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Legal Update
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The European Commission Unveils Plans To Restrict The EU's General System of Preferences

On 10 May 2011, the European Commission unveiled a proposed Regulation on the EU's new General System of Preferences ("GSP") that should enter into force at the latest on 1 January 2014. This proposal must now be examined by the Council and the European Parliament.

The product scope of the GSP remains unchanged. As well, products remain categorized into:

- non-sensitive products which can be imported into the EU duty-free except for agricultural components;
- sensitive products for which the EU customs duty rate is decreased by 3.5 percentage points for most products.

Whilst currently 176 countries and territories benefit from the EU's GSP, the European Commission proposes to exclude from GSP benefits countries that have been classified by the World Bank as high-income or upper-middle income economies for the past three years, based on Gross National Income (GNI) per capita. That would significantly limit the number of beneficiaries to possibly 80 countries only whereby countries such as Kuwait, Russia, Saudi Arabia and Qatar as well as a lot of the Latin-American countries such as Brazil, Argentina or Venezuela would cease to benefit from the EU's GSP.

Countries that already benefit from preferential access to the EU that is at least as good as the EU's GSP (such as countries that concluded an FTA with the EU or countries that benefit from an autonomous arrangement such as Balkan countries or the countries with an Economic Partnership arrangement with the EU) would also cease benefiting from the GSP.

Note that both categories of countries can resume benefiting from the GSP if they cease being high or upper-middle income economies or their FTA expires.

The exact list of beneficiary GSP countries will be known only at the time of the adoption of the new GSP Regulation based on the 3-year data available at that time.

The EU's current GSP also has a GSP+ regime that offers improved tariff preferences of which 15 countries benefit based on:

- vulnerability whereby the five largest sections of their GSP-covered imports to the EU represent over 75% of their total GSP-covered imports and GSP-covered imports from each of those countries represent less than 1% of total EU imports under GSP;
- ratification of 27 specific international conventions in the fields of human rights, core labour standards, sustainable development and good governance;

Under the European Commission's proposal, the vulnerability thresholds are relaxed so that more countries will be eligible for GSP+, i.e.:

- the import-share threshold would increase from 1% to 2%;
- the share of the seven rather than five largest sections of GSP-covered imports should represent 75% of the total GSP-covered imports.

These countries will still be required to respect core international standards but the burden of proof for the implementation of the international conventions concerned will rest on the countries concerned. They will be compelled to commit to full cooperation with international organisations regarding the respect of the conventions concerned.

Applications for GSP+ will be accepted at any time rather than every 1.5 years as is currently the case.

For the Least Developed Countries (49 among the poorest countries), the EU will continue to exempt their originating products from customs duties in its Everything But Arms regime. It trusts that with the reduction of its normal GSP regime to fewer beneficiaries, competitive pressures will decrease and the LDCs will be able to reap a greater benefit from the EU's GSP.

The current EU GSP regime is subject to revisions every 3 years. It is now proposed for the new GSP to be adopted for an indefinite period of time with changes being made if and when necessary.

Pursuant to the provisions on graduation in the current EU GSP system, groups of products originating in GSP beneficiary countries may lose GSP and GSP+ benefits when the average imports of products in a Section of the tariff nomenclature exceed 15% (12.5% for textiles and clothing) of GSP imports into the EU of the same products from all GSP beneficiaries during 3 years. Under the European Commission's proposal:

- product sections used for graduation are expanded from 21 to 32 so that products in the categories susceptible of graduation are more homogenous;
- the thresholds are increased from 15% to 17.5% and from 12.5% to 14.5%;
- graduation will not apply to GSP+ countries.

The Commission's proposal provides that the GSP preferential arrangements can be withdrawn *inter alia* in the case of:

- failure to comply with international conventions on anti-terrorism and money laundering;
- serious and systemic unfair trading practices including those affecting the supply of raw materials which have an adverse effect on the EU industry and are not addressed by the beneficiary country (possibly after a WTO determination).

The reaction to the Commission's proposal is likely to divide EU Member States. Spain might find the exclusion of Latin-American countries problematic; other countries might welcome the exclusion as they wish to protect domestic production. BusinessEurope that is the federation of EU industry associations has already issued a mitigated reaction in which it welcomes the restriction of the number of beneficiary countries to concentrate the benefits of the system on LDCs and lower-middle income countries. At the same time, it has expressed reservations regarding the relaxation of the conditions to grant GSP+ because it can undermine the competitive position of poorer countries to the benefit of stronger economies. Also, the politicizing of the GSP regime by linking it to fair trading or anti-terrorism will be prone to criticism. As a result, the Commission's proposal may undergo significant amendments before finalization.

For additional information on the new EU GSP Regulation or Mayer Brown's customs capabilities, please contact:

Paulette Vander Schueren
Partner
pvanderschueren@mayerbrown.com
+32 2 551 5950

Madelein Perrick
Counsel
mperrick@mayerbrown.com
+32 2 551 5948