standard GSP and/or EBA should also be expected to satisfy before GSP/EBA preferences are granted? What form might this take and what would be the added value in terms of promoting support for the implementation of sustainable development standards?**

Opinions expressed were very varied.

The Brazilian FA Ministry said these standards represented EU external policy objectives, and should not be attained by making developing countries abide by them if they wanted to benefit from GSP.

For other respondents, preferences granted by GSP and/or EBA should not be suspended to ensure protection of the environment and good governance, as benchmarks in those domains had not yet been fully agreed among all countries.

One development NGO said that GSP and EBA should be provided on the basis of the graduation criteria. In their view, only in the case of the GSP+ incentive system was it appropriate to have such conditions, and in any case, the current conditions were sufficient. However, monitoring of implementation should be enforced and violations should lead to sanctions.

One German company said there were significant concerns about using trade policies to achieve the goals named. They believed that to reach environmental and labour goals, the relevant laws should be used: *Any mix of different policies in one instrument could lead to an unpredictable and untransparent situation.*

Several trade unions were concerned that the GSP system was not driving improvements in most of the beneficiary countries. They suggested that a system of simple benchmarks for GSP/EBA beneficiaries should be introduced to generate improvements in a transparent, consistent and credible manner.

One business association said the current provisions were still valid, but should be complemented *by a full implementation of international conventions on Governance (e.g. UN Anticorruption Convention), on Proliferation, on Intellectual Property (e.g. the WTO TRIPS) but also on the EU rules on Bribery, Money-laundering.*

Another business association, based in Spain, said it was absolutely essential that beneficiary countries abide by the social and environmental conditions required for EU products and production processes.

Another company said emerging economies were often able to penetrate the EU market as a result *of so-called social and/or environmental dumping.*

One wood sector company said that for wood products, a legal and sustainable origin of the raw material (wood) was essential. .

Another respondent suggested that instead of sanctions for those not respecting the norms, additional incentives should be offered to GSP countries that invest in environmentally-friendly technologies and products.

On similar lines, one respondent suggested that: *promoting the implementation of sustainable development standards should not be done with the stick of reduction of market access, but with the carrot of increased trade in sustainable commodities. In general, we should not seek to impose yet more conditions if these reduce market access for the least advantaged: the danger is that conditions are imposed more for the benefit of European business interests than the producers in DCs.*

A respondent from Myanmar said that where there are serious violations of EU and ILO rules and regulations, GSP had to be withdrawn, but added that this *should be considered selectively and not collectively, because the areas that occur might be different. The people involved might be different. In Myanmar, there is no state or government involvement in the garment and apparel sector, it is all private, where an estimated 90% of the workforce are women, with elementary or middle schooling education background, supporting a family of about five, as a part of the culture.* In their opinion, lifting the GSP sanction for Myanmar would not send the wrong signal, but would show that the EU was serious in its efforts to encourage reducing poverty and fostering sustainable development.

Another respondent from Myanmar said that labour rights were always linked to economic rights and development, and wondered how a country could start developing its labour rights if it were not allowed to develop.

## **Special incentive arrangement to encourage sustainable development and good governance (GSP+)**

**Q21: Should the product coverage (in 2009, 6336 tariff lines) and associated tariff treatment (currently very largely but not exclusively duty-free) under GSP+ be reviewed? If so, how?**

Some respondents said all product lines should be covered and others that all products covered by GSP+ should be granted duty-free access to the EU. Some said inclusion should not be based on sensitiveness for EU industry. Other respondents were in favour of expanding coverage as much as possible, given that one of the stated aims of GSP+ is to encourage diversification.

Respondents from Paraguay would appreciate the inclusion of sugar cane, while a respondent from Colombia said GSP+ should extend tariff benefits covering specific tariffs and any other ad valorem tariffs, including quotas.

Other respondents sought restrictions, as for wood products. With reference to this sector, some said the global situation had changed and some GSP imports were threatening EU industries while the exporting countries kept high barriers to their markets.

