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COMMISSION STAFF WORKING DOCUMENT

Report on assessment of the application for GSP+ by the Kyrgyz Republic

Accompanying the document

COMMISSION DELEGATED REGULATION

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

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1. INTRODUCTION

1. The special incentive arrangement for sustainable development and good governance (GSP+) provides additional tariff preferences to developing countries which are vulnerable due to a lack of diversification and insufficient integration within the international trading system. The GSP+ scheme supports these countries to assume the special burdens and responsibilities resulting from the ratification of 27 core international conventions on human and labour rights, environmental protection and good governance, as well as from their effective implementation.

Vulnerable developing countries that, upon formal application, fulfil the eligibility criteria linked to the relevant 27 international conventions, should be able to benefit from the additional tariff preferences.

2. The Kyrgyz Republic has submitted a request for GSP+ preferences to the Commission.

2. LEGAL BACKGROUND FOR GRANTING THE GSP+

3. In accordance with the eligibility criteria for GSP+ as set out in Article 9(1) of the European Parliament and the Council Regulation (EU) No 978/2012 ('GSP Regulation')¹, GSP+ preferences may be granted to a country which:

- (a) is considered to be vulnerable;
- (b) has ratified all the conventions listed in Annex VIII to the GSP Regulation (hereafter the 'relevant conventions') and the most recent available conclusions of the monitoring bodies under those conventions do not identify a serious failure to effectively implement any of those conventions;
- (c) in relation to any of the relevant conventions, it has not formulated a reservation which is prohibited by any of those conventions or which for the purposes of Article 9 of the GSP Regulation is considered to be incompatible with the object and purpose of that convention;

¹ OJ L 303, 31.10.2012, p.1

- (d) accepts without reservation the reporting requirements imposed by each convention and gives binding undertakings referred to in points (d), (e) and (f) of Article 9(1) of the GSP Regulation.
4. The vulnerability criteria are defined in Annex VII of the GSP Regulation as follows:
 - (a) in terms of value, the seven largest GSP sections of the country's imports into the Union represent more than the threshold of 75 % in value of its total imports, as an average during the last three consecutive years;
 - (b) the country's imports into the Union represent less than the threshold of 6,5 % in value of the total imports into the Union originating in GSP beneficiary countries, as an average during the last three consecutive years.
 5. For the purposes of Article 9 of the GSP Regulation, reservations are considered to be incompatible with the object and purpose of a convention if:
 - (a) a process explicitly set out for that purpose under the convention has so determined; or
 - (b) in the absence of such a process, the Union where a party to the convention, and/or a qualified majority of Member States party to the convention, in accordance with their respective competences as established in the Treaties, objected to the reservation on the grounds that it is incompatible with the object and purpose of the convention and opposed the entry into force of the convention as between them and the reserving state in accordance with the provisions of the Vienna Convention on the Law of Treaties.
- 3. SERIOUS FAILURE TO EFFECTIVELY IMPLEMENT ANY OF THE CONVENTIONS IN THE CONTEXT OF GSP+**
6. The concept of “serious failure” used here is applied in accordance with the specific GSP+ objective to support and enhance the implementation of key international conventions in the beneficiary country. The GSP Regulation stipulates that GSP+ is designed – *inter alia* – to help vulnerable developing countries assume the special burdens and responsibilities resulting from the ratification and effective implementation of the relevant conventions (see recital 11 of the GSP Regulation). The general approach is that, as developing countries, all applicants experience problems of implementation. This should not lead to the exclusion of countries from the scheme – even developed countries (including Member States) have a number of shortcomings. GSP+ recognizes that developing countries have special needs in this respect and provides additional incentives.
 7. The ILO has an established practice for the application of the benchmark of “serious failure” to effectively implement². Drawing on the ILO practice, taking into account

² In particular, for the purposes of GSP, a serious failure to effectively implement ILO conventions occurs when the tripartite International Labour Conference (ILC) Committee of Application of Standards, in the context of the yearly meetings of the International Labour Conference, notes the existence of a serious failure to implement a convention and introduces a “special paragraph” to that effect in its Report.

the purpose of GSP+ and having regard to the specificities of the conventions on human rights, environment, and good governance, a set of general principles has been used for the “serious failure” benchmark, in a way that is meaningful and that ensures a consistent application across all 27 conventions. Such consistent application is fundamental to respect the non-discrimination principle.

