

Buenos Aires, 28 de mayo de 2010

Embajador de la República Argentina ante la Unión Europea

Sr. Jorge Luis Remes Lenicov

S/D

De nuestra mayor consideración:

Nos dirigimos a Ud. a fin de transmitirle la opinión de las instituciones abajo firmantes respecto a la consulta pública formulada por la Comisión Europea en materia del Sistema Generalizado de Preferencias.

El Sistema Generalizado de Preferencias de la Unión Europea ha sido un instrumento de gran relevancia para impulsar el desarrollo de algunas de nuestras industrias, y constituye un elemento de suma importancia para el comercio internacional de los países en desarrollo. Por tal motivo, consideramos de vital importancia mantener dicho sistema en, al menos, las mismas condiciones ventajosas para las exportaciones argentinas.

En el Anexo a esta carta podrá encontrar las respuestas por nosotros formuladas a algunas de las preguntas realizadas por la Comisión Europea en su consulta pública.

Le solicitamos tenga a bien considerar distribuir dichas respuestas a los organismos, divisiones y/o departamentos de la Comisión Europea que considere pertinente a estos fines.

Sin otro particular, aprovechamos la oportunidad para saludarlo muy cordialmente,



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International Negotiations on Agriculture Institute Foundation
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Dr. Roxana Blasetti, Directora de Relaciones Agroalimentarias Internacionales, Ministerio de Agricultura, Ganadería y Pesca

Ministro Estanislao Zawels. Unidad de Negociaciones Económicas con la Unión Europea.
Ministerio de Relaciones Exteriores, Comercio Internacional y Culto

ANEXO I

PUBLIC CONSULTATION ON THE EU GENERALISED SYSTEM OF PREFERENCES

Objectives of GSP

Q1: Do you consider that the GSP is a valid trade instrument for development and should be continued?

A: Yes, it is a valid trade instrument in order to improve market access for developing and less developed countries, though it is not the most advantageous because of its deadline.

The GSP has been useful to help many sectors of domestic industry in developing countries. EU's duty free or reduced import tariffs helps beneficiary countries to increase rural development, boost other economic areas and enhance investment in technology processes of industrialization.

Q5: Do you consider that GSP could contribute to address the challenges of the 21st century such as climate change and food security? Do you see ways to take account of these challenges in the next GSP regulation?

A: Yes. The new GSP scheme may contribute to the challenges of climate change by promoting trade of "eco friendly" products through special tariff benefits - duty free access- i.e. organic products certified under the EU legislation or biofuels under the Renewable Energy Directive (RED). Consequently, it would be important to identify objective parameters to define this kind of products.

The EU must also make easier under GSP scheme trade of multi-purpose products for food, feed and energy, like soybean crushing products (soy meal for feed use, soybean oil as food and soybean biodiesel as energy). In this sense, the EU should introduce a new approach as a GSP value chain policy, meaning that all the products from the raw material to the last edible or not edible product should be considered with a preferential treatment under GSP (free duty). A policy like this will improve sustainable development with the introduction of industrial practices in developing countries in favor of climate change, improvement of employment, new green technologies at farm and processing level and food security goals.

Simple and easy access to the GSP

Q6: Does the parallel co-existence of different preferential regimes (for example GSP and a bilateral trade agreement) for imports into the EU from the same developing country support or hinder effective use of the preferences by that country? To what extent does the co-existence of parallel import regimes create other incoherences that need to be addressed?

A: Co-existence of different preferential regimes does not hinder effective use of preferences as long as a given product would only be levied with the lower duty - the biggest tariff preference - (see answer to Q. 13).

Q8: How far in advance of its entry into force should a GSP Regulation be published in order to provide economic operators and other interested parties with enough time to become aware of and adjust to any changes?

A: It is important for economic operators to be informed as soon as possible of the new scheme, in order to guarantee the best use of them. If the new regimen will be effective in 2014 as informed and considering the EU domestic administrative and legislative process post Lisbon Treaty, it will be reasonable to publish the new Regulation not after mid 2011.

Additionally, we wish to emphasize that the new Regulation should maintain the current market conditions to achieve development policy goals from the EU to developing countries.

Maintaining generous and appropriate preferential tariff rates under the standard GSP

Q10: Under the current standard GSP regime, “non-sensitive” products are given duty-free treatment, “Sensitive” products are subject to a fixed-rate reduction from MFN rates (in general 3.5 percentage points on ad valorem duties but for products from Sections XI textiles - by 20% and for specific duties -by 30%) but still remain subject to duties and certain other products are excluded from the regime altogether, so remain subject to MFN duties. Should the new Regulation adjust the balance between these three categories? Should the treatment of “sensitive” products be adjusted?

