



EU GSP plus scheme on Developing Countries & General Agreement on Tariffs and Trade (GATT)

Introduction

Developed country governments, led by the United States and the United Kingdom, are driving this proliferation of international market-opening and technology-protecting regulations, using multilateral economic organizations, international treaties and bilateral agreements. They have come together to legitimize a level of intrusion into the economies and politics of developing countries hitherto frowned upon by the international community, framing the intrusion in the shape of international agreements.

Development is a fundamental objective of EU trade strategy, and together trade and development create a synergy that aims to support the gradual and equitable integration of developing countries in the world economy and the multilateral trading system. Roughly 40 percent of EU imports originate in developing countries, due at least in part to the EU's longstanding array of preferential trade arrangements with developing countries that reduce or eliminate duties and quotas and provide unprecedented market access. The EU is also the world's most open market for poor countries.

Similarly the EU Generalized System of Preferences is the mechanism of preferential trading arrangements through which the European Union extends preferential access to its markets to developing countries. Further analysis drives through the EU GSP Plus scheme opportunities for developing countries and whether it has been used to implement a political agenda and is inconsistent with the WTO Principle.

Early Stage Of GSP/GSP PLUS And Its Current Developments ; With Special Reference To Developing Countries.

This system was firstly discussed in the United Nations conference on trade development in 1968, the underline intention was to implement a system that would grant trade preference to all developing countries.

Having intention of granting either duty free access or a tariff reduction for the selected 178 states, EU introduced GSP scheme in 1971. The GSP scheme requires three main conditions to be met for exports to qualify: (a) the origin criterion, the products must originate in the beneficiary country as defined in the EU GSP rules of origin; (b) the transport criterion, the goods must be transported directly from the beneficiary country to the EU; and (c) the documentary evidence criterion, a certificate of origin or documentary proof of the origin of the goods, issued by the beneficiary country's identified competent authority, must accompany the goods to the EU. Disregarding duty free under MFN, since 1995 EU started applying GSP from the developing countries when they enter into EU market. GSP applied nearly 7000 customers, having exception of arms and ammunitions. It is important to remember 2000 customers already given the duty free package, following MFN.

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¹ What strategies are viable for developing countries today? The World Trade Organization and the shrinking of 'development space', Robert Hunter Wade, Development Studies Institute, London School of Economics and Political Science

² <http://www.euro-nio.n.org/News/eu-newsletters/EUFocus/2008/EUFocus-Trade&DevMar2008.pdf>, **Truths and myths about the openness of EU trade policy and the use of EU trade preferences**, Lars Nilsson and Nanna Matsson* European Commission Directorate General for Trade B-1049 Brussels, Belgium, 2009, 1p

³ EU Trade Policy and Democracy Building in South Asia



Earlier EU introduced five GSP schemes where general scheme covers 7000 products having classified 3300 products as non sensitive and 3700 products as sensitive. Non sensitive products were given duty free access on the other hand sensitive products were benefited from a tariff reduction of 3.5 percentage from MFN tariff rate.

Next the tariff reduction for sensitive products by 8.5 percentage from MFN tariff rate is given for the recognition of labour rights and environmental standards. Another special scheme was identified for to combat drug protection and trafficking. More than 2700 Covered by this scheme and get the free access to the EU market. The main beneficiaries of this scheme are all Central American Countries, countries of Andean community and Pakistan.

Finally EU looked into least developed countries around 50 and allowed them free access to the EU market for all products except arms and ammunition. Simply this was known as Everything but Arms. Above schemes were scheduled to operate until 2008 and end of that period the tariff systems were kept open to revise according to the global business behavior and needs. Then the number of GSP schemes reduced to three. Under general scheme number of products covered are about 7200 similarly having incorporated 300 additional products in the area of agriculture and fishery sector.

Secondly a new GSP plus scheme covers especially vulnerable countries with special development needs. The important thing is to remember is, to govern under this scheme those countries must ratified and effective application of seven key international conventions on sustainable development and sixteen core conventions on good governance. The benefit of this category is that countries can enter the EU duty free for around 7200 products.

To benefit from 'GSP Plus' countries need to demonstrate that their economies are poorly diversified, and therefore dependent and vulnerable. Poor diversification and dependence is defined as meaning that the five largest sections of its GSP-covered imports to the Community must represent more than 75% of its total GSP-covered imports. GSP-covered imports, from that country must also represent less than 1% of total EU imports under GSP.

