



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

concerning Article 5 of Council Regulation (EC) No 2820/98 applying a multilateral scheme of generalised tariff preferences for the period 1 July 1999 to 31 December 2001

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1. Section 2 of Council Regulation (EC) No 2820/98 of 21 December 1998 applying a multilateral scheme of generalized tariff preferences for the period 1 July 1999 to 31 December 2001¹ refers to graduation. According to Article 5 of that Regulation, “*the Commission shall present a report to the Committee referred to in Article 31 on the application of Articles 3 and 4 by 31 December 1999 and submit appropriate proposals to the Council at the latest by 31 December 2000.*” The present communication is submitted in pursuance to that provision.
2. Articles 3 and 4 of Council Regulation No 2820/98 refer to two different provisions governing graduation. Article 3 (1) mentions the graduation mechanism and its specific criteria, laid down in Part 2 of Annex II to the Regulation, while Article 4 (1) describes the so-called “lion’s share clause”.
3. In the past, graduation took place when new GSP Regulations were prepared. However, the preparation of the present GSP Regulation coincided with the Asian crises. Trade statistics available at that time did not yet reflect the impact of that crises. Some sectors that would have qualified for graduation, according to those statistics, were supposed not to qualify according to more recent figures. It was therefore decided to maintain the results of previous graduations and to postpone new graduations to a later date.
4. Accordingly, Articles 3 and 4 of Council Regulation No 2820/98 stipulate that sectors that had previously been graduated, continue to remain outside the GSP. Article 5 establishes a calendar for the graduation exercise that had been postponed.
5. This calendar, however, gives rise to a serious difficulty. Where sectors were graduated, in the past, on the grounds of the “lion’s share clause”, preferential treatment ended one year after a decision was taken, while in the framework of the graduation mechanism preferential treatment was phased out in two steps, over a period of two years. There is indeed a legitimate interest of economic operators to know future changes to the GSP before such changes take effect. It would therefore appear that any new decisions on graduation could only enter into force after one year.
6. This would coincide with the end of the period covered by the present Regulation. Therefore, amendments concerning the list of sectors that are graduated cannot refer to the present Regulation, as it will not be in force anymore. They cannot refer to the future Regulation either, as it has not yet been adopted.
7. One might consider a decision that would anticipate the new GSP Regulation and would already determine one of its features. This approach, too, has serious drawbacks, as graduation is an important element determining the overall

¹ OJ L 357, 30.12.1998, p. 1

equilibrium of the scheme. Thus, it would not make sense to decide on one of those elements separately and beforehand. Moreover, the rules on graduation of the future scheme might differ from the previous ones, and would therefore lead to different results.

8. For these reasons, no graduation should be decided now. It is foreseen that the Regulation laying down the conditions of the future GSP for the years 2002 to 2004 will be adopted in autumn 2001. Immediately after its adoption, new graduations can be prepared on the basis of the rules that will govern graduation in the future. A formal decision can be taken by the end of this year. That decision would specify the sectors that will be graduated, effective 1 January 2003.
9. Until that time, i.e. during 2001 and 2002, the present list of graduated sectors should continue to apply.