A: Yes, the new regulation should adjust the balance between the described categories. First, considering EU GSP goals, the whole tariff universe should be taken into account. Second, objective, transparent, science-sound parameters should be established in advance to designate a product like “sensitive” in order to improve predictability and transparency in trade preferences, withdrawing subjectivity of the revised scheme.

Specially, considering that “sensitive product” (SP) are affected by an exceptional – less beneficial for developing countries – tariff treatment. The last revision of the Regulation modified the benefits of certain products bringing on economic crisis in specific third countries industries which are small and family producers in general.

Therefore, there is a clear need to introduce Impact Assessment Studies for designating a SP so as to evaluate impact in developing countries and weighing up real consequences on EU if the decision is made. The EU counts with many precise tools to pursue such assessment.

GSP targeted on countries that most need it

Q13: The current Regulation already establishes the principle that countries that have concluded contractual preferential trade agreements with the EU (eg FTAs) should be removed from the GSP (it can be expected that a reciprocal FTA will incorporate and go beyond the autonomous preferences provided under GSP). . Should this principle be reinforced and made more operational? If so, how?

A: The EU should introduce a clause in all Free Trade Agreements with developing countries compromising “at least” the same preferences level as GSP scheme in the year 0 of the agreement tariff preference schedule. The GSP and a Free Trade Agreement should work as complementary tools for granting preferential market access to the EU and different policy choices to support developing countries exports.

Q14: The current Regulation includes a wide range of beneficiaries, including countries that have become major global actors in international trade with very significant and wide-ranging exports to the EU and participation in global markets (eg the emerging economies such as Brazil, China and India). Should GSP continue to be available to such major traders (albeit with their individual benefits under the scheme effectively modulated as a result of the graduation mechanism) or should they be excluded altogether on the grounds that they no longer need preferential access under GSP to support their effective participation in EU markets or their broader development? If the latter, then what general, horizontal indicators should be considered as relevant to determine continued participation in the scheme?

A: Yes, GSP should be granted to all developing and less developed countries following GATT Enabling Clause. Mostly considering the fact that countries development assessment indicators must reflect the whole country circumstances not the particularities of any domestic industry. Argentina should be considered as a developing country according to different and agreed international parameters related to economic and social development. The application of EU GSP scheme has developed positive outcomes in different agrifood and energies value chains, creating

new employments, improving rural livelihood and new processing practices. Argentina farmers and industries would suffer tremendous impacts if the EU excludes products or sectors from the GSP scheme, generating negative social impacts.

Graduation mechanism

It can be expected that “graduation” (ie the modulation of benefits available under GSP and GSP+ in light of a beneficiary country’s relative performance on the EU market for certain groups of products) will remain an important feature of the EU GSP and a key instrument in ensuring that benefits under the scheme are targeted on those countries most in need of them in order to expand their exports to the EU and thereby support their own development.

Q16: Should graduation be linked to any other economic indicators instead of or as well as the current indicator (relative share in GSP covered imports)?

A: It should be added an indicator linked to export concentrations in the beneficiary country of the section that under the current regime (art 13.1 Regulation 732/2008) would be excluded of GSP. A similar provision is considered under art. 3.1 for excluding a beneficiary country. Consequently, a section in a beneficiary country should not be excluded if the UE is the main importer of that product or it embraces most of the total exports of that beneficiary country.

Q17: Should graduation continue to be calculated on the basis of product sections, which typically cover a large group of products and thereby makes qualification for graduation less likely to be achieved, or should it rather be based on a more detailed product grouping, and if so at what level?

A: The graduation mechanism has proved to be very efficient to achieve EU goals. In this sense, it should continue to be calculated on the basis of product sections in order to diminish the non-typical behavior of one single tariff line. This method gives the regimen the needed stability for economic operators in their international strategy.

In spite of that, the withdrawn of GSP treatment should be set at CN Code instead by entire section with the view to avoid a damage to products that are related.

As a “second best” it should be established that when a tariff line (8 digits) imports are bigger than an X% of a given section, only that line would be excluded.

Q18: Should the present thresholds for triggering graduation (15% or 12.5% for textiles and clothing) or statistical reference periods (most recent 3-year period before the entry into force of the Regulation) be adjusted? If so, how?

A: We do not consider necessary to introduce any amendments in this statistical periods. The 3 year period is the “minimum” statistical background to obtain an objective analysis in order to carry out a product graduation – inclusion.

Q19: How frequently should graduation be calculated? Should de-graduation (ie the re-establishment of benefits if a beneficiary’s relative share drops below the reference threshold) continue to be possible? If yes, then should there be any adjustment in how that operates?

A: Under the current GSP regime benefited products are only included when the Regulation is amended, considering the limited validity period of the law. Then there is no chance of adding new products once the Regulation has entered into force.

Due to the fact that the current EU-GSP review process will be slower and the period of validity of the final Regulation longer, it would be highly desirable to carry out an annual revision for graduation and de-graduation **but** considering the last three years data. This measure will invigorate the GSP system.

Sustainable Development and Good Governance

Q20: Under the current Regulation benefits can be suspended in the event of “the serious and systematic violation of principles” laid down in 8 ILO core labour rights conventions and 8 UN core human rights conventions. Should any consideration be given to building on this as regards areas beyond labour and human rights such as protection of the environment and promotion of good governance? Should this provision be strengthened eg by introducing appropriate benchmarks in these areas that beneficiary countries of the standard GSP and/or EBA should also be expected to satisfy before GSP/EBA preferences are granted? What form might this take and what would be the added value in terms of promoting support for the implementation of sustainable development standards?

A: International Environment Agreements (Treaties, Agreements, Protocols, etc in which EU is a signatory part) mainly provide their own cooperation (cooperation funds, technical assistance, etc) and enforcement mechanisms to support developing and less developed countries in accomplishing the goals and duties established in those legal instruments. This recognizes – at a multilateral level - the precise circumstances shared by this group of countries.

Then, the fact that tariff preferences would depend upon accomplishing certain multilateral settled standards might sound contradictory providing at unilateral level a different approach than that agreed in the multilateral arena.

Notwithstanding that, it should be established an objective and transparent mechanisms to prove when and under which circumstances a serious and systematic violation of principles occurs.

Temporary withdrawal instruments, safeguard measures, antifraud measures

Q31: Are “safeguard” type instruments relevant for the GSP scheme?

A: Considering the limited period of validity and that there are temporary withdrawals instruments and products graduations, safeguard instruments should be excluded from the scheme.

Nonetheless, in accordance with GSP goals, safeguards should trigger on more restrictive basis than the “common” safeguard measures. In example, the “threaten to cause” injury should not be included as well as the chance to impose provisional safeguard measures. This does suits with the purpose of the regimen and makes it ineffective.

Q32: Should any of the current “temporary withdrawal instruments” (eg. for cases of fraud, unfair trading practices, goods made by prison labour etc) be reinforced or rather relaxed and if so in which way? Should any new instruments be included?

A: On the one hand, it should be clarified the term “competent WTO body” related to “unfair trading practices” (art. 15.1 d of current Regulation). The said because those practices are included in WTO agreements requiring certain findings from the competent domestic authorities. The only WTO body with legal authority to make findings on WTO regulated measures is the Dispute Settlement Body (DSB). Other WTO instances (TPR, Committees) have no legal authority about WTO non compliance claims, according WTO agreements.

On the other hand, it should be considered a warnings system, previously to the decision of starting an investigation, with the purpose to justify that the non compliance is systematic and repetitive.

Q33: Should the criteria for opening an investigation under the Regulation be specified in more detail?

A: Yes, we encourage the EC to develop clear and transparent guidelines for the acceptance and opening of an investigation and the possibility to consult to the third country sector and government during the process. The new criteria will introduce a positive message to developing countries and reduce the potential threaten of protectionism lobbyist.

Considering that the new GSP Regulation would have a longer period of validity it should make available a periodical review on affected countries. It also should be excluded the suspension mechanism set in art 16.3 of Regulation 732/2008.

Q34: The European Commission during its administrative procedures observes general principles of EU law including the rights of defense. The rights of defense include the right to be heard, the right of access to the file and the principle of sound administration. Should there be any specific rules, including in the GSP Regulation, that would allow the country being subject of proceeding for the temporary withdrawal to better exercise its rights of defense?

A: Yes, appropriate technical assistance should be granted to assure effective rights of defense. Rights to defense should mean suitable time for responses and a clear and transparent methodology about the information to be provided by the affected country. The assessment and subsequently decision of UE authorities should be sounded legal motivated on objective and public well-known basis.

Horizontal aspects

Duration of the Regulation

Q35: Following the entry into force of the Lisbon Treaty, the legislative procedure for the GSP Regulation has changed and will inevitably be more drawn-out than was the case previously. As a result, the current approach based on relatively short-duration (3-year) Regulations within a broad framework lasting 10 years is no longer sustainable. What would be the appropriate duration for the next GSP Regulation?

A: It would be a positive sign to concede longer period preferences to beneficiaries countries. However, it necessary requires providing periodical review mechanisms to de-graduate excluded products or re-evaluate the qualification of included products as sensitive.

Q36: Are there any other aspects of the current GSP regulation 732/2008 that should be reviewed or changed? If yes, which and in what way?

A: GSP (Art. 4 y Annex II) should include the whole tariff lines (or most of them), so as to consider GSP as useful instrument of the EU to succeed in supporting developing and less developed countries.