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**COMMISSION STAFF WORKING DOCUMENT**

**Report on Bolivia**

*Accompanying the document*

**COMMISSION IMPLEMENTING DECISION**

**terminating the investigation initiated by Commission Decision (2012/161/EU) with respect to the effective implementation of the United Nations Single Convention on Narcotic Drugs in Bolivia**

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## Report on Bolivia

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#### COMMISSION IMPLEMENTING DECISION

#### **terminating the investigation initiated by Commission Decision (2012/161/EU) with respect to the effective implementation of the United Nations Single Convention on Narcotic Drugs in Bolivia**

#### 1. INTRODUCTION

1. The Plurinational State of Bolivia (hereinafter 'Bolivia') is a beneficiary country of the special incentive arrangement for sustainable development and good governance (hereinafter 'the special incentive arrangement'), provided under Article 7 of Council Regulation (EC) No 732/2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 (the GSP Regulation)<sup>1</sup>. To be noted that a revised GSP Regulation has been adopted on 31 October 2012 whose preferences will be applied only as of 1 January 2014. Therefore in the present case by GSP Regulation it is meant Council Regulation (EC) No 732/2008.
2. The special incentive arrangement was granted to Bolivia by Commission Decision 2008/938/EC<sup>2</sup>.

#### 2. LEGAL BACKGROUND FOR AN INVESTIGATION ON TEMPORARY WITHDRAWAL OF THE GSP SPECIAL INCENTIVE ARRANGEMENT FOR SUSTAINABLE DEVELOPMENT AND GOOD GOVERNANCE

3. Regulation (EC) No 732/2008 is the legal instrument for the application and administration of the Union's generalised scheme of tariff preferences (hereinafter 'GSP') under which preferences for the special incentive arrangement were granted to Bolivia.
4. Article 15(2) of the GSP Regulation provides for temporary withdrawal of the special incentive arrangement, in particular if the national legislation of a beneficiary country no longer incorporates those conventions referred to in Annex III of the Regulation, which have been ratified in fulfilment of the requirements of Article 8(1) and (2) or if that legislation is not effectively implemented.
5. The United Nations Single Convention on Narcotic Drugs ('the UN Single Convention' or 'the Convention') is listed in Annex III, part B, point 24 to the GSP Regulation. In accordance with Article 8 of the Regulation, the ratification and effective implementation of this Convention is one of the substantive conditions for benefitting from the special incentive arrangement.
6. Bolivia acceded to the Convention on 23 September 1976.

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<sup>1</sup> OJ L 211, 6.8.2008, p. 1

<sup>2</sup> OJ L 334, 12.12.2008, p. 1

7. In February 2009, Bolivia adopted a new Constitution. Under Article 384, the Constitution provides that Bolivia shall protect native and ancestral coca cultural patrimony.
8. In order to reconcile the provision of Article 384 of the Constitution with its international commitments, Bolivia submitted on 12 March 2009 a proposal to amend Article 49 of the UN Single Convention, to abolish the obligation for State Parties to prohibit the chewing of the coca leaf within 25 years from the accession to the Convention. This proposal was rejected since 17 State Parties objected to it by 31 January 2011.
9. In the wake of that event, on 29 June 2011, the Government of Bolivia notified to the Secretary-General of the United Nations that it had decided to denounce the Convention. The denunciation took effect on 1 January 2012. Simultaneously, Bolivia declared that it would have submitted an instrument of accession to the Convention, with a reservation concerning the obligation to prohibit the chewing of the coca leaf.
10. Therefore, on 29 December 2011, the Government of Bolivia sent to the Secretary-General of the United Nations a letter containing an instrument of accession to the Convention. The instrument of accession included a reservation, where Bolivia asked for the right to allow in its territory the use of coca leaf for traditional use (chewing, medicinal purposes, infusion) and its cultivation to the extent necessary for licit purposes. In the same reservation, Bolivia engaged to take all necessary legal measures to control the illicit cultivation of coca in order to prevent its abuse and the illicit production of the narcotic drugs which may be extracted from the coca leaf.
11. The request for re-accession has been subject to the permission of the State Parties of the Convention. The condition for the acceptance of the Bolivian request was that, by 10 January 2013, less than one third of the 183 government Parties had explicitly objected to it.
12. In the light of those events, the Commission considered that it was necessary to analyse the effects of the denunciation of the UN Single Convention and to determine whether they justify a temporary withdrawal of the special incentive arrangement.
13. Consequently, by the adoption of a Commission implementing Decision, which was published in the Official Journal of the European Union<sup>3</sup> on 20 March 2012, the Commission decided to initiate an investigation pursuant to Article 17(2).
14. In particular, the investigation referred to the provisions of Article 15(2) of the same Regulation.

### **3. RELEVANT FINDINGS REGARDING THE INVESTIGATION**

#### **3.1. The status of Bolivia as a member of the UN Single Convention on narcotic drugs**

15. By 10 January 2013, 15 out of 183 State Parties had explicitly objected to the Bolivian instrument of accession.

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<sup>3</sup> OJ L 80, 20.3.2012, p.30

16. Therefore, Bolivia's instrument of accession has been accepted and the country will be again a full party of the UN Single Convention as of 10 February 2013.

### **3.2. Procedure of the investigation**

17. In order to assess whether Bolivia effectively complies with the requirements laid down in the Regulation (EC) 732/2008, the Commission sent to the Bolivian government a questionnaire on its policy in the fight against illicit drugs and the implementation of the Convention's clauses. The Government of Bolivia provided the Commission with an answer to the abovementioned questionnaire in good time. The Commission analysed the content of that reply and transmitted to the Government of Bolivia a request for further clarification of certain elements of the reply. Bolivia also replied to this request in good time.

18. The analysis of the Commission, based on the answers contained in the reply to the questionnaire and on other sources of information publicly available, verified whether the Bolivian authorities had changed their national legislation and practice towards illicit drugs after the denunciation of the Convention; i.e., whether the legislation did not incorporate the provisions of the Convention or if that legislation was not effectively implemented.

### **3.3. Changes in Bolivian legislation on fight to illicit drugs**

19. The investigation revealed that rules and obligations under national law remained substantially unchanged after 29 June 2011.

20. From January 2012, the only changes in the national legislation have aimed at strengthening the effectiveness of the policy against illicit drugs:

- The conclusion of two memoranda of understanding with, respectively, the United States of America and Brazil, on an integrated control system for the reduction of excessive cultivation of coca.
- The conclusion of a memorandum of understanding with Iran regarding the fight against trafficking.

### **3.4. Bolivian national legislation and participation to international cooperation on fight to illicit drugs**

21. Bolivia has in place a system of internal legislation and international cooperation which are linked to the relevant international rules on the fight against the production, trade and use of illicit drugs.

22. None of the elements of this system has undergone any change after the denunciation of the UN Single Convention. In particular:

23. As for internal legislation, the main domestic legislative tool is the "Law for the coca regime and controlled substances" No. 1088 of 1988. The circulation and trade of the coca leaf is ruled by the Ministerial Decree 112/06 of 2006.

24. The most relevant organism for the definition and execution of the national policy against illicit drugs is the "National Council against the Undue Use and Illicit Trafficking of Drugs (CONALTID)" which is normally presided by the President of Bolivia and comprising various Ministries (Foreign Affairs, Government, Defence, Health and Sport). The vice-Ministry of Coca and Integral Development (VCDI) is responsible for the policies of economic and rural development in coca-growing areas, with the aim to replace and rationalise coca production with other economic activities.

25. The main strategy of the Bolivian government is set in the "Fight Strategy Against the Drug trafficking and Reduction of surplus Cultivations of the Coca Leaf 2011-15".
26. The Bolivian government continues to integrate an international framework for the cooperation against the production, trade and use of illicit drugs. To-date, Bolivia has concluded a total of 28 international agreements with 16 States and the European Union; it is also part of regional initiatives under the auspices of the Union of South American Nations (UNASUR), the Andean Community (CAN) and the Southern Common Market (MERCOSUR).

### **3.5. International reporting requirements and reports of the relevant international bodies on the effectiveness of Bolivia's fight to illicit drugs**

27. After the denunciation of the Convention, Bolivia continued complying with the requirement to submit to regular reporting as provided in the Convention.
28. In June 2012, it sent the information required by the International Narcotics Control Board (INCB), which is administering controls on production and trade of illicit drugs, for its annual report. That information regards annual statistics of production, manufacturing, consumption, existence and seizure of narcotic drugs and substances used in the illicit manufacturing of narcotic drugs and psychotropic substances.
29. The Bolivian government cooperated with the United Nations Office on Drugs and Crime (UNODC) for the annual report on coca cultivation in Bolivia, which was finally published in September 2012.
30. The fact that Bolivia's denunciation of the UN Single Convention did not negatively impact the effectiveness and results of the fight against illicit drugs in confirmed by two reports issued by INCB and UNODC.
31. The last available report of INCB did not show any significant issues regarding the incorporation of the Convention into the Bolivian legislation and its effective implementation.
32. The last available report of UNODC on coca cultivation (officially presented on 17 September 2012) showed that, during 2011, the effectiveness of the fight against cultivation of illegal coca has not diminished and did not report any significant issue in Bolivia's implementation of the relevant legislation. According to the UNODC report, the cultivation of coca bush decreased by around 12 per cent in 2011 with respect to 2010 (27,200 hectares versus 31,000). Coca leaf production diminished by 13%, down from 55,500 metric tons to 48,100 metric tons. Rationalisation and eradication of coca crops increased by 30%, from 8,100 hectares to 10,500 hectares, above the minimal legal threshold, set by the Bolivian "Law for the coca regime and controlled substances" at 5,000 hectares per year.
33. According to the information available, there is no evidence of major changes in terms of drug seizures, eradication and illicit drugs-related arrests in Bolivia during 2012.

### **3.6. Participation of Bolivia in the joint activities with the European Union on fight against illicit drugs**

34. The government of Bolivia did not declare or show any intention of denouncing or reducing its commitment at international level in the fight against illegal drugs. At the two EU-Bolivia High Level Dialogues , held on 7 September 2011 in La Paz and

on 13 November 2012 in Brussels, both parties reiterated their commitment to develop joint efforts to fight drugs, under the principle of shared responsibility.

35. The denunciation of the UN Single Convention did not affect Bolivian participation and commitment in the framework of the Cooperation Programme on Drug Policies between Latin America and the European Union on Drugs Policies (COPOLAD).
36. During 2012, Bolivia regularly participated in the activities of the Joint Follow-up Group of the EU-Bolivia agreement on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances.

#### **4. CONCLUSIONS AND RECOMMENDATIONS**

37. It descends from above that Bolivia is a State Party to the UN Single Convention which was ratified and incorporated into its national legislation. Therefore, Bolivia has ratified all the conventions listed in Annex III of the currently applicable Regulation.
38. Furthermore there are no reasons to conclude that Bolivia does not effectively implement that legislation.
39. The Commission therefore decides to conclude its investigation on the basis that the above findings do not justify temporary withdrawal of benefits under the special incentive arrangement. The Commission shall therefore adopt a Decision to terminate the investigation and thereafter publish a *Notice in the Official Journal of the European Union* announcing the termination and setting out the main conclusions of the investigation.
40. It should be also recalled that in accordance with Article 8(3) of Regulation (EC) No 732/2008, the Commission is to continue to monitor the developments with respect to the status of ratification and the effective implementation of the UN Single Convention in Bolivia and react to them in accordance with the procedures available under the GSP regulation, including, if necessary, by opening a new investigation on this issue.