Spokesman's Service, European Commission

Ref: MEMO/94/35
DATE DOCUMENT : 94/06/02

THE COMMUNITY'S GENERALIZED SCHEME OF PREFERENCES (GSP) : BACKGROUND NOTE

I. BACKGROUND

The concept of generalized tariff preferences was originally mooted at the first UNCTAD Conference, which took place in Geneva in 1964. It was formally accepted in 1968 by the members of the UN at the second UNCTAD Conference in New Delhi, which established the key principles of the generalized system of preferences (GSP), i.e. its application to all developing countries, non-reciprocity of concessions and internal non-discrimination(1).

The European Community was the first to implement this system within the framework of a scheme which came into effect on 1 July 1971. Since the principles of the system deviate from the normal GATT rules, particularly the most-favoured nation clause, their implementation was subject to prior authorization from the GATT in the form of a formal derogation decision, commonly referred to as an "enabling clause", which was initially adopted on 25 June 1971 and renewed for an indefinite period on 28 November 1979.

Since its conception, the Community's generalized scheme of preferences has been subject to more or less automatic annual renewal with complete revision every 10 years.

The first ten-year review was carried out on 1 January 1981, followed by a more modest mid-term review on 1 January 1986. The new ten-year review, which was originally scheduled for 1 January 1991, was postponed pending the conclusion of the Uruguay Round.

On 1 June 1994 the European Commission, at the initiative of Vice President MARIN, proposed an updating of the principles that should be followed in the elaboration of the new GSP. On the basis of these proposals, the Commission will introduce, before next summer, detailed operational proposals. The new GSP should be in place by January 1995.

The annex illustrates the main figures relative to the Community's GSP of the last three years.

(1) Resolution 21(II) of the UNCTAD.

II. MAIN CHARACTERISTICS OF THE GSP

The generalized scheme of preferences (GSP) is an autonomous commercial policy instrument, with the emphasis on development(2).

It is based on the most classic commercial policy instrument of all: the tariff. The aim is to grant the developing countries tariff preferences over the developed countries, thus allowing their exports easier access to

the Community market.

This is in recognition of the fact that today encouraging exports is one of the most effective ways of promoting economic growth in these countries. In this context, the GSP is particularly concerned with promoting industrialization in the developing countries, encouraging them to diversify their exports and thus increase their income.

In the early years of its existence, the GSP was the only instrument of its kind available to the developing countries: owing to their low level of development, they were scarcely in a position to make any kind of contribution to the multilateral trade liberalization mechanisms (GATT) and thus failed to reap the full benefit of these mechanisms, which are based on reciprocity of concessions.

The GSP provided them with an alternative to these GATT mechanisms, and this was its special significance.

Since then, the situation has changed somewhat and the developing countries themselves, recognizing their ability to contribute to the process, have realized that it would be in their interest to become integrated into the multilateral system. This objective has therefore become their main priority whilst the GSP is now not so much an alternative as a complement to the multilateral system. Furthermore, this evolution has been given further impetus by the erosion of the preferential margin accorded to the developing countries in line with the reduction in multilateral tariff protection agreed at the successive GATT rounds on trade liberalization and under regional arrangements such as free trade areas or preferential agreements.

III. HOW DOES THE COMMUNITY'S GSP WORK?

Each year, a number of Council Regulations are adopted setting out the preferential arrangements applicable under the GSP from 1 January to 31 December to products covered by the scheme originating in the recipient countries(1).

(2) To be distinguished from the contractual instruments which serve a similar purpose such as the Lome Convention or the Mediterranean agreements.

(1) The most recent are those whose validity was extended in 1993 by Council Regulation (EEC) No 3917/92 of 21 December 1992 published in Official Journal No L 396 of 31.12.1992.

1. General principle: exemption from customs duties

With the notable exception of agricultural produce, the preferential system grants complete exemption from customs duties subject to certain limitsand other conditions, for instance those relating to rules of origin (see Section 6 below). This exemption applies to all industrial products covered by the EEC Treaty, including textiles, which are, however, subject to special arrangements on account of the specific conditions laid down in

the MFA.

2. Limits to the principle of exemption

(a) Industrial products

For industrial products in general, limits apply mainly to the "sensitive" products, i.e. those imports likely to be detrimental to the interest of Community industry.

The limits, which are expressed in ecus (except in the case of petroleum oil and plywood), fall into two categories: fixed limits and flexible limits.

Fixed limits are referred to as "fixed zero-duty amounts". As is clear from the name, these are fixed limits beyond which the normal customs tariff is automatically re-applied until the end of the year in question. They are applied to specific products in the most competitive countries, and are individual, in that they are applied to each country in its own right and not to all the countries as a group. Generally speaking, the amount usually represents between 1% and 5% of total trade in the respective product originating in all third countries. These limits apply to the Community as a whole and not to each individual Member State, and are administered at Community level on a "first come first served" basis.

As for flexible limits, unlike the "fixed zero-duty amounts" normal customs duties are not automatically re-applied if a ceiling is exceeded. Only if a request is made by a Member State or (more rarely) at the instigation of the Commission itself, which intervenes if the situation in a particular industry makes this necessary, are normal customs duties re-applied following verification of the facts by the Commission. Ceilings are applied, also on an individual basis, to all recipient countries which are not considered especially competitive in respect of the product in question. The amount is often, but not necessarily, identical to the "fixed zero-duty amounts" applied to the competitive countries in respect of the same product. Under no circumstances is it lower.

All the industrial products covered by the scheme which do not appear on the list of sensitive products are considered "non-sensitive" and are not subject to "fixed zero-duty amounts" or ceilings. However this does not rule out the possibility of normal customs duties being reintroduced for these products during the course of the year. For this class of products a "reference base" is set at just over 6% of the total Community imports (in

1988) of each of the products concerned(1). If this percentage is exceeded, normal customs duties may be re-established where economic problems occur due to an increase in preferential imports of these products from a given country. However cases like this are more unusual; they involve an information procedure between the Commission and the Member States, with more generous time-limits.

(b) Textile products

The general principle governing the textile part of the scheme lies in the

close link between tariff concessions granted in this context and the voluntary restraint arrangements negotiated in bilateral agreements concluded under the Multifibre Arrangement (MFA). This principle means, first of all, that exemption from duty is granted for products covered by the MFA only to beneficiary countries that have signed bilateral agreements concluded for this end or have given similar undertakings, whereas for non-MFA textile products exemption applies for all beneficiary countries. Secondly, textile products, unlike industrial products in general, are, by definition and without exception, always considered sensitive. This contrast became less pronounced this year with the implementation of the single market on 1 January 1993. Up until last year, the preference limits set for MFA textiles, known as "quotas", were divided between the Member States. Since 1 January these quotas have been replaced by "fixed zero-duty amounts" and are no longer divided between Member States. Consequently, the textile part of the scheme is now operated on much the same lines as the general industrial part.

It nonetheless retains a few distinctive features peculiar to MFA textile products, apart from the fact that there are no "non-sensitive" products in the scheme and thus no reference base(1). Thus the competitiveness of a country in terms of a particular product is considered on the basis of criteria laid down in the bilateral textile agreement with that country. In other words, a product which is subject to voluntary restraint in the agreement will automatically be liable to a fixed zero-duty amount in the GSP scheme, whilst ceilings will apply in all other cases. The volume of the fixed amounts is also calculated differently, to account for the supplier country's level of competitiveness, as defined in the bilateral agreement. For the majority of countries, this gives a volume figure of 1% of total imports of the product concerned into the Community, but it can be as low as 0.1% for the so-called "dominant" suppliers and for certain highly sensitive products. Note that, as in the MFA textile agreements, the fixed amounts and ceilings are expressed in either tonnage or number of articles or pairs and not in ecus and are based on the product categories defined in the bilateral agreements.

(1) A rate of 2% applies to certain products considered to be a little less "non-sensitive" than the others.

(1) Textile products not coming under the MFA are covered by exactly the same arrangements as sensitive industrial products (See Point (a) above).

(c) Accentuated differentiation

With the introduction of the accentuated differentiation policy in 1986, the preferential advantages hitherto accorded to sensitive products originating in highly competitive countries were reduced or even withdrawn. This policy was introduced to help correct the considerable imbalance which had arisen within this scheme in the sense that a small number of highly competitive countries were in a position to reap maximum benefit from the advantages accorded whilst a far greater number of countries only benefited minimally from the advantages of the scheme. The accentuated differentiation policy attempted to correct the imbalance by withdrawing the advantages from those which no longer needed them in view of their

level of industrialization, and redistributing them to countries in greater need.

In practice, the policy is implemented on the basis of two criteria. As soon as total imports (whether preferential or not) of a given product from a given country reach 20% (10% in the case of MFA textiles) of aggregate imports of the same product from third countries, the product in question is phased out from the preference system over a two-year period (50% reduction of the fixed amount in the first year and total exclusion in the second year, provided the criteria are still fulfilled). The same conditions apply in principle when total imports of a given product have reached ten times the fixed amount allocated to that product. In such cases it is assumed that the country in question is no longer dependent on the benefits of the scheme to help promote its exports of the product concerned. Nonetheless, the second phase (exclusion) has never been applied on the basis of this criterion.
These criteria have been modulated in the interests of fairness, in order to avoid penalizing low-income countries.

(d) Agricultural products

The agricultural part of the preference scheme is far more limited in scope than the industrial and textile parts. This is due in the main to the basic orientation of the GSP, whose priority is the industrialization of the developing countries rather than the promotion of exports of primary products. Secondly, the constraints of the common agricultural policy make it very difficult to grant concessions in sectors subject to a common organization of the market.

As a result, the list of agricultural products covered by the preference scheme is limited and products from temperate zones are mostly excluded. Furthermore, for a number of products on the list, not all countries are granted preferential access. Greenland, the Baltic States, the CIS republics and Georgia are not eligible for preferences in respect of fishery products. Poland was also excluded in 1990 and 1991. A similar situation applies to China in respect of other agricultural products.

Unlike the preference for industrial and textile products, preference under the agricultural list does not systematically take the form of complete exemption from customs duties. Often, it is simply a matter of lower duties. On the other hand, there are no quantitative restrictions in respect of the preference, save in exceptional cases. Such exceptions

apply solely to canned pineapple, certain coffee extracts and certain raw tobaccos.

Unlike in the case of industrial or textile products, the fixed reduced-duty amounts applied to these products are not granted to countries on an individual basis, but to the recipient countries as a whole.

The agriculture preference system also incorporates a safegaurd clause of a general nature which, without specifying particular quantities, permits re-establishment of the normal customs duty in cases where Community producers are held to be under serious threat. In practice, this safegaurd clause is

very rarely applied. The last such case (the only one in many years) concerned carnations from Colombia.

The final point to be made with regard to agriculture is the innovation introduced in 1990, when the list of GSP beneficiaries was extended to include the East European countries (see Section 5 below). Notwithstanding the traditional principle of excluding products subject to a common organization of the market from the GSP, new preferential arrangements in the form of reduced levies subject to certain limits have been introduced for certain such products, notably in the pork and poultry sectors.

(e) Steel Products

Because of the specific legal characteristics of the ECSC treaty, the steel products which it covers are subject to separate arrangements in the form of an ECSC decision. The system adopted for these products is identical to the industrial scheme except that in this case the fixed limits are quotas within which each Member State receives and administers a share. Beyond this share the normal duty is reintroduced on the territory of the country concerned. Moreover, the list of beneficiaries is less extensive for it does not include Albania, the three Baltic States, Georgia or the CIS States, and is only partially applicable to China.

3. More favourable treatment for the least developed countries (LLDCs)

Since 1977 and the commitments undertaken by the Community under the Tokyo Round, the Community has always accorded special treatment to the countries designated by the United Nations as "the least developed" of the developing countries. Although the majority are already beneficiaries of the Lome Convention and thus hardly concerned by the GSP, there is nonetheless a number of them which are covered by the special LLDC arrangements in the GSP context, such as Bangladesh, Afghanistan, Yemen, the Maldives, Nepal, Bhutan, Myanmar (Burma), Laos and, more recently, Cambodia.

These special LLDC arrangements consist in exemption from all preference limits for industrial and textile products and also for a large number of agricultural products, to which not reduced but zero customs duties apply. Nonetheless, the safeguard clause for agriculture still applies to these countries.

Finally, these countries can also benefit from derogations from the rules of origin (see Section 6 below).

4. Special measures for countries affected by drug trafficking

It was traditionally only the LLDCs which could benefit from special terms within the GSP framework. However since 1990, similar arrangements have

been temporarily applied to most of the Andean Group (Bolivia, Colombia, Ecuador and Peru) in view of the special difficulties encountered by these countries in their struggle against the production and trafficking of drugs, which has brought considerable instability to their social, political and economic structures. The main thrust of these arrangements consists in providing export opportunities for these countries for

substitute crops replacing coca. Since 1991 the arrangements have been extended, for agricultural products, to the countries of Central America (Costa Rica, Guatemala, Honduras, Nicaragua, Panama and El Salvador). The arrangements expire for all countries at the end of 1994.

5. Extension of the GSP to the East European countries

Following the political upheaval in the former Eastern bloc countries (Poland, Hungary and then Czechoslovakia) at the end of 1989, it was decided that the problem with which these countries were temporarily confronted were of a similar nature to those facing the developing countries which were GSP beneficiaries. Thus, in order to facilitate their transition to a market economy, it was decided to admit them to the GSP, which was the only short-term means of granting them the access they needed to Community markets. Thus they were included in the list until 1992, when the Europe agreements concluded between them and the Community entered into force. Bulgaria and Romania will each benefit from a similar agreement in 1993. Meanwhile their places are being taken in the GSP by other East European countries: Albania and the Baltic countries in 1992 followed by all the CIS republics and Georgia in 1993.

6. Rules of origin

It should be pointed out that the GSP preferential arrangements are subject in their entirety to strict conditions relating to the origin of the products accorded preferential terms.

These rules of origin are governed by separate detailed legislation which is adopted by the Commission after the assent of a regulatory committee (Committee on Origin) and establishes both the definition of the origin of products and the necessary control mechanisms(1).

The definition of the origin of a product is particularly important where two or more countries have been involved in its manufacture. In this case, the country which finally exports the good to the Community can only benefit from the GSP if the processing undertaken there is sufficient to classify it as the country of origin. Generally speaking, the processing can be considered sufficient if it has given rise to a change in the nomenclature heading (Harmonized System) between the imported item and the finished product. However there are numerous exceptions to this rule,

(1) The most recent is that of 4 March 1988: Commission Regulation No 693/88 published in Official Journal No L 77 of 22 March 1988.

which involve supplementary or alternative processing conditions, expressed either by a description of the type of processing required or in terms of a maximum percentage of imported matter. It should be noted here that there are special provisions which permit derogation from these conditions where a good has been subject to successive processing within a regional group of beneficiary countries. The aim of these provisions, known as regional cumulation, is to encourage the regional integration of the developing countries' economies. They are currently applied to the ASEAN and Andean Group countries. They are also due to be applied to the CACM as soon as the relevant administrative arrangements have been made. The CIS

and the Baltic States are also in line to benefit from these provisions.

The mechanisms for monitoring the origin of imports are entirely dependent upon administrative cooperation between the customs authorities in the beneficiary countries and the Community. This implies a high level of trust between the customs authorities concerned especially since the initial responsibility for such control lies with the exporting beneficiary country. The "Form A certificate of origin", which the exporting country issues for the goods being exported, is regarded by the Community importing authorities as a sort of cheque to be cashed against the Community budget since the goods it accompanies will be exempt from the customs duties that go to make up the Community's own resources. This illustrates the importance of such cooperation and the serious problems which can be caused by any failure to honour the commitments undertaken by the beneficiary countries when they issue the certificates. It should be noted in this context that a subsequent verification procedure for certificates of origin enables the Community authorities to ask beneficiary countries to confirm or otherwise the result of the initial control.

IV. TECHNICAL ASSISTANCE

Since the GSP was set up, the Commission has undertaken an intensive technical assistance programme to help the beneficiary countries make the best use of the scheme and to improve their understanding of its mechanisms. To this end, the Commission has organized several information seminars and technical workshops aimed at the officials responsible for issuing certificates of origin and also exporters and other business people. These seminars and workshops are more particularly for the benefit of countries whose export performance is handicapped by chronic under-utilization of the GSP and for new beneficiaries. Plans for the future include intensification of the programme and greater participation of Commission staff in similar activities organized by UNCTAD.

V. THE SCOPE OF GSP

It takes a number of keys to open the door to the Community market. One of these is the GSP. But it is not the only one. There are also other types of rules and regulations governing imports into the Community and it is necessary to be aware of them at least in order to cross the Community threshold. They range from plant health regulations to quantitative import arrangements, anti-dumping measures, technical norms and other legislation to protect trade marks and registered designations of origin.

The setting up of the single market on 1 January 1993 has greatly

simplified life for exporters by removing the partitions within the Community and standardizing the "front door keys". This is a remarkable step forward, the practical advantages of which are often not fully understood and should therefore be emphasized.

There is no doubt that the Community will still be required to make life simpler for exporters in the developing countries, and this includes modifying and simplifiying the GSP.

Having said this, the most important key of all is most certainly in the hands of the exporters themselves. The GSP presents them with an opportunity, inasmuch as it grants them easier access to the Community market. However it does not dispense developing country exporters and producers from doing their job properly, particularly as regards the quality of their exports and the need to adapt them to the requirements of the Community market. The Community can, of course, also provide assistance here by financing trade promotion and encouraging technical and financial cooperation between the partners in the developing countries and in the Community through the ECIP instrument or other forms of financial cooperation.

The GSP remains a vital tool in the promotion of exports from developing countries and therefore everything possible must be done to improve the use made of it and information about it. In this respect, it is imperative that exporters in the developing countries are fully aware of the advantages to be gained from the system, not so much in financial terms through exemption from, or reduction of, customs duties, but rather in terms of the commercial advantage of being granted priority by Community importers provided that the quality is there.

GLOSSARY

GSP: Depending on the context, this can signify either the Generalized System of Preferences (established by the UNCTAD) or the Generalized Scheme of Preferences (as implemented by each donor country).

GATT (and GSP): General Agreement on Tariffs and Trade. It monitors the multilateral trading system, paying particular attention to the non-discrimination principle which governs trade relations between the contracting parties, a principle commonly referred to as the most-favoured-nation (MFN) clause. The GSP, in establishing special arrangements for the developing countries, deviates from this principle and thus required a decision permitting derogation from this clause.

MFA: Multifibre Arrangement: a multilateral arrangement governing trade in textile products which permits, by derogation from GATT rules, the negotiation of bilateral voluntary restraint agreements between the main importing countries, including the Community, and the supplier countries.

UNCTAD: United Nations Conference on Trade and Development. The Conference meets at ministerial level every four years. In 1968 it set up the Special Committee on Preferences, which is responsible for monitoring the implementation of the Generalized System of Preferences. This Committee has met annually since its inception. UNCTAD VIII, the last to date, was held in 1992 in Cartagena (Colombia).

Andean Group: A regional group comprising Bolivia, Colombia, Ecuador, Peru and Venezuela. All are eligible for "regional

cumulation" but only the first four are beneficiaries of the special "drug" programme.

CACM: Central American Common Market. A regional group comprising Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. All are eligible for "regional cumulation" and are beneficiaries of a special "drug" programme for agriculture. Panama is also covered by this special programme.

ASEAN: Association of South East Asian Nations. A regional group comprising Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand. It is eligible for "regional cumulation".

Harmonized System: Harmonized Commodity Description and Coding System. A new universal nomenclature for goods, adopted by the Customs Cooperation Council and applied to the majority of countries in the world.

Form A certificate of origin: Standardized GSP certificate of origin drawn up by UNCTAD and accepted by all donor countries granting preferences.