Others would prefer to keep the current system, as otherwise the delicate balance between EBA, GSP+ and GSP might be affected.

Representatives of fisheries processing and trading sector said the current product coverage for this sector was positive.

Some respondents said it would be beneficial to consolidate the EBA and GSP+ regimes into a single system, at least for agricultural products.

One respondent said there were too many tariff lines and suggesting grouping them, for the sake of simplification.

An Indian research centre said that the use of a trade instrument such as tariff preferences to influence social policy was inappropriate and proposed phasing out this component of the EU GSP scheme.

One trade company association suggested selection based on objective development criteria (e.g. GDP per capita), and no distinction between sensitive and non-sensitive products.

**Q22: Should graduation continue to apply to GSP+ beneficiaries? If yes, should the mechanism apply any differently to them than in the case of beneficiaries of the standard GSP?**

Several respondents said graduation should not apply for GSP+ beneficiaries. Some said the EU should encourage the active participation of GSP+ beneficiary countries, among the most vulnerable, in international trade and this could only be done: *by securing a stable*

*preferential market access for these countries for a given period of time, therefore enabling visibility and predictability of export activities and investments in the medium to long-term.*

In any case, they added, the graduation mechanism for GSP+ beneficiaries should be applied differently than for standard GSP, *because GSP+ beneficiaries are vulnerable countries which really need the tariff preferences granted by this regime.* If graduation were to be applied, transition periods should be established to guarantee the interests of current beneficiary countries, EU importers and European companies; and there should be enough notice given of changes to guarantee predictability.

Another organisation suggested that no graduation should take place during a GSP period of five years. When changing from one period to the next, a graduation exercise could be implemented.

A lower number of respondents said the system should continue to apply as at present.

Some answers suggested that the criteria should be widened and include elements such as raw materials, trade facilitation measures, protection and enforcement of intellectual property rights, foreign direct investment safeguards, which could be considered for graduation purposes even in cases where the thresholds for triggering graduation were not met.

Regarding de-graduation, one respondent suggested that in cases where a country benefiting from GSP+ has a dominant position in the market and is responsible for at least 20% of the imports in a given product, that product should be excluded from GSP or at least be subject to general GSP.

Finally, for one respondent, given that GSP+ countries are, by definition, vulnerable, a longer period should be granted, to ensure they do not slip back development-wise as soon as their status is removed.

**Q23: Should the list of 27 conventions relevant for GSP+ (those which GSP countries must ratify and effectively implement) be adjusted in any way? If so, for what purpose and how (eg additions, updates, deletions)?**

Some respondents said the system should be left as it is: *it is already a heavy burden for the beneficiaries.* Others said trade issues should not be mixed with topics not related to the domain of export and production.

One business association said that if non-trade objectives were integrated into trade policy, then they would have to be applied in an objective, transparent and non-discriminatory manner, on the basis of existing internationally-accepted standards, conventions or arrangements.

Other respondents made reference to conventions or international norms:

- *EU conventions should also be included, such as the GRECO Anticorruption convention;*
- *The UN Anti-corruption convention, to strengthen the contribution of the GSP+ to good governance;*
- *Conventions on sustainable fishing and trade;*

- *The ETS Directive and the commitments taken by the EU (20% and even 30% reduction of CO2 emissions);*
- *Agreements on protection of intellectual property and on public procurement;*
- *New international agreements regarding climate change, once adopted;*
- *Measures for the dismantling of export restrictions on raw materials;*
- *Other important ILO conventions relevant to decent work, including those identified as ‘priority conventions’ by the ILO Governing Body in its 1993 decision (Convention 122 on Employment Policy, Conventions 81 and 129 on Labour Inspection and Convention 144 on Tripartite Consultation), other Conventions enjoying widespread support at the ILO (including Convention 155 on Occupational Safety and Health, Convention 102 on Social Security, Convention 103 on Maternity Protection, and Convention 135 on Workers’ Representatives), and certain other essential ILO instruments (namely the Promotion of Cooperatives Recommendation, 2002 (No 193), the Human Resources Development Recommendation, 2004 (No 195) and the Employment Relationship Recommendation, 2006 (No 198)). Additional ILO Conventions dealing specifically with occupational health and safety issues that should be included are Convention 162 on Safety in the Use of Asbestos, as well as others concerning sectors which are recognised as hazardous by the ILO, and Convention 187 on the Promotional Framework for Occupational Safety and Health.*
- *Norms for basic human rights regardless of sexual orientation or gender identity .*

Several respondents said the EU could/should provide further assistance for the monitoring and enforcement of those norms.