Final category of Everything but Arms was not changed.

¹ GSP: The new EU preferential market access system for developing countries. Memo - Brussels, 23 June 2005, 1-2p

¹ List of Conventions to qualify for 'GSP Plus' Core human and labour rights UN/ILO Conventions (all must be ratified and effectively implemented for GSP Plus to apply): International Covenant on Civil and Political Rights; International Covenant on Economic Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination Against Women; Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; Convention on the Prevention and Punishment of the Crime of Genocide; Minimum Age for Admission to Employment (N° 138); Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (N° 182); Abolition of Forced Labour Convention (N° 105); Forced Compulsory Labour Convention (N° 29); Equal Remuneration of Men and Women Workers for Work of Equal Value Convention (N° 100); Discrimination in Respect of Employment and Occupation Convention (N° 111); Freedom of Association and Protection of the Right to Organise Convention (N° 87); Application of the Principles of the Right to Organise and to Bargain Collectively Convention (N° 98); International Convention on the Suppression and Punishment of the Crime of Apartheid.

Conventions related to environment and governance principles (7 must be ratified and effectively implemented for GSP Plus to apply, all must be ratified and implemented by 2009): Montreal Protocol on Substances that deplete the Ozone Layer; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; Stockholm Convention on persistent Organic Pollutants; Convention on International Trade in Endangered Species; Convention on Biological Diversity; Cartagena Protocol on Biosafety; Kyoto Protocol to the UN Framework Convention on Climate Change; UN Single Convention on Narcotic Drugs (1961); UN Convention on Psychotropic Substances (1971); UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); Mexico UN Convention Against Corruption.

¹ GSP: The new EU preferential market access system for developing countries. Memo - Brussels, 23 June 2005



Sri Lanka; As A Beneficiary of GSP PLUS Scheme

In 2004, Sri Lanka became a beneficiary country of EU's GSP plus scheme. This was based on humanitarian grounds due to a huge national disaster.

GSP Plus is an EU trade concession that has helped Sri Lanka's garment industry, its top foreign exchange earner 2007, to boost export revenue since mid-2005. Sri Lanka's net a record income was \$2.9 billion in 2007 and it was 37.5 percent of total export income.

Garments were the country's top source of foreign exchange in 2007 followed by remittances of \$2.5 billion and tea export earnings, which brought in \$1 billion. Then under the GSP plus scheme the annual Sri Lanka's tariff reduction was around 150 US millions. But recently it seems, EU's attitude on Sri Lanka has changed today. Massive differences of opinion between the Government of Sri Lanka and the European Union over the implementation of three UN Human Rights conventions threaten the suspension of GSP plus or a preferential system of tariffs for garments and a variety of other export items. And also until SL Government make necessary arrangements implement the conventions [namely ICCPR, CAT and CRC], EU supposed to suspend the GSP plus facility. Then the facility was not available after June 2009. The major fact behind that is the success of a great humanitarian mission against LTTE.

The annual loss imposed to the country was 1500 US millions. The main effects of this sanction led the country to high degree of the unemployment and unstable environment to the garment business holders. The three UN conventions that EU focused were the International Covenant on Civil and Political Rights (ICCPR), Convention Against Torture (CAT) and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on Rights of the Child (CRC). And after some period EU finalized from their panel report that Sri Lanka was unable to implement above mentioned international legal forums effectively. Since Sri Lanka did not respond the panel on the issue, it was suggested to conclude it based on the facts available.

The following conclusions of the investigation are based on the Commission's analysis of these aspects.

"The legal and institutional framework giving effect to the ICCPR, CAT and CRC is not sufficient to ensure effective implementation of all relevant obligations provided for by the three instruments. Some of the provisions of the Conventions have not been transposed in full, while provisions in the domestic legislation are in some cases more restrictive than the corresponding provisions in the Conventions. Domestic legislation also contains provisions which are not entirely in compliance with the Conventions. In particular, the emergency legislation overrides other current legislative provisions and imposes restrictions on human rights, which are incompatible with the Conventions

Moreover EU concerned that significant number of disappearances and violation of freedom of association too, highlighting ILO convention. There were some issues discussed by EU are, serious restrictions on freedom of movement, child soldier recruitment on government controlled area by TMVP party etc. Prof G L Peiries mentioned that, the Government would not betray Sri Lanka's sovereignty to obtain economic benefits from other countries.