8. In order to establish whether a serious failure to effectively implement exists, the analysis encompasses the three areas generally used by the relevant monitoring bodies when assessing the implementation of conventions. These are: (1) shortcomings detected in the country’s implementation record, (2) positive elements where the country shows progress, and (3) constraints suffered by the country, which limit its ability to achieve effective implementation.

4. ANALYSIS OF THE KYRGYZ REPUBLIC' APPLICATION

A. Vulnerability

9. As required by point (a) of Article 9(1) of the GSP Regulation and in line with its Annex VII, the Kyrgyz Republic is to be considered vulnerable. Indeed, the seven largest GSP sections of its imports into the Union of products listed in Annex IX represent around 93%, which is more than the threshold of 75 % in value of its total imports of products listed in that Annex, as an average during the last three consecutive years; and the imports of products listed in Annex IX into the Union represent around 0,01%, which is less than the threshold of 6,5 % in value of the total imports into the Union of products listed in that Annex originating in countries listed in Annex II, as an average during the last three consecutive years.

B. Ratification

10. As required by point (b) of Article 9(1) of the GSP Regulation, the Kyrgyz Republic has ratified all conventions listed in Annex VIII of the GSP Regulation.

C. Reservations

11. The Kyrgyz Republic has not formulated any reservations on the relevant conventions, therefore the criterion under point (c) of Article 9(1) of the GSP Regulation is also met.

D. Serious failure to effectively implement

12. **International Convention on the Elimination of All Forms of Racial Discrimination** – In its report of 19 April 2013, the Committee on the Elimination of Racial Discrimination (CERD) identified the following salient shortcomings:
 - repeated ethnic conflicts and clashes which occurred between the majority of the population and some ethnic groups;
 - reports of biased attitudes based on ethnicity in investigations, prosecutions, condemnations and sanctions imposed on those charged and convicted in relation to the June 2010 events, who were mostly of Uzbek origin;
 - since the June 2010 events, many schools in Osh and Jalal-Abad have changed the language of education from minority languages into Kyrgyz, and that some of

them do no longer benefit from State funding enabling them to ensure classes in minority languages;

- the disappearance of some Uzbek language media impedes the right of persons belonging to the Uzbek minority to disseminate and receive information in their language.

However, there are elements of progress:

- various legislative and policy developments have taken place to combat racial discrimination;
- there have been efforts to integrate minorities into political and public affairs, such as the security forces and the police, as well as efforts to implement the Decision 567/2011 of the Parliament asking for a balanced staffing policy;
- there have been efforts to solve the situation of stateless persons in its territory by granting citizenship to stateless persons;
- ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman United Nations International Convention on the Elimination of All Forms of Racial Discrimination and Degrading Treatment or Punishment and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 6 December 2010.

In view of the fact that salient shortcomings have been identified in a relatively low number of areas (4 out of 26) and of the elements of progress, it is considered that there is no serious failure to effectively implement the Convention.

13. **International Covenant on Civil and Political Rights** – In its report of 23 April 2014, the Human Rights Committee (HRC) found a few salient shortcomings on which it made the following urgent recommendations:

- the Kyrgyz Republic should ensure, as a matter of urgency that its anti-terrorism legislation and its application thereof, especially the use of force, is in conformity with the provisions of the Covenant, particularly with respect to the right to life;
- the Kyrgyz Republic should promptly investigate allegations of excessive use of force by the special services, prosecute perpetrators and provide compensation to victims' families;
- the Kyrgyz Republic should urgently strengthen its efforts to address the root causes of obstacles to the peaceful coexistence between different ethnic groups on its territory and to promote ethnic tolerance and mutual trust;
- the Kyrgyz Republic should urgently strengthen its efforts to take measures to prevent acts of torture and ill-treatment and ensure prompt and impartial investigation of complaints of torture or ill-treatment.

However, there are elements of progress:

- abolition of the death penalty in 2007;
- adoption of the Constitution on 27 June 2010, which contains provisions on the protection of human rights, including the rights stipulated in the Covenant, and on the implementation of findings of international human rights bodies;
- establishment, in 2013, of the Human Rights Coordination Council, mandated to enforce implementation of international human rights obligations;
- ratification or accession to several international instruments In view of the fact that salient shortcomings have been identified in a relatively low number of areas (4 out of 24) and of the significant elements of progress, it is considered that there is no serious failure to effectively implement the Convention.