One respondent suggested eliminating all references to conventions: *Economic growth first, good governance comes thereafter. Taiwan, South-Korea, hopefully China and other emerging economies are living examples of the ‘natural’ sequencing of the way for countries to modernity.*

**Q24: Should the ‘Vulnerability’ criterion for GSP+ be adjusted – made more stringent or relaxed? Should the exclusion of high-income economies from the possibility to apply for GSP+ be extended to other income groups (eg upper-middle income economies)?**

Most respondents favoured keeping the status quo. There were few comments in favour of restrictions or relaxation.

One respondent from Colombia said vulnerability should be retained as a criterion, but added that the impact of the fight against drugs on a country should be taken into account.

Regarding the upper-middle income economies, there were few comments too.

One respondent criticised the special incentives programme because of the arbitrariness of the vulnerability criterion: *The share of trade under the GSP is a function of the size of the economy and exclusion of those with more than a one percent share is manifestly unfair for beneficiary countries with a larger supplying base.*

Another respondent said the definition of vulnerability was too restrictive, particularly regarding the small percentage of total GSP-covered imports, as a result of which bigger, but poor, commodity-dependent suppliers were excluded.

For a respondent from Switzerland, the current criterion was Eurocentric (focused on EU imports) and had no direct relation with actual vulnerability. He suggested the countries recognised as Small Vulnerable Economies (SVEs) in the Non Agricultural Market Access (NAMA) negotiations at the WTO should be recognised as vulnerable for the purposes of GSP also.

**Q25: Should the application windows for GSP+ (currently every 18 months) and the period of time for which GSP+ is granted (currently for either 18 months or 3 years) be adjusted? If so, how?**

Regarding the application windows, several respondents said the current system should be maintained, and several called for more frequent windows, or even for an open-ended system enabling countries to be granted GSP at any time.

In any case, various respondents said there should be a transition period, enabling predictability and planning for economic operators.

As regards the period of time for which GSP+ is granted, most were in favour of a longer period, most likely aligned with the duration of the general GSP scheme, which should also be longer. This, they said, would ensure stability and predictability in investments and the development of new projects.

**Q26: Should the current procedural arrangements for ongoing monitoring of the compliance of GSP+ beneficiaries with the substantive requirements of the special regime be reinforced in any way? How could this be achieved, while not duplicating or undermining the role of international organisations and their monitoring bodies?**

Several respondents said there should be more emphasis on implementation. As one put it, *the current process of judging effective implementation is too weak and expectations are set too low.*

Suggestions for a more efficient monitoring system included:

- Making a link to the Governance Action Plans put in place under EU development policy;
- - Investigating submissions of a body representing social partners and civil society organisations or of a parliamentary committee;
- Involving EU Delegations should be an efficient and secure way to monitor the country's compliance with the criteria;
- For conventions which have no or very vague monitoring bodies, the Commission should develop its own monitoring procedures;

- It is important to have an objective monitoring system with some independence from the European Commission, involving civil society.

A Belgian Trade Union organisation observed that the monitoring and approval arrangements under the GSP+ regime could be greatly strengthened *by firstly, allowing other parties to provide additional information on compliance that complements monitoring bodies, and secondly, making monitoring processes more transparent.*

Moreover, relevant stakeholders should be able to submit relevant information. Some said EC technical assistance could also assist national governments in achieving relevant benchmarks. Finally, the Commission should list and publish the information it is considering, decisions it has arrived at, and the reasons for those decisions, before the approval of applications for GSP+ status.

**Q27: The current eligibility criteria for GSP+ require that beneficiaries have implemented a set of international conventions. What would be the best ways to measure effectively achievements in this domain?**

Several answers stressed the importance of setting a clear system of benchmarks to monitor, steer and demonstrate progress.

Some suggested that a representative of the European Union, together with a representative of the government in question, should make a joint assessment. Others suggested local business organisations should also be involved in measuring achievements.

One respondent suggested that beneficiary countries should provide comprehensive evidence on the implementation of international conventions, and that the European Union should monitor the countries directly. Others proposed sending a team of EU investigators to visit the countries under scrutiny and to investigate all human rights abuses.

Other respondents referred to the international organisations responsible for these matters (UN and ILO). According to Colombian Trade Ministry: *Total credibility should be given to the evaluation and the follow-up procedure performed by such multilaterally-established institutions.*

Some respondents proposed a risk-based, in-country, independent monitoring scheme, which would ensure there was objectivity regarding findings on the implementation of the eligibility criteria.

One respondent proposed that achievements should be measured *against a 'basket' of selected countries in the EU, in the GSP scheme and out of any scheme (EBA). A Red, Amber, Green rating should be issued with expiry dates for each status.*

One respondent had doubts about the suitability of Regulatory Impact Assessment for the GSP+ recipient countries.

From South America, several respondents said they believed that commercial issues should not be mixed with other concerns.

Finally, a Spanish organisation said that no country in the world could live up to all the criteria in the 27 relevant conventions.

**Q28: What alternatives or complements, if any, to the criterion of ‘effective implementation’ of international standards in these fields might be relevant for the support of sustainable development and good governance through the GSP+ scheme?**

A business association based in Belgium said that, with reference to climate change, several factors would need to be considered, such as adherence to international consensus agreements and future treaties, and adherence to the ETS 2013 scheme or linkage to it.

Another respondent proposed carrying out outcome-based reviews into the overall effect of the implementation of sustainable development and good governance measures in specific countries.

A respondent from India said the EU should regularly visit industries in countries using GSP, to verify whether the benefits were reaching the poorer segments of the population.

Several trade union organisations said the European Union *has interpreted ‘effective implementation’ to mean that a beneficiary country is ‘continually improving’*. In their view, while the idea of encouraging continuous improvement should be supported, this should complement effective implementation, and not be a substitute for it. Again, they called for clear benchmarks and a more transparent process of verification.

One business association based in Belgium said that if not all criteria were fulfilled, serious efforts to reach that goal should be sufficient.

Some respondents were concerned that the implementation costs of some of these conventions could be very high. They suggested that the GSP+ scheme could be reinforced with additional development funds (e.g. Aid for Trade) to support implementation after GSP+ countries ratified them.

**EBA**

**Q29: Under Everything But Arms (EBA), the EU has fully implemented the goal of full duty-free, quota-free access for all products from all Least-Developed Countries (only 23 tariff lines, covering arms and armaments are excluded). Are there any other ways to enhance the value of this preferential access to the LDCs?**

The most recurrent response stressed that the most efficient way to enhance these preferences was the exclusion of high-income countries from the GSP.

Many respondents said rules of origin requirements needed to be simplified or harmonised.

Some respondents said that LDC exports also faced non-tariff obstacles such as health, phyto-sanitary or environmental protection. They proposed EU support *to better understand, use, practise and implement these standards through technical assistance, transfer of technology*

*or training programmes. This could allow LCDs to develop competitive advantages for their products.*

According to some respondents, several countries benefiting from the EBA scheme are currently negotiating Economic Partnership Agreements (EPAs) or Free Trade Agreements with the EU. Therefore, another possible challenge would be to ensure coordination of preferences granted to countries under the EBA and other schemes.

One respondent proposed simplifying the system by replacing the EBA certificate with an invoice declaration.

Others suggested further improvements to the online 'Export Helpdesk for Developing Countries' information, such as availability in more languages and taking into account the needs of SMEs.

Other suggestions included:

- Increasing the number of tariff lines, including more agricultural products;
- Removing the local content criteria or reducing it from 49% to 25% ;
- Extending the scheme to services, including Mode IV.

**Q30: Should EBA treatment be extended to any other beneficiaries of the GSP? If so, what general horizontal indicators or criteria should be used to identify those non-LDCs whose developmental needs and situations would be such as to indicate a genuine need to benefit from such improved access?**

Most respondents were against extending EBA treatment to non-LDCs.

Those in favour of some kind of extension suggested extending it to poor/lower income developing countries and, in one case, transition economies.

According to a UK-based non-governmental organisation: *EBA region neighbouring countries, where those countries are close to meeting LDC criteria, should be included to promote regional development. In particular, all countries in sub-Saharan Africa should be eligible for EBA. As a priority, Cote d'Ivoire, Ghana and Kenya should be brought under the EBA regime, for two reasons: these are countries surrounded by EBA countries, so that the exports of the whole region would be boosted; and they are in a slightly better position than some of their neighbours to make the best of market access, again driving a rise in regional exports.*

An NGO based in Belgium said: *The EBA system should be extended to those non-LDCs from the ACP region which do not wish to enter into a free trade agreement in order to protect their local economy from the influx of cheap imports, in line with the American AGOA programme, which involves also non-LDCs. In particular the EBA scheme should also be extended to those African non-LDCs, like Kenya, which are in a customs union with LDCs in order to support the functioning of the customs union.*

Finally, a Swedish business association proposed that LDCs and countries eligible for GSP+ should be treated in the same way: simple origin requirements and zero duties.

### **Temporary withdrawal instruments, safeguard measures, antifraud measures**

#### **Q31: Are ‘safeguard’ type instruments relevant for the GSP scheme?**

Many respondents agreed on the need for safeguard instruments, as they:

- ensure a rapid response in case of unfair practices or abnormal trade flows;
- provide a mean to ‘graduate’ individual Combined Nomenclature (CN) codes;
- could be used against unexpected import surges causing injury to EU industry;
- help to prevent distortions of the EU market;
- help to protect importers acting in good faith, especially with reference to certificates of origin of imported goods.

One respondent said that such measures should not be politically motivated, while a German company suggested allowing industry to request safeguards based on sound justification and evidence of injury or threat of injury.

Another respondent called for more effective safeguard-type instruments by addressing the effects of GSP benefits in the calculation of trade defence duties, for the duration of the measure.

Other respondents said there was no need for safeguard measures in the GSP scheme, because of:

- the limited period of validity and the existence of temporary withdrawal instruments;
- the existence of the graduation mechanism, which reflected the real state of development in the future.

Other respondents said safeguard instruments reduced incentives and brought uncertainty to investors, reducing GSP's development potential.

One respondent suggested that *safeguards should trigger on more restrictive basis than the ‘common’ safeguard measures. In example, the ‘threaten to cause’ injury should not be included as well as the chance to impose provisional safeguard measures.*

For an Indian research centre, Section 2 of Chapter III of the EC GSP Regulation needed to be reconsidered, *as it creates a parallel safeguard clause of a lower order to be invoked when the EU experiences ‘serious difficulties’ as opposed to ‘serious injury’.* It would be better to use the general safeguard provision for this purpose.

**Q32: Should any of the current ‘temporary withdrawal instruments’ (eg for cases of fraud, unfair trading practices, goods made by prison labour etc) be reinforced or rather relaxed and if so in which way? Should any new instruments be included?**

One group of respondents said the system should remain as it is. One answer added that the problem is implementation, which would become more complex if instruments were reinforced.

For others, the actual norms should be reinforced to strengthen the credibility of the system and combat unfair trade practices.

A German company observed that some practices, such as dual-pricing and export taxes, would most likely not be prohibited by the WTO: *yet, countries making use of these practices should not be ‘rewarded’ by preferential access to the European market.*

For another respondent, the number of on-the-spot controls should be increased.

A Swedish NGO said that temporary withdrawal should be reinforced, especially when justified by human rights violations.

A trade union organisation deplored the fact that this mechanism had never been used in the case of labour standards and proposed that *temporary suspension should also be possible based on other sources of information, where monitoring bodies are unable to respond quickly.*

A Latin American organisation stressed the difference between fraud cases and trade defence cases, and said reinforcement was justified only for fraud.

For a third group of respondents, temporary withdrawal instruments introduced uncertainty in the GSP system and should be used only in exceptional circumstances and announced a year ahead of implementation.

Finally, some respondents said that the term ‘competent WTO body’ related to ‘unfair trading practices’ (art. 15.1d of current Regulation) should be clarified and that a warning system should be considered.

**Q33: Should the criteria for opening an investigation under the Regulation be specified in more detail?**

Some respondents thought the current system was adequate and that more detail was not necessary, or could be too difficult to implement. A textile business association warned that asking for too much detail could preclude the possibility of opening an investigation into potentially dubious situations.

Others said that a better definition would help ensure transparency and legal certainty. Industry would also be better placed to exert its right of defence.

With reference to the ‘actors’ in this process, some respondents called for the introduction of a consultation with stakeholders before the opening of an investigation, with a view to ensuring a more transparent procedure. The possibility of consulting stakeholders would

introduce a positive message to developing countries and reduce the potential threat of lobbyists seeking protectionism.

Some respondents suggested that the EU provide a clear definition of some of the concepts incorporated in Article 15(1) of the 2008 GSP Regulation: (a) ‘Serious and systematic violation’; (c) ‘Serious shortcomings in customs control’; and (d) ‘unfair trade practices’. In their view, *such definitions would enhance legal certainty and a common understanding of possible violations of the criteria listed in Article 15(1).*

A trade union organisation said: *having a clear procedure for filing and considering complaints and initiating investigations would aid the process*, and added that the European Parliament should also have the right to initiate an investigation. They also called for a clearer process for re-admitting suspended countries into the GSP+ scheme.

On this point, a respondent from Myanmar said a reinstatement mechanism was needed, so that the country sanctioned could be given another opportunity to benefit from development via GSP.

One respondent from Lithuania said the current regulation did not give the criteria for opening an investigation in respect of beneficiary countries which did not ratify conventions listed in the Part A of the Annex III, but which allegedly systematically violated their principles.

**Q34: The European Commission during its administrative procedures observes general principles of EU law including the rights of defence. The rights of defence include the right to be heard, the right of access to the file and the principle of sound administration. Should there be any specific rules, including in the GSP Regulation, that would allow the country being subject of proceedings for the temporary withdrawal to better exercise its rights of defence?**

Several respondents said the right of defence should be accompanied by principles of openness and transparency to allow both sides to understand the case being put, and to allow those facing a complaint the right of reply to rebut untrue or misleading statements.

Other recommendations:

- access to all information managed by the Commission;
- proportionality between the infringement and the sanction;
- speeding up procedures;
- timely notification of an investigation;
- allowing the defence enough time and the means to prepare their case;
- guarantee third countries the same rights of defence as any EU state;
- clear rules on timing.

One respondent from Belgium said that specific provisions should be included on the legal status of economic operators as interested parties and their rights to be heard, to access the file, etc.

Others called for appropriate technical assistance to be made available to ensure that the rights of defence could be exercised effectively. Rights of defence should allow sufficient time to prepare responses, and should provide a clear and transparent methodology concerning the information a country affected was expected to provide. Moreover, the assessment and subsequent decision of the EU authorities should have a sound, objective legal basis.

A business association from Bangladesh said having too many rules was counterproductive: *Once the system is made simpler, everyone will save time and money and the GSP will work much better.*

Regarding Myanmar, one respondent said the country had had GSP sanctions unilaterally imposed on it since 1997, but that the measures *hit the wrong people, poor people who lose their jobs, while those responsible for forced labour remain unscathed. This is clearly notable with regard to industries such as garment and fisheries; most of which were closed down and the workers were jobless and misplaced.*

## **Horizontal aspects**

### **Duration of the Regulation**

**Q35: Following the entry into force of the Lisbon Treaty, the legislative procedure for the GSP Regulation has changed and will inevitably be more drawn-out than was the case previously. As a result, the current approach based on relatively short-duration (3-year) Regulations within a broad framework lasting 10 years is no longer sustainable. What would be the appropriate duration for the next GSP Regulation?**

There was consensus regarding the need for a GSP regulation lasting longer: a minimum of 3-4 years and a maximum of 15 years, to provide both predictability and stability for exporters from developing countries. Some respondents proposed having a regulation lasting five years, and a longer duration for the broader GSP framework.

Several respondents said that during this period, graduation should be adapted and any necessary adjustments/review mechanisms could be operated, provided that enough notice was given. One respondent said that the most important thing was to give plenty of notice about possible changes, however frequent they were, and that an early warning system would be appreciated.

One trade union organisation said: *The central focus of any review of the system should be on how to guarantee the integrity of the system, by ensuring that status is granted or withdrawn in a more open and transparent way, taking into account the valuable input from third parties.*

A Swedish business association suggested the GSP could be unnecessary within 10 years as it should be possible to envisage the duty-free, tariff-free import of everything into the EU by

then: *The concept of duties is out of date. The revenue is not even covering the cost of the customs organisations and the bureaucracy at EU and national levels.*

**Q36: Are there any other aspects of the current GSP regulation 732/2008 that should be reviewed or changed? If yes, which and in what way?**

Several respondents refer to the question of GSP rules of origin (even if acknowledging that this subject is not covered by the present consultation). According to some trade organisations, it is important to maintain the certificate of origin A and to ensure effective protection of importers' good faith through a fair allocation of risk and responsibilities. A fisheries organisation said it was important to maintain the current preferential rules of origin for the GSP scheme.

Other respondents called for all (or most) products/tariff lines to be included in the scheme. GSP would thus be a more advantageous instrument in supporting all types of developing countries.

A German company listed its major concerns: *Unfair trade, child and prisoners work, violation of environmental standards should not be honoured; enforcement of standards should be implemented, all countries should be treated the same, barriers or subventions in one country should be mirrored by all other countries of the world, to create a level playing field.*

One respondent said the main issues of concern were: *a proper and consistent definition of the product scope; removal of those countries/products which are subject to trade defence measures for the duration of these measures; exclusion of economies in transition and emerging economies to maximise the benefit for LDCs.*

Another respondent said the treatment of non-tariff barriers and non-reimbursable economic and technical cooperation should be included.

A renewable energies sector's association said it should be possible to 'graduate' individual CN Codes once developing countries had reached the same level of maturity as developed countries, which can be assessed according to prices and import volumes.

For another respondent, *the current regulation does not provide the criteria for de-graduation. A clear mechanism, through which the interested country can request de-graduation on the basis of the most recent data, should be supplied.*

Some fisheries organisations said removing requirements on crew nationality would be a positive change, as well as increasing the GSP tolerance rule to 15 %, to harmonise it with the tolerance rule under EPAs.

Several biofuels associations recommended the reintroduction of the MFN tariff for biodiesel for countries benefiting from the GSP general scheme. In their view, this would enable European producers to compete more effectively with the mature biodiesel industry from competitive third countries which are nevertheless benefiting from the EU's preferential tariff policy, while other emerging biodiesel exporting countries would not be affected, as they are beneficiaries of the GSP+ and Everything But Arms schemes.

A clothing retailers' representative said the system would greatly improve if the new GSP Regulation allowed interregional cumulation for the textiles sector among all countries benefiting from the GSP system.

Vietnam government called for tropical and sub-tropical aquatic products, textile and garment, coffee, wooden products, handicrafts and bicycles to be moved from the sensitive list to the non- sensitive list.

Finally, a Bangladeshi organisation called on the European Union to work at this review *from the position of a poor nation, and not from the position of an EU country.*