"We should not betray our dignity and respect for US\$ 150 million. We have to develop our strength and resources. In every sense we have capabilities to fulfill our task."

Then EU recently warned it may not renew the GSP Plus trade scheme after it expires in December 2009 because of continuing human rights abuses stemming from Sri Lanka's civil war.

EU GSP PLUS Trade Policies On Developing Countries; Whether It Is Inconsistent With WTO/GATT Principles

Birth of the MFN treatment go far beyond to 12th century, developed rapidly in 15th and 16th century and by the time of 18th and 19th centuries it was included in many international standing agreements. This supposes that GSP plus act as an exception to MFN treatment.

MFN treatment is defined by the Draft articles on MFN as the:

"[...] treatment accorded by the granting State to the beneficiary State, or to persons or things in a determined relationship with that State, not less favorable than treatment extended by the granting State to a third State or to persons or things in the same relationship with that third State."

And an MFN clause as:

"...a treaty provision whereby a State undertakes an obligation towards another State to accord most-favored treatment in an agreed sphere of relations."

Article 1.1 of GATT 1947 reveals the principle as follows.

"With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports and with the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III any advantage, favour or privilege or immunity granted by any member to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territory of all other members."

The MFN rule requires that members of the WTO cannot discriminate between their trading partners, but the GSP (legalized by the Enabling Clause within the framework of the GATT) allows for a more favorable treatment for developing country imports. The GSP systems established by industrial countries typically differentiate market access according to the development level of the recipient country and the sensitivity of certain products.

Basically the principle is a very important element in the WTO point of view. But it is possible to find that this can be relaxed or excepted by either the mutual understanding or decisions of the member states.

¹ Sunday Times, Sunday February 21 of 2010, "GSP Plus: Strictly for the birds"

² for example "A convention to regulate the commerce between the territories of the United States and of his Britannick Majesty" 3 July 1815.



The rationale behind that, is to provide non discriminatory treatment among WTO members. That is, any benefit in relation to importation or exportation given to a product of a most favoured nation (whether a member or not) has to be given to a like product of all members without discrimination.

It is obvious that no any member is not bound to treat to non member state under this principle. As the section states the methods of levying totally depend on the rule related to importation and exportation, internal regulations and finally internal taxations.

Article 1.1 GATT which embodies the MFN principle in the Enabling Clause, which states in part as follows;

1. *Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favorable treatment to developing countries, without according such treatment to other contracting parties.*
2. *The provisions of paragraph 1 apply to the following:*
 - (a) *Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences,*

Since there is no any interpretation provided in the GATT to identify the like product, it depends on the inherited nature of the respective product. The criteria may be like product end uses in a particular market, consumer interest and commercial habits international classification of the products for tariff purposes., and the physical characteristics of the product.

The next important fact is that, the customs duty or the tariff rates. Over the 60-year history of the GATT/WTO multilateral trading system, countries have agreed to progressively reduce their tariffs (or customs duties) on imported goods and to enter into what are called tariff "bindings". With tariff bindings in place, an exporter can know what the import duty, if any, will be on goods that it sells to a buyer in another country. As we can see there is no any single criteria of tariff application to the imported goods, custom itself has to activate the entry process to decide what the relevant tariff classification is. GATT itself does not prohibit the custom duty impose on the imported goods yet it is permissible under certain circumstances, eg; MFN basis. As GATT Article 2.1 [a] states,

Each contracting party shall accord to the commerce of the other parties treatment no less favorable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.

Although it is important to remind that GATT preamble and the article 28 bis are facilitated for tariff negotiations to reduce tariff rates and to bind the tariff concession.

Article XXVIII bis calls for negotiations

on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on imports and exports and in particular to the reduction of such high tariffs as discourage the importation of even minimum quantities

ADF Group Inc. v. The United States of America, ICSID Case No. ARB(AF)/00/1, Award, 9 January 2003.

Ibid., para. 194

European Foreign Affairs Review 14: 663681, 2009. 2009 Kluwer Law International BV. The New GSP+ Beneficiaries: Ticking the Box or Truly Consistent with ILO Findings? JAN ORBIE* AND LISA TORTEL, p 666

Das L. Bhagirath, (1998) P.15

It would remain open for the CONTRACTING PARTIES to consider on an *ad hoc* basis under the GATT provisions for joint action on any proposals for differential and more favourable treatment not falling within the scope of this paragraph.

