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COMMISSION STAFF WORKING DOCUMENT

**Report on assessment of the application for GSP+ by El Salvador, Guatemala and
Panama**

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, in order to help them assume the special burdens and responsibilities resulting from the ratification of core international conventions on human and labour rights, environmental protection and good governance as well as from their effective implementation.

Vulnerable 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 Commission has received requests for GSP+ preferences from El Salvador, Guatemala and Panama.

2. LEGAL BACKGROUND FOR GRANTING THE GSP+

3. In accordance with the eligibility criteria for the GSP+ as set out in Article 9(1) of the European Parliament and the Council Regulation (EU) No 978/2012 (GSP Regulation), 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 of 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;
 - (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:

- (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 2 % 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” is for the purpose of granting GSP+ applied in accordance with its specific incentive-based objective, which is to support and enhance the implementation of key international conventions by the beneficiary country. The GSP Regulation stipulates that GSP+ is designed – *inter alia* – to help vulnerable developing countries to assume the special burdens and responsibilities resulting from the ratification and effective implementation of the relevant conventions (see also recital 11 of the GSP Regulation). General approach is that, as developing countries, all applicants will experience problems of implementation. This is normal and should not lead to the exclusion of countries from the scheme. This is the more pertinent as developed countries (including Member States) may also have a number of shortcomings in their track record. Developing countries naturally face more problems of implementation. GSP+ exists in recognition of the special needs of developing countries in this respect, to which our regime responds positively by providing additional incentives.
7. The concept of “serious failure” to effectively implement comes from the ILO context, where an established practice exists for the application of this benchmark¹. Drawing on ILO practices and taking into account 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 to underpin the “serious failure” benchmark, in a way that is meaningful and that ensures a consistent application across all 27 conventions. Such application is fundamental to respect the principles of non-discrimination and generalised application of preferences.

¹ In particular, for the purposes of GSP, a serious failure to effectively implement ILO conventions occurs when the 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.

8. In order to establish whether a serious failure to effectively implement exists, the analysis encompasses the three areas generally used by the relevant conventions' 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.
9. After the analysis regarding all GSP+ conventions, the following focuses on those conventions where monitoring bodies have identified salient shortcomings.

4. ANALYSIS OF THE APPLICANT COUNTRIES

4.1. El Salvador

A. Vulnerability

10. El Salvador meets vulnerability criteria in accordance with point (a) of Article 9(1) of the GSP Regulation.

B. Ratification

11. In accordance with point (b) of Article 9(1) of the GSP Regulation, El Salvador has ratified all conventions listed in Annex III of the GSP Regulation.

C. Reservations

12. El Salvador has made reservations to two Conventions: the Convention on the Elimination of All Forms of Discrimination Against Women and the Stockholm Convention on persistent Organic Pollutants.

Under the GSP Regulation, these reservations are permissible, as they:

- (a) are not prohibited by the Convention;
- (b) for GSP+ purposes are not considered to be incompatible with the object and purpose of the Conventions as they do not meet criteria of point (c) of Article 9(1). The reservations have not been determined as being incompatible with the object and purpose of the conventions by a process explicitly set out for that purpose under the respective convention. Therefore provisions of Article 9(1)(c)(ii) are applied to determine whether the reservations are incompatible with the object and purpose of the convention. No Member State objected to the reservations opposing the entry into force of the convention as between them and El Salvador.

D. Serious failure to effectively implement

13. The monitoring bodies of five conventions have observed some salient shortcomings regarding El Salvador's effective implementation of the conventions. However these monitoring bodies have confirmed significant elements of progress and have acknowledged objective constraints, which restrict the country's ability to effectively implement the relevant conventions.
- 13.1 **Convention on the Elimination of All Forms of Racial Discrimination.** The Committee on the Elimination of Racial Discrimination² (CERD) expressed concern at the discrepancy in the figures regarding ethnic composition of the country derived from national census and figures from other reliable sources. At the same time, it

² CERD Report of 20 August 2010.

acknowledged a significant change in approach to human rights issues relating to the convention, including promotion rights of indigenous people, preserve indigenous languages and help previously persecuted indigenous people to recover their indigenous names. In conclusion, in view of the limited number of salient shortcomings and significant elements of progress, it is considered that no serious failure to effectively implement the Convention exists.

- 13.2 **International Covenant on Economic, Social and Cultural Rights.** The Committee on Economic, Social and Cultural Rights³ (CESCR) observed such concerns regarding the fact that most strikes have been declared illegal, that great inequalities in wealth distribution persist in the country and the lack of statistics on indigenous people. It nevertheless acknowledges significant constraints, such as the natural disasters that hit El Salvador between 1998 and 2005. In addition, it recognises significant progress in the implementation of relevant international instruments, criminalisation of domestic violence and recognition of housing as a human right. In conclusion, in view of the relatively limited number of salient shortcomings, the constraints and the significant elements of progress, it is considered that no serious failure to effectively implement the Convention exists.
- 13.3 **Convention on the Elimination of All Forms of Discrimination Against Women.** The Committee on Elimination of All Forms of Discrimination against Women⁴ (CEDAW Committee) observed concerns regarding pervasiveness of patriarchal attitudes in the family and in the society, occurrence of violence against women motivated by gender-specific causes, persistence of child labour in particular among girls and high incidence of births among adolescents and illegal abortions. On the other hand, the CEDAW Committee acknowledged significant progress through comprehensive and on-going reform in the areas of employment, health, criminal law and domestic violence. In conclusion, in view of the relatively limited number of salient shortcomings and significant elements of progress, it is considered that no serious failure to effectively implement the Convention exists.
- 13.4 **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.** The Committee against Torture⁵ (CAT) observed such concerns regarding several cases of serious accusations against the security forces, the failure to separate accused persons from convicted persons and to ensure adequate living conditions to convicted, the prison conditions for minors, the prevalence of forms of violence against women and girls, the non-prosecution of official suspected of human trafficking. CAT detected nevertheless significant elements of progress, such as the elimination of death penalty, the ratification of relevant international instruments and the adoption of a Special Act on the Protection of Victims and Witnesses in May 2006. In conclusion, in view of the relatively limited number of salient shortcomings and significant elements of progress, it is considered that no serious failure to effectively implement the Convention exists.
- 13.5 **Convention on the Rights of Child.** The Committee on Rights of the Child⁶ (CRC Committee) noted salient shortcomings regarding the extent of the problem of youth gangs (“maras”) and the very high number of killings of children, many of whom are

³ CESCR Report of 27 June 2007.

⁴ CEDAW Committee Report of 7 November 2008.

⁵ CAT Report of 9 December 2009.

⁶ CRC Committee Report of 17 February 2010.

members of “maras”. The CRC Committee detected nevertheless constraints which impede implementation, such as the high level of violence against young persons, the prevalence of youth gangs and the vulnerability of the territory to natural disasters. Furthermore, it noted significant elements of progress, including the ratification of relevant international treaties, the introduction of law for the legal protection of children, the creation of a Commission to investigate disappearances of children during the internal conflict. In conclusion, in view of the relatively limited number of salient shortcomings and significant elements of progress, it is considered that no serious failure to effectively implement the Convention exists.

E. Binding undertakings

14. El Salvador has submitted the binding undertaking as provided in point (b) of Article 1(2) of Commission Delegated Regulation (EU) No 155/2013.

F. Conclusions

15. El Salvador meets eligibility criteria of Article 9(1) of the GSP Regulation.

4.2. Guatemala

A. Vulnerability

16. Guatemala meets vulnerability criteria in accordance with point (a) of Article 9(1) of the GSP Regulation.

B. Ratification

17. In accordance with point (b) of Article 9(1) of the GSP Regulation Guatemala has ratified all conventions listed in Annex III of the GSP Regulation.

C. Reservations

18. Guatemala has not made any reservations to the conventions.

D. Serious failure to effectively implement

19. The monitoring bodies of five conventions have observed some salient shortcomings regarding Guatemala’s effective implementation of the conventions. However these monitoring bodies have confirmed significant elements of progress and have acknowledged objective constraints, which restrict the country’s ability to effectively implement the relevant conventions.

- 19.1 **Convention on the Elimination of All Forms of Racial Discrimination.** The Committee on the Elimination of Racial Discrimination⁷ (CERD) observed such concerns regarding racism and racial discrimination against the Maya, Xinka and Garifuna peoples and the inadequacy of public policies to eliminate racial discrimination; lack of access to land for indigenous people and attitudes of contempt and rejection displayed by the communication media towards indigenous people. At the same time, there are significant elements of progress. The CERD welcomed the establishment of the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA) and the Office for the Defence of Indigenous Women’s Rights within the Presidential Human Rights Commission; also the promulgation of several legal acts, in particular the Agreement on Identity and Rights of Indigenous Peoples. In conclusion, in view of the relatively limited number

⁷ CERD Report of 8 April 2011.

of salient shortcomings and significant elements of progress, it is considered that no serious failure to effectively implement the Convention exists.

19.2 **International Covenant on Economic, Social and Cultural Rights.** The Committee on Economic, Social and Cultural Rights⁸ (CESCR) observed such concerns regarding insufficient level of minimum wage, persistent problem of child labour and uneven distribution of wealth and land and the high level of social exclusion. At the same time, there are significant elements of progress. The CESCR welcomed the establishment of the post of the Prosecutor for Human Rights and the Office for the Defence of Indigenous Women's Rights for the promotion and development of proposals for government policies, plans and programmes for the defence of the rights of indigenous women, as well as the adoption of the Law on the Parliamentary Commission on Human Rights and the Law on the Prosecutor for Human Rights. The CESCR acknowledged constraints hampering the country's ability to implement the convention, namely the consequences of the armed conflict that have seriously affected the full enjoyment of economic, social and cultural rights. In conclusion, in view of the relatively limited number of salient shortcomings, significant elements of progress and the constraints impeding implementation, it is considered that no serious failure to effectively implement the Convention exists.

19.3 **Convention on the Elimination of All Forms of Discrimination Against Women.** The Committee on Elimination of All Forms of Discrimination against Women⁹ (CEDAW Committee) observed such concerns regarding persistence of child labour and its implications for children, especially for girls. At the same time, there are significant elements of progress. The CEDAW Committee welcomed Guatemala's efforts to implement the Convention, in particular the entry into force of the Act on Femicide and Other Forms of Violence against Women and the reinforcement of the Presidential Secretariat for Women, the Office for the Defence of Indigenous Women's Rights and the National Coordinating Office for the Prevention of Domestic Violence and Violence against Women, through the provision of additional human and financial resources. In conclusion, in view of the relatively limited number of salient shortcomings and significant elements of progress, it is considered that no serious failure to effectively implement the Convention exists.

19.4 **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.** The Committee against Torture¹⁰ (CAT) observed such concerns regarding high level of violence against women, including murders and ill-treatment of minors in detention, including corporal punishment and locking them up for long periods. As regards elements of progress, the CAT welcomed Guatemala for significant elements of progress, including the measures taken to amend its legislation on matters related to the Convention, particularly, the adoption of the Prisons Act, the Act on Femicide and Other Forms of Violence against Women, the Act on Criminal Jurisdiction in High-risk Trials, the Act on Strengthening the Criminal Prosecution System and the Act against Sexual Violence, Exploitation and Trafficking in Persons, efforts to modify its policies and procedures so as to afford greater protection for human rights and to apply the Convention and the

⁸ CESCR Report of 8 December 1999

⁹ CEDAW Committee Report of 2 February 2009.

¹⁰ CAT Report of 25 July 2006.

establishment of rota criminal courts. In conclusion, in view of the relatively limited number of salient shortcomings and significant elements of progress, it is considered that no serious failure to effectively implement the Convention exists.

- 19.5 **Convention on the Rights of Child.** The Committee on Rights of the Child¹¹ (CRC Committee) noted salient shortcomings regarding the lack of adequate and sufficient measures to address negative impact of drought crisis on the right of food to children. At the same time, there are significant elements of progress. The CRC Committee welcomed Guatemala for a number of positive developments, including the adoption of the several legal acts, such as the Adoption Act, the Act on Sexual Violence, Exploitation and Trafficking in Persons, the Early Warning System Law, the Act on Universal and Equitable Access to Family Planning Services and their Integration in the Reproductive Health Programme and the “PINA” Law for the protection of children and adolescents, the creation of the Secretariat on Sexual Violence, Exploitation and Trafficking in Persons, the drafting of the National Strategic Action Plan 2007-2017 and the adoption of a number of policies, governmental agreements and administrