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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 5.12.2016 amending Annex II to Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences

Delegations will find attached document C(2016) 7809 final.

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Brussels, 5.12.2016
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COMMISSION DELEGATED REGULATION (EU) .../...

of 5.12.2016

amending Annex II to Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The EU Generalised Scheme of Preferences has assisted developing countries since 1971 in their efforts to reduce poverty, promote good governance and sustainable development by providing preferential access to the Union market and, consequently, helping them to generate additional revenues through international trade. Regulation (EU) No 978/2012 of the European Parliament and the Council¹ provides the legal framework for the implementation of the Generalised Scheme of Preferences ('GSP'). It was designed to concentrate GSP on the developing countries most in need: the least developed countries and other low and lower-middle income countries, as a reflection of the current global economic and trade landscape.

The list of GSP beneficiaries is established by Annex II to Regulation (EU) No 978/2012. According to Article 5(2) of Regulation (EU) No 978/2012, the Commission has to review Annex II by 1 January of each year. The review should take into account changes in the economic, development or trade conditions of beneficiary countries.

Article 4(1)(b) of Regulation (EU) No 978/2012 sets out that GSP should not be extended to developing countries which benefit from a preferential market access arrangement with the Union, which provides the same level of tariff preferences as GSP, or better, for substantially all trade.

Furthermore, Article 5(2)(b) of Regulation (EU) No 978/2012 states that if a country started to apply a preferential market access arrangement, then GSP should continue to be granted for two years as from the date of application of that preferential market access arrangement.

The EU and Ukraine signed the Deep and Comprehensive Free Trade Area (DCFTA) on 27 June 2014 as part of their broader Association Agreement. The DCFTA started to provisionally apply from 1 January 2016. Consequently, as of 1 January 2018 Ukraine should cease to benefit from GSP preferences and this needs to be reflected in Annex II.

Article 4(1)(a) of the GSP Regulation provides that a country which has been classified by the World Bank as a high or an upper middle-income country for three consecutive years should not benefit from the GSP general arrangement. Under Article 5(2)(a) of the GSP Regulation, the decision to remove a beneficiary country from the list of GSP beneficiary countries should apply as from one year after the date of entry into force of that decision.

Tonga was classified by the World Bank as upper middle-income country in 2013, 2014 and 2015. Accordingly, Tonga was removed from Annex II as from 1 January 2017 by Commission Delegated Regulation (EU) 2015/1979 of 28 August 2015 amending Annexes II, III and IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences².

In 2016 Tonga was classified by the World Bank as a lower middle-income country. Therefore, Tonga should be reinserted into Annex II of Regulation (EU) No 978/2012.

¹ OJ L 303, 31.10.2012, p. 1.

² OJ L 289, 5.11.2015, p. 3.

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. The Commission Expert Group on the Generalised Scheme of Preferences was consulted in the meeting held on 27 April and 27 September 2016.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 5(3) of Regulation (EU) No 978/2012 empowers the Commission to adopt delegated acts in order to amend Annex II to that Regulation.

Ukraine should be removed from Annex II of Regulation (EU) No 978/2012 with application from 1 January 2018.

Tonga should be reinserted into Annex II of Regulation (EU) No 978/2012, with application from 1 January 2017.

COMMISSION DELEGATED REGULATION (EU) .../...

of 5.12.2016

amending Annex II to Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008³, and in particular Article 5(3) thereof,

Whereas:

- (1) Article 4 of Regulation (EU) No 978/2012 establishes the criteria for granting tariff preferences under the general arrangement of the Generalised Scheme of Preferences ('GSP').
- (2) Points (a) and (b) of Article 4(1) of Regulation (EU) No 978/2012 provide, respectively, that a country that has been classified by the World Bank as a high-income or an upper-middle income country for three consecutive years, or a country that benefits from a preferential market access arrangement which provides the same tariff preferences as the GSP, or better, for substantially all trade, should not benefit from GSP.
- (3) The list of beneficiary countries of the general GSP referred to in point (a) of Article 1(2) of Regulation (EU) No 978/2012 is established in Annex II to that Regulation. Article 5(2) of Regulation (EU) No 978/2012 provides that Annex II is to be reviewed by 1 January of each year. The review should take into account changes in the economic, development or trade conditions of beneficiary countries in relation to the criteria laid down in Article 4.
- (4) Pursuant to Article 5(2) of Regulation (EU) No 978/2012, a GSP beneficiary country and economic operators are to be given sufficient time for an orderly adaptation to the country's GSP status revision. Therefore, the GSP arrangement is to continue for one year after the date of entry into force of a change in a country's status as referred to in Article 4(1)(a) and for two years after the date of application of a preferential market access arrangement, as referred to in Article 4(1)(b).
- (5) Tonga was classified by the World Bank as upper middle-income country in 2013, 2014 and 2015. Therefore, Tonga was removed from the list of GSP beneficiary countries in Annex II to Regulation (EU) No 978/2012 as from 1 January 2017 by

³ OJ L 303, 31.10.2012, p. 1.

Commission Delegated Regulation (EU) 2015/1979⁴. In 2016, however, Tonga was classified by the World Bank as a lower middle-income country. Therefore, Tonga should be reinserted into Annex II to Regulation (EU) No 978/2012, with application from 1 January 2017.

- (6) The implementation of the Deep and Comprehensive Free Trade Area (DCFTA), signed by the Union and Ukraine on 27 June 2014, as part of their broader Association Agreement, has been provisionally applied from 1 January 2016. As the DCFTA provides better tariff preferences as the GSP for substantially all trade, Ukraine should be removed from the list of GSP beneficiary countries in Annex II with application from 1 January 2018,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 978/2012

Annex II to Regulation (EU) No 978/2012 is amended as follows:

- (1) The following alphabetical code and the corresponding country are inserted in columns A and B, respectively:

TO	Tonga
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- (2) The following alphabetical code and the corresponding country are deleted from columns A and B, respectively:

UA	Ukraine
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Article 2

Entry into force and application

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

Article 1(1) shall apply from 1 January 2017.

Article 1(2) shall apply from 1 January 2018.

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

⁴ Commission Delegated Regulation (EU) 2015/1979 of 28 August 2015 amending Annexes II, III and IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences (OJ L 289, 5.11.2015, p. 3).

Done at Brussels, 5.12.2016

*For the Commission
The President
Jean-Claude JUNCKER*