As described in the Decision of the CONTRACTING PARTIES of 25 June 1971, relating to the establishment of "generalized, non-reciprocal and non discriminatory preferences beneficial to the developing countries" (BISD 18S/24).



Another vital element under the WTO is principle of special and deferential treatment. Prima facie GSP plus is a path which provided by EU tariff preferences to exports of manufactures from developing countries under the respective schemes.

It is noticeable that GSP Plus is an important example for the effective Special and Differential Treatment for vulnerable developing member countries to WTO .

In this light, developing countries must refocus WTO trade and development policy around the twin goals of development and fairness. Developing countries need a comprehensive agreement on Special and Differential treatment clarifying that development not trade liberalization is the number one economic policy goal for developing countries and that fairness and not charity, is the basis for development. Such an Agreement should incorporate precise and operational rules on the generalized system of preferences, creating binding and unconditional preferential market access for developing countries.

The key issue regarding these programs is whether in practice they make a significant contribution in enhancing market access prospects for developing countries.

It may be done in two ways; (a) they enjoy freedom to undertake policies which limit access to their markets or provide support to domestic producers or exporters in ways which are not allowed to other members--all of which can be viewed as exemptions from WTO disciplines to take into account particular developing country circumstances; (b) they are provided with more time in meeting obligations or commitments under the agreements. In some cases, more favorable treatment involves a combination of (a) and (b).

The most general and fundamental way in which developing countries continue to be exempted from WTO disciplines regarding market access policies is the recognition of the principle of non-reciprocity in trade negotiations with developed countries to reduce or remove tariffs and other barriers to trade. This consists in GATT article XXXVI and enabling clause.

It could be argued that flexibility, as applied in the WTO, is not the negation of reciprocity. Commitments were agreed on a reciprocal basis, and flexibility applies to the differential application of such commitments. However, the Uruguay Round Agreements, by placing flexibility in the context of reciprocity, mark a significant shift in the handling of development issues within the multilateral trading system, away from the concept of non-reciprocity. This lack of effective definition to developing countries, has arisen in many circumstances, such as EU-India GSP case. Here they largely depended on the definition of developing countries as used in the Enabling Clause of GATT.

Time extension of the respective obligations under the agreement is another way of special and differential treatment. Flexibility in transition times is provided in practically all the WTO Agreements, with the exception of the Agreement on Anti-Dumping Procedures and on Pre shipment Inspection. The time limit intends to measure countries have made sufficient progress from the privileges what they were offered and also to monitor whether it is useful enough to continue further. Another important fact to analyze is that, did EU manage to maintain transparency and equity throughout their GSP plus scheme proceedings.

¹ P 98

¹ What strategies are viable for developing countries today? The World Trade Organization and the shrinking of 'development space', Robert Hunter Wade Development Studies Institute, London School of Economics and Political Science, p 16

¹ Ibid p 18



Observations And Remarks

EU has displayed its massive commitment of promoting the social dimension of globalization collaborating with ILO and basic international legal bindings. When we think about the GSP plus scheme it displays the nature of both granting or withdrawing trade preferences according to a developing country's observation or violation of labour standards.

It is clear that a strong link has been established between EU GSP and ILO. Also ratification of ILO conventions has become a pre requisite to enjoy EU GSP facility.

Also it is important to draw EU's attention on the fact that a serious investigation should be done to disclose whether the specific developing country is already ratified the required number of ILO conventions. The system has been successful in ensuring the full ratification of the eight fundamental labour standards among the beneficiary countries, as exemplified by the case of El Salvador. However, several countries have received GSP+ trade preferences despite being seriously criticized by the authoritative ILO committees for their *implementation* of the relevant conventions. In the Sri Lankan context, the issue on suspend the GSP plus, was by that time country did not implement the core conventions. An interesting argument arises is, EU being a organized and reputed trade union, didn't they draw their attention on the mentioned issue when they suppose to grant GSP concession.

