



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 December 2012

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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 18 December 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No Cion doc.: C(2012) 9460 final

Subject: Commission Delegated Regulation (EU) No .../.. of 18.12.2012 establishing
rules related to the procedure for granting the special incentive arrangement for
sustainable development and good governance under Regulation (EU) No
978/2012 of the European Parliament and the Council applying a scheme of
generalised tariff preferences

Delegations will find attached Commission document C(2012) 9460 final.

Encl.: C(2012) 9460 final



Brussels, 18.12.2012
C(2012) 9460 final

COMMISSION DELEGATED REGULATION (EU) No .../..

of 18.12.2012

establishing rules related to the procedure for granting the special incentive arrangement for sustainable development and good governance under Regulation (EU) No 978/2012 of the European Parliament and the Council applying a scheme of generalised tariff preferences

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The European Union (EU) has granted trade preferences to developing countries through the Generalised Scheme of Tariff Preferences (GSP scheme) since 1971. It is part of its common commercial policy, in accordance with the general provisions governing the EU's external action.

In order to ensure legal certainty and stability of the new GSP scheme the European Parliament and the Council Regulation (EU) No 978/2012 (GSP Regulation) is premised on enhanced transparency and predictability.

Article 9(1) of the GSP Regulation establishes the requirements for the granting of the preferences under the special incentive arrangement for sustainable development and good governance (GSP+). The establishment of procedural rules on the submission of the applications for GSP+ has been conferred by the European Parliament and the Council on to the Commission.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission, appropriate and transparent consultations, including at expert level, have been carried out on this delegated act.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 10(7) of the GSP Regulation empowers the Commission to adopt a delegated act to establish rules related to the procedure for granting GSP+ in particular with respect to deadlines and the submission and processing of requests.

COMMISSION DELEGATED REGULATION (EU) No .../..

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establishing rules related to the procedure for granting the special incentive arrangement for sustainable development and good governance under Regulation (EU) No 978/2012 of the European Parliament and the Council applying a scheme of generalised tariff preferences

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union and in particular Article 207 thereof,

Having regard to the European Parliament and Council Regulation (EU) No 978/2012 of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008¹, and in particular Article 10(7) thereof,

Whereas:

- (1) Article 9(1) of Regulation (EU) No 978/2012 establishes the requirements for the granting of the preferences under the special incentive arrangement for sustainable development and good governance. To ensure the transparency and predictability of the process, the Commission has been empowered by the European Parliament and the Council to adopt a delegated act to establish rules related to the procedure for granting the special incentive arrangement for sustainable development and good governance in particular with respect to deadlines and the submission and processing of requests.
- (2) In line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission, appropriate and transparent consultations, including at expert level, have been carried out on the procedural rules provided for in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Submission of application

1. The requesting country shall submit its request in writing. The requesting country shall explicitly state that its request is made in the framework of the special incentive arrangement for sustainable development and good governance (GSP+ arrangement) under Article 9(1) of Regulation (EU) No 978/2012 (GSP Regulation).
2. The request shall be accompanied by the following documentation:

¹ OJ L 303, 31.10.2012, p. 1.

- (a) comprehensive information concerning the ratification of the conventions listed in Annex VIII of the GSP Regulation (the 'relevant conventions'), including a copy of the deposited ratification instrument to the relevant international organisation, the reservations made by the requesting country and the objections to these reservations made by other parties to the convention.
 - (b) the binding undertaking, to be done by the signature by the competent authority of the requesting country of the form in Annex I to this Regulation, containing:
 - (i) a statement of the commitment to maintain ratification of the relevant conventions and to ensure their effective implementation;
 - (ii) a statement to accept without reservation the reporting requirements imposed by each relevant convention and to accept regular monitoring and review of its implementation record in accordance with the provisions of the relevant conventions;
 - (iii) a statement of the commitment to participate in and cooperate with the monitoring procedure referred to in Article 13 of the GSP Regulation
3. To facilitate the review process of the applications, all requests and accompanying documentation shall be submitted in English. The copy of the documents under point 2(a) if the original language is different from English shall be accompanied by an English translation.
4. The request, together with the accompanying documents, shall be submitted to the Commission's mail reception service:

Central mail service (Courrier central)
Batiment DAV1
Avenue du Bourget 1
1140 Bruxelles
5. In addition to the formal written submission, the request and the accompanying documents shall also be submitted in electronic format. Any request submitted exclusively in electronic format will not be considered valid for the purposes of this Regulation.
6. To facilitate information exchange and verification, in its application the requesting country shall inform the Commission of the contact person who is competent to handle the processing of the application.
7. The request shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or the issuing of an acknowledgement of receipt by the Commission.

Article 2

Examination of application

1. The Commission shall examine whether the conditions of Article 9(1) of the GSP Regulation have been met. When examining the request the Commission shall assess the most recent available conclusions of the monitoring bodies of the relevant

conventions. It may ask the requesting country any questions which it considers relevant, and may verify the information received with the requesting country or with any other relevant sources.

2. Failure to provide the necessary information as required by Article 10(2) of the GSP Regulation or requested by the Commission may lead to termination of the examination and the rejection of the request.
3. The Commission shall finalise the examination of the request and decide whether to grant a requesting country the GSP+ arrangement within six months from the date of acknowledgement of receipt of the request.

Article 3

Constituted file

1. The Commission shall establish a constituted file. A constituted file shall contain the documents submitted by the requesting country and the relevant information which has been obtained by the Commission.
2. The content of a constituted file shall comply with provisions of confidentiality in accordance with Article 38 of the GSP Regulation.
3. The requesting country has a right of the access to the constituted file. Upon written request, it may inspect all information contained in the constituted file except internal documents prepared by the Commission.

Article 4

Disclosure

1. The Commission shall disclose the details underlying the essential facts and considerations on the basis of which the Commission's decisions are taken.
2. Disclosure shall be given in writing. It shall contain the Commission's findings and shall reflect its provisional intention whether to grant a requesting country the GSP+ arrangement.
3. Disclosure shall be made, with due regard to the protection of confidential information, as soon as possible and, normally, not later than 45 days prior to a definitive decision by the Commission of any proposal for final action. Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter.
4. Disclosure shall not prejudice any subsequent decision which may be taken but where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.
5. Submissions made after disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 20 days, due consideration being given to the urgency of the matter.

Article 5

General hearing

1. A requesting country has the right to be heard by the Commission.
2. The requesting country shall submit a written request specifying the reasons for it to be heard orally. Such a request shall be received by the Commission at the latest one month after the date of acknowledgement of receipt of the application.

Article 6

Involvement of Hearing Officer

1. On procedural grounds a requesting country may also request the intervention of the Hearing Officer of the Directorate General for Trade. The Hearing Officer shall review requests for access to the constituted file, disputes on the confidentiality of documents, requests for extension of time limits and requests of a requesting country to be heard.
2. If the requesting country has an oral hearing with the Hearing Officer the relevant Commission service shall participate in it.

Article 7

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18.12.2012

For the Commission
The President
José Manuel BARROSO

ANNEX I

BINDING UNDERTAKING

We, the Government of ..., represented by ..., in our capacity as ..., express our commitment to maintain the ratification of the conventions listed in Annex VIII of the Regulation (EU) No 978/2012 and to ensure effective implementation thereof.

We accept without reservation the reporting requirements imposed by each convention and regular monitoring and review of the implementation record in accordance with the provisions of the conventions listed in Annex VIII of the Regulation (EU) No 978/2012.

We express our commitment to participate in and cooperate with the monitoring procedure referred to in Article 13 of the Regulation (EU) No 978/2012.

We fully accept that withdrawal of any of these commitments may result in removal of the GSP+ arrangement according to Article 10(5) of the Regulation (EU) No 978/2012.

Place and date

Signature(s)