14. **Convention on the Elimination of All Forms of Discrimination Against Women** – In its report of 11 March 2015, the Committee on the Elimination of Discrimination against Women (CEDAW) found one salient shortcoming: the continuing existence of bride abduction, despite the fact that the amendments to the Criminal Code in 2013 criminalize bride kidnapping and provide for increased sanctions However, there are elements of progress:

- legislative reforms, in particular the adoption of the long-term national strategy on achieving gender parity by 2020 (Government Decree No. 443 of 2012);
- accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 2010 and to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2008.

In view of the fact that salient shortcomings have been identified in a relatively low number of areas (1 out of 15) and of the significant elements of progress, it is considered that there is no serious failure to effectively implement the Convention.

15. **Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** – In its report of 20 December 2013, the Committee against Torture (CAT) found the following salient shortcomings:

- ongoing and widespread practice of torture and ill-treatment of persons deprived of their liberty, in particular while in police custody to extract confessions, substantial gap between the legislative framework and its practical implementation;
- persistent pattern of failure to conduct prompt, impartial and full investigations into the many allegations of torture and to prosecute perpetrators;
- failure to afford to all persons deprived of their liberty, especially those held in pre-trial detention, all fundamental legal safeguards; case of Azimjan Askarov, an ethnic Uzbek human rights defender prosecuted on criminal charges in

connection with the death of a police officer in southern Kyrgyzstan in June 2010;

- detainees are frequently denied access to an independent lawyer of their choice, police officers forcibly extract confessions before formal detention or arrest, and that in practice lawyers need to secure special permission from investigators to have access to their clients;
- reports that corruption in the judiciary significantly contributes to a climate of impunity;
- heavy reliance on coerced confessions within the criminal justice system;
- reports of intimidation, reprisals and threats against human rights defenders, journalists and lawyers;
- reports of deaths in custody or immediately after release.

However, there are significant elements of progress:

- ratification or accession to several international instruments:
 - the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (22 July 2002);
 - the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (12 February 2003) and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (13 August 2003);
 - the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (29 September 2003);
 - the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (29 December 2008); and
 - the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (6 December 2010).
- adoption of several legislative measures:
 - the adoption of the new Constitution in 2011;
 - amendments to the Criminal Code in 2012 and the Criminal Procedure Code in 2011;
 - the adoption of three decrees (nos. 40, 70 and 75) by the General Prosecutor's Office in 2011; and

- the abolition of the death penalty in 2007.
- the establishment of the National Centre of the Kyrgyz Republic for the Prevention of Torture.

Despite the fact that salient shortcomings have been identified in a relatively high number of areas, there are also significant elements of progress, a willingness to address the issues and a general commitment to improve implementation of GSP+ relevant conventions (see paragraph 19). The Kyrgyz authorities cooperate with international organisations and engage with local and international NGOs to address the issue of use of torture and other cruel, inhuman or degrading treatment. A National Action Plan on combating torture and other cruel, inhuman or degrading treatment has been adopted in 2014. Therefore the shortcomings do not amount to a serious failure to effectively implement the Convention that would prevent the Kyrgyz Republic from joining the GSP+.

16. **Convention on the Rights of the Child** – In its report of 7 July 2014, the Committee on Rights of the Child (CRC) found the following salient shortcomings:

- cases of torture and ill-treatment of children by the representatives of law enforcement in detention facilities and closed institutions, including solitary confinement being imposed on them for up to seven days;
- growing number of cases of sexual exploitation and abuse of children; culture of covering up such problems; mishandling of cases by law enforcement agencies; inability of children to lodge complaints directly to the authorities;
- continuing widespread practice of bride-kidnapping of underage girls and that cases often remain unreported by the victims owing to social stigma and pressure;
- working children, especially those living in care institutions, are often subjected to physical, emotional and sexual abuse;
- lack of a holistic juvenile justice system.

However, there are significant elements of progress:

- adoption of several legislative measures:
 - amendments to the Children’s Code on 10 July 2012;
 - the new Constitution on 27 June 2010, which includes special guarantees for families and children;
 - the State Benefits Act on 29 December 2009, which sets out the right to monthly social benefits for families in poverty;
 - the Act on the rights and guarantees of persons with disabilities on 3 April 2008;

- the ratification of and/or accession to the:
 - second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in December 2010;
 - Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in December 2008.
- adoption of the following policy measures:
 - National Action Plan against Trafficking in Human Beings for 2013–2016;
 - Strategy on Social Protection for 2012–2014;
 - Education Development Strategy for 2012–2020 and the Action Plan for the Implementation of the Education Development Strategy for 2012–2014;
 - Decree of the Government on standards for social services to families and children as well as institutions which provide social services to children in difficult life circumstances on 9 October 2012;
 - Order of the Ministry of Social Services on a programme for rehabilitation of children in conflict with the law on 17 May 2012;
 - Programme of State guarantees relating to the provision of medical and health care of 2011, which inter alia, provides for free health care for children under 5 years of age.

Despite the fact that salient shortcomings have been identified in a relatively high number of areas, there are also significant elements of progress and a general commitment to improve implementation of GSP+ relevant conventions (see paragraph 19). Therefore the shortcomings do not amount to a serious failure to effectively implement the Convention that would prevent the Kyrgyz Republic from joining the GSP+.

17. **United Nations Single Convention on Narcotic Drugs** – In its report of 30 June 2013, the International Narcotics Control Board (INCB) found the following salient shortcomings:

- drug trafficking poses a serious threat in the Kyrgyz Republic because of the country’s proximity to Afghanistan;
- illicit drug production in the Kyrgyz Republic poses a significant challenge to the Government’s efforts to address the drug problem;
- The Kyrgyz Republic has yet to update its last national drug control strategy, which covered the period 2004-2010.

However, there are elements of progress: the Kyrgyz Republic has gradually strengthened its efforts in drug control since 1991, when it gained its independence (e.g. it has adopted national drug control legislation in line with the international drug control treaties and it has designated the State Drug Control Service as the competent national authority responsible for the implementation of the treaties).

In view of the fact that salient shortcomings have been identified in a relatively low number of areas and of the elements of progress, to which a serious effort to develop a drug control strategy in line with international recommendations, including harm reduction services for drug users, it is considered that there is no serious failure to effectively implement the Convention.

18. **Core labour rights ILO Conventions** – In its report to the 2015 International Labour Conference, the ILO Committee on the Application of Standards listed the Kyrgyz Republic among the countries still concerned with a failure to submit the instruments adopted by the Conference to the competent authorities. The Committee also noted that no information had been yet received from the country regarding most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2014. The Committee decided to mention the cases in the corresponding paragraph of the General Report. Moreover, the Committee regretted that the Government of the Kyrgyz Republic failed to take part in the discussions concerning their country and the fulfilment of their reporting and other standards-related obligations.

In conclusion, it is considered there is no serious failure to effectively implement the core labour rights ILO conventions; however, a close monitoring of further developments with regard to the above issues and the relevant conclusions of the ILO supervisory bodies will be necessary.

19. *Conclusion*

In summary, the monitoring bodies of the relevant conventions detected salient shortcomings in connection to the above listed conventions. The Commission in its monitoring will be paying particular attention to the effective implementation of these conventions. However, it is considered that there is no serious failure to effectively implement any of these conventions. Since the 2010 Revolution, the Kyrgyz Republic, in close cooperation with the international organisations and under the guidance of the Venice Commission, adopted a progressive constitution with clear separation of powers, guarantees of fundamental human rights and respect for the rule of law. It is the only parliamentary democracy with a multi-party political system in the Central Asian region. Moreover, the overall picture in terms of the implementation of the GSP+ relevant human rights conventions by the country demonstrates the Government's commitment to improve implementation of GSP+ relevant conventions. In 2013, the government has adopted a National Strategy for Sustainable Development, complemented with Action Plans and strategic concepts to address challenges in specific areas (for ex. a "Concept of Unity of the People and Inter-ethnic relations". An Action Plan for Human Rights is currently being developed). The Kyrgyz Republic actively cooperates with international organisations. Following the Universal Periodic Review that the Kyrgyz Republic underwent in 2015, 77% of recommendations have been accepted by the Kyrgyz authorities. The Kyrgyz Republic has been elected as member of the UN Human

Rights Council as of January 2016 for 3 years, and presented a number of voluntary commitments to further promote human rights. The status of recent legislative initiatives, potentially impeding on human rights of specific vulnerable groups (such as LGBT community, as pointed out in the European Parliament resolution of 15 January 2015³) will also be closely monitored. In general, it is believed that the monitoring and co-operation under the GSP+ will provide further incentive to the Kyrgyz Republic to address the remaining gap between the legislative framework and its practical implementation.

E. Binding undertakings

20. The Kyrgyz Republic has submitted the binding undertaking as provided in point (b) of Article 1(2) of Commission Delegated Regulation (EU) No 155/2013.

F. Conclusion

21. The Kyrgyz Republic meets eligibility criteria of Article 9(1) of the GSP Regulation.

³ European Parliament resolution of 15 January 2015 on Kyrgyzstan, homosexual propaganda bill (2015/2505(RSP))