

## MMTA TRADE AND LOBBY COMMITTEE'S NEWSLETTER

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### TRADE LAW UPDATE

#### 1. Changes in the European decision-making procedures in anti-dumping procedures

The European Parliament agreed to shift more power in trade defence matters (anti-dumping, anti-subsidy, and safeguard measures) to the European Commission (Regulation No. 182/2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers).

The new decision making process, follows from the Lisbon Treaty (formerly called the "EU Constitution"). As regards anti-dumping and anti-subsidy measures, the new decision making process will enter into force as soon as the Council and Parliament have amended the EU's basic anti-dumping and anti-subsidy regulations. The process of amending these rules is already at an advanced stage: the Commission already sent a proposal to the Council for approval. The proposal can be found through this link:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0082:FIN:EN:PDF>. As soon as the basic regulations are amended, the Commission -- and no longer the Council -- will adopt definitive anti-dumping and countervailing duties.

As a result, traders will have to re-think their strategy in trade defence proceedings by getting involved earlier in the proceedings and focusing their lobbying activities more on the Commission instead of Member States. In addition, the new decision-making procedure also grants the Commission the power to adopt immediately applicable provisional anti-dumping and countervailing duties for a period not exceeding six months, after consulting the Member States, or in cases of "extreme urgency" after simply informing them and holding a consultation at a later stage. ([read the Regulation](#))

#### 2. Changes in the EU's General System of Preferences (GSP)

The EU is currently revising its GSP with a view to simplifying it and making it easier to access. The EU aims to have a new GSP in place by 1 January 2014. Currently, the consultations and preparations are ongoing.

The review includes the following:

- The criteria for beneficiary countries/sectors. Will China still qualify for GSP, should there still be a distinction between sectors and countries. Based on recent statistics, GSP preferences were re-established for six countries: Algeria was re-established in the GSP for exports of mineral products, and India for exports of jewellery, pearls, etc.
- The criteria for graduation and de-graduation of beneficiary countries. The graduation triggers either a removal or a re-establishment of tariff preferences whenever an individual country's performance on the EU market over the past three years exceeds or falls below a set threshold.
- The criteria for eligibility for GSP+.
- The list of products entitled to preferential treatment including their (non) sensitivity.

Companies with an interest in GSP should consider getting involved now to ensure their interests are adequately safeguarded in this review.

## EU adopts new rules of origin for its GSP

As of 1 January 2011, the EU applies new rules of origin for products imported under its GSP as laid down in Commission Regulation No 1063/2010 of 18 November 2010 ("GSP Origin Regulation"). The new rules benefit imports from developing countries. These new rules will serve as a model for future trade agreements that the EU is planning to conclude.

Rules of origin are used to determine the origin of goods, and whether these goods originate in countries covered by the EU's preferential trade agreements. This, in turn, determines whether the goods will be imported into the EU subject to preferential duty-free treatment.

To be considered as originating in a country covered by a preferential trade agreement, the goods must either be wholly obtained (e.g., grown, mined, harvested or raised) in that country, or the goods must have been sufficiently processed in that country.

The previous rules of origin applied under the GSP were widely seen as too complex for developing countries and least developed countries. As a result, the benefits the GSP offered were underutilized. The revised GSP origin rules aim at simplifying the existing rules and at providing additional flexibility for developing countries and LDCs. The overall idea of the European Commission is also that these revised GSP origin rules will serve as a basis for all future trade agreements concluded by the EU.

In particular, the revised GSP origin rules result in the following:

- Simplification of origin rules
- Less restrictive origin rules
- Simplification of the procedural rules: self-declaration
- Revision of the cumulation rules

An illustration of the cumulation is that the EU now allows *regional cumulation* to products from the Mercosur zone under its GSP. This means that, for most products, raw materials and processing done collectively in the entire zone can be added up to confer preferential origin under the GSP. These imports then qualify for duty preferences when imported into the EU. Previously, the GSP preference could only be granted on a country-by-country basis. A EU-Mercosur FTA is also expected by mid-2011. ([read the communication](#)).

### 3. EU Pursues Free Trade Agreements

The EU is actively pursuing bi-lateral free trade agreements. The EU is currently negotiating with 38 countries/regions some kind of trade or partnership agreement. This high number is partly the result of the slow progress of the negotiations at the World Trade Organisation for a global agreement.

The EU is looking for ambitious trade agreements. The starting point is that all the trade with the partner country should be duty free and that all trade barriers and export restrictions should be removed. In addition, the EU is looking to include rules on investment protection and minimum environmental and social standards.

The FTA between the EU and South Korea is the most recently concluded FTA by the EU and serves as a blue print for other FTA's. On the agenda of the EU politicians are the following agreements with China, India, Singapore, Ukraine, Malaysia and Russia.

Companies that are interested in better access to the EU market, or to the market of any country the EU is negotiating an agreement with, should seize this opportunity. This would be a good moment to raise the issue and get it resolved. Interested companies could for instance submit a response to a questionnaire the European Commission developed for this purpose. If there is sufficient interest from MMTA members the MMTA would be happy to coordinate the input.

To illustrate the situation, the table below shows that India currently applies export restrictions in your sector (export taxes on ferrous waste and scrap, re-melting scrap ingots of iron or steel, iron ore fines, leather. or others).

HS as described in the third country legislation	Product description	Type of export restriction measure	If export tax, rate of export tax
7204	Ferrous waste and scrap, re-melting scrap ingots of iron or steel	Export tax	15%
2601	Iron ore and concentrates	Export tax	15%
	Iron Ore fines	Export tax	5%
4101	Finished leather	Export tax	60%
4102	Finished leather	Export tax	60%
4103	Finished leather	Export tax	60%
5201	Raw cotton	Export tax	Rs. 2500/tonne
5202	Cotton waste, all sorts	Export tax	3%

Please contact the [MMTA](#) or [Arnoud Willems](#) at Sidley Austin for more information.

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