Since some countries that are high on scale of condemnation still benefit from GSP+ preferences, the EU remains vulnerable for criticism that it only considers the ratification criterion. For example, when the EU rejected the GSP+ applications by Nigeria and Gabon because they had not ratified one of the relevant conventions, this formal shortcoming was contrasted with Colombia's continuing GSP+ treatment despite serious violations of basic labour rights

The next issue is GSP sanctions or withdrawn. The case of Belarus shows that even the 'normal' sanctioning procedure is time consuming and prone to opposition from EU Member States. While the complaint against Belarus was made in 2003, it took until 2007 before sanctions were established. The delay was partly caused by the EU's wish to monitor the situation in Belarus and wait for ILO reports in this regard, but also related to practices of 'classic horse-trading' between Member States. EU's ability to withdrawn GSP plus was discussed issues related to Sri Lanka and El Salvador. In the case of El Salvador, it concerns labour standard conventions.. In the case of Sri Lanka, it concerns violations against the Covenant on Civil and Political Rights, the Convention against Torture, and the Convention on the Rights of Child.

In a similar vein, other analysts suggest that the developing countries that would benefit the most from the Uruguay Round are those that have reduced their barriers the most, partly because of improved market access opportunities through the exchange of reciprocal reduction of barriers and partly because of the positive effects of their own lower protection on their economies. The broad conclusion that is drawn from these analyses is that greater discipline in the context of the WTO, which would lead developing countries to adopt policies that would lower protection, would tend to result in greater benefits to their trade and development.



Further differentiation among potential GSP+ beneficiaries, in conformity with ILO and other assessments over time, may be justifiable. This would help the EU to move beyond 'ticking the box' in terms of ratifications.

The impact of the EU's GSP+ on ratification of ILO Conventions suggests that this option could influence countries' implementation of Core Labour Standards as clearly the EU has the trade leverage to cause changes when it takes a determined line. Such an approach could allow the EU to focus on applying pressure on countries in relation to the more serious of breaches of core conventions, without resorting to the use of a 'stick'. In doing so, it could be considered to reinforce the ILO committees' work in relation to the observance of the fundamental conventions.

Shortly after 9/11 the EU added Pakistan to the beneficiaries of the GSP drugs system, which provided additional trade preferences to Latin American countries fighting drug trafficking and production. This provoked the Indian government to vehemently argue that the EU's decision was motivated by foreign policy and geopolitical motivations and not justified under the GATT Enabling Clause. Although this challenge did not directly concern the labour standard arrangements, it risked undermining the legality of any GSP conditionality system. The WTO Appellate Body, however, ruled that developed countries could grant additional preferences if these "respond positively" to the "needs of developing countries". Thus, if it is based on objective and transparent criteria, discrimination between developing countries may be consistent with international trade law.

Moreover it seems even though EU trade policies are really helpful to the economy of the developing countries but largely dealt with political favors. Having warned it may not renew the GSP Plus trade scheme after it expires in December 2009 because of continuing human rights abuses stemming from Sri Lanka's civil war, we lead into such a conclusion. If it is so, then EU largely violates WTO principles such as MFN, special and differentiated treatment etc. Moreover it violates the proportionality principles of International Law and the concept transparency.

Ishara Kumudumalee Munasinghe

¹ Commission Decision, OJ 2008, L 277/34.

¹ Finger, M. J. and L. A. Winters. 1998. "What Can the WTO Do for Developing Countries" in A.O. Krueger Ed. *The WTO as an International Organisation*, University of Chicago Press, Chicago;

¹ Although note, of course, that the ILO committees' reports are intended to provide technical and tripartite consideration of the implementation of labour standards for the purposes of the governments involved - and are not intended to operate as sources for external assessments. Their use in what could amount to trade disadvantage could potentially be argued to harm the ILO system, with its exclusively non-sanction-based approach.

¹ Since 1990 this system had granted additional market access to Andean Community members (Bolivia, Colombia, Ecuador, Peru and Venezuela); in 1998 it was extended to members of the Central American Common Market (Costa Rica, Guatemala, Honduras, Nicaragua, El Salvador and Panama).

¹ R. Howse, 'India's WTO Challenge to Drug Enforcement Conditions in the European Community Generalized System of Preferences: A Little Known Case with Major Repercussions for "Political" Conditionality in US Trade Policy', *Chicago Journal of International Law* 2 (2003).

¹ WTO Appellate Body Report, European Communities - Conditions for the granting of tariff preferences to developing countries, para. 165.