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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 22.7.2014 amending Annex II to Regulation (EU) No 978/2012 applying a scheme of generalised tariff preferences

Delegations will find attached document C(2014) 5087 final.

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Brussels, 22.7.2014  
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**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 22.7.2014**

**amending Annex II to Regulation (EU) No 978/2012 applying a scheme of generalised  
tariff preferences**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

The EU Generalised Scheme of Preferences ('GSP') has assisted, since 1971, developing countries in their efforts to reduce poverty, promote good governance and sustainable development by providing preferential access to the EU market and, consequently, helping them generate additional revenues through international trade. Regulation (EU) No 978/2012 of the European Parliament and the Council<sup>1</sup> ('the GSP Regulation') provides the legal framework for the GSP implementation. It was designed to concentrate GSP preferences on those developing countries most in need: the least developed countries (LDCs) 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 the GSP Regulation. Annex II was last amended by Regulation (EU) No 1421/2013<sup>2</sup>, which replaced Regulation (EU) No 154/2013<sup>3</sup>. Under Article 5(2) of the GSP Regulation, the Commission has to review Annex II by 1 January of each year. The overall aim is to ensure that GSP is granted to all developing countries which are in a similar stage of economic development and share a common development need. The review should take into account changes in the economic, development or trade conditions of beneficiary countries. When implementing the change, the Commission should also provide for a specific time period for the beneficiary country and economic operators to adapt to the revised country's status under the GSP scheme.

The criteria to be granted GSP beneficiary status are laid down in Article 4 of the GSP Regulation.

Article 4(1)(b) of the GSP Regulation sets out that GSP preferences should not be extended to developing countries which are benefiting from a preferential market access arrangement with the Union, which provides the same level of tariff preferences as the GSP, or better, for substantially all trade.

According to Council Regulation (EC) No 1528/2007,<sup>4</sup> the following countries, among others, are benefitting from a preferential market access arrangement with the Union: the Republic of Botswana, the Republic of Cameroon, the Republic of Côte d'Ivoire, the Republic of Fiji, the Republic of Ghana, the Republic of Kenya, the Republic of Namibia, and the Kingdom of Swaziland. Therefore, the abovementioned countries are not listed as GSP beneficiaries in Annex II of the GSP Regulation.

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<sup>1</sup> OJ L 303 of 31.10.2012, p. 1.

<sup>2</sup> OJ L 355, 31.12.2013, p. 1.

<sup>3</sup> OJ L 48, 21.2.2013, p. 1.

<sup>4</sup> OJ L 348 of 31.12.2007, p. 1.

By Regulation (EU) No 527/2013, the preferences set by Council Regulation (EC) No 1528/2007 are due to expire on 1 October 2014. Therefore, on 1 October 2014 the abovementioned countries will cease to benefit from a preferential market access arrangement which provides the same or a better level of tariff preferences as the GSP. As a consequence, Article 4(1)(b) of the GSP Regulation will not be applicable anymore and those countries should be treated in the context of the GSP legislation, according to their status.

The Republic of Cameroon, the Republic of Côte d'Ivoire, the Republic of Fiji, the Republic of Ghana, the Republic of Kenya, and the Kingdom of Swaziland are GSP eligible countries and comply with the requirements of Article 4 of the GSP Regulation to be beneficiaries of the general GSP arrangement. Consequently, the above-mentioned countries should be included in Annex II of the GSP Regulation with application from 1 October 2014.

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. The Republic of Botswana and the Republic of Namibia have been classified by the World Bank as upper-middle income country, in 2011, 2012 and 2013. Accordingly, the Republic of Botswana and the Republic of Namibia do not fulfill the criteria anymore to benefit from GSP general arrangements.

However, Article 4(3) of the GSP Regulation provides that a country that has initialled a bilateral preferential market access arrangement before 20 November 2012 is not covered by the provisions on high or upper-middle income classification of Article 4(1)(a) until 21 November 2014. The Republic of Botswana and the Republic of Namibia had initialled, but not yet applied, such a bilateral preferential market access agreement with the Union before 20 November 2012. Therefore, the application of Article 4(1)(a) shall start only on 21 November 2014.

Under Article 5(2)(a) of the GSP Regulation, when a country is removed from the list of beneficiaries, the change should apply as from one year after the date of entry into force of that decision. Therefore, the exclusion of the Republic of Botswana and the Republic of Namibia from the list of beneficiary countries will be effective from 22 November 2015. In order, however, to allow for an update consistent with the yearly update of the Annex II of GSP Regulation, the removal of those two countries should take place on 1 January 2016.

The Republic of Botswana and the Republic of Namibia will, therefore, be included in Annex II of the GSP Regulation from 1 October 2014 to 31 December 2015. On 1 January 2016, both countries will be removed from Annex II and they will cease to benefit from the GSP general arrangement.

## **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 21 May 2014 and via electronic communication during the months of May and June 2014.

## **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

Article 5(3) of the GSP Regulation empowers the Commission to adopt delegated acts to amend Annex II to that Regulation. The proposed amendments to Annex II are as follows.

The Republic of Cameroon, the Republic of Côte d'Ivoire, the Republic of Fiji, the Republic of Ghana, the Republic of Kenya, and the Kingdom of Swaziland should be added to Annex II to the GSP Regulation with application from 1 October 2014.

The Republic of Botswana and the Republic of Namibia, should be added to Annex II of the GSP Regulation with application from 1 October 2014 to 31 December 2015.

# **COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 22.7.2014**

## **amending Annex II to Regulation (EU) No 978/2012 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 the European Parliament and Council Regulation (EU) No 978/2012 of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008<sup>1</sup>, and in particular Article 5(3) thereof,

Whereas:

- (1) Article 4 of Regulation (EU) No 978/2012 ('the GSP Regulation') establishes the criteria for granting tariff preferences under the general arrangement of the Generalised Scheme of Preferences ('GSP').
- (2) Article 4(1)(a) of the GSP Regulation provides 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 should not benefit from GSP preferences. However, according to Article 4(3) of the GSP Regulation, Article 4(1)(a) should not apply until 21 November 2014 for countries that have initialled a bilateral preferential market access arrangement by 20 November 2012.
- (3) Article 4(1)(b) of the GSP Regulation provides that 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 enjoy GSP preferences.
- (4) The list of beneficiary countries of the general GSP is established by Annex II to the GSP Regulation. Article 5 of the GSP Regulation lays down that Annex II is to be reviewed by 1 January of each year, to reflect changes in relation to the criteria laid down in Article 4. Furthermore, it provides for a GSP beneficiary country and economic operators to be given sufficient time for an orderly adaptation to the country's GSP status revision. Accordingly, the GSP arrangement is to continue for one year after the date of entry into force of a change in a country's status on the basis of Article 4(1)(a).

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<sup>1</sup> OJ L 303, 31.10.2012, p. 1.

- (5) By Council Regulation (EU) No 1528/2007<sup>2</sup>, the Republic of Botswana ('Botswana'), the Republic of Cameroon ('Cameroon'), the Republic of Côte d'Ivoire (Côte d'Ivoire'), the Republic of Fiji ('Fiji'), the Republic of Ghana ('Ghana'), the Republic of Kenya ('Kenya'), the Republic of Namibia ('Namibia') and the Kingdom of Swaziland ('Swaziland'), among others, are benefitting from a preferential market access arrangement which provides the same level of tariff preferences as, or better than, the GSP. In accordance with Article 4(1)(b) of the GSP Regulation, those countries were not included in Annex II since they were already benefitting from such preferential market access.
- (6) The abovementioned countries are included in Annex I of the GSP Regulation as GSP eligible countries.
- (7) By Regulation (EU) No 527/2013, as from 1 October 2014, Botswana, Cameroon, Côte d'Ivoire, Fiji, Ghana, Kenya, Namibia, and Swaziland cease to be covered by the market access arrangement provided by Regulation (EU) No 1528/2007. These countries are GSP eligible countries as defined by Article 2(c) of the GSP Regulation and, as of 1 October 2014, meet the criteria of Article 4 of the GSP Regulation. Therefore, these countries should be included in Annex II to the GSP Regulation with application from 1 October 2014.
- (8) Botswana and Namibia have been classified by the World Bank as upper-middle income countries in 2011, 2012 and 2013. Nevertheless, both countries had initialled, but not applied, a bilateral preferential market access with the Union, which provides the same tariff preferences as GSP, or better, for substantially all trade by 20 November 2012. As a consequence, Article 4(1)(a) does not apply to those two countries until 21 November 2014.
- (9) In accordance with Article 5(2)(a) of the GSP Regulation, the decision to remove a beneficiary country from the list of GSP beneficiary countries shall apply as from one year after the date of entry into force of that decision. However, as a consequence of Article 4(3) of the GSP Regulation, the removal of Botswana and of Namibia cannot be effective before 22 November 2015. Consistently with the yearly update of Annex II to the GSP Regulation, the removal of Botswana and of Namibia from that Annex should be effective as from 1 January 2016. Consequently, Botswana and Namibia should be included in Annex II to the GSP Regulation from 1 October 2014 to 31 December 2015,

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<sup>2</sup> Council Regulation (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements (OJ L 348, 31.12.2007, p. 1).

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:

(a) the following countries and the corresponding alphabetical codes are inserted under columns A and B, respectively:

BW	Botswana
CM	Cameroon
CI	Côte d'Ivoire
FJ	Fiji
GH	Ghana
KE	Kenya
NA	Namibia
SZ	Swaziland

(b) the following countries and the corresponding alphabetical codes are removed from columns A and B, respectively.

BW	Botswana
NA	Namibia

*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(a) shall apply from 1 October 2014.



Article 1(b) shall apply from 1 January 2016.

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

Done at Brussels, 22.7.2014

*For the Commission*  
*The President*  
*José Manuel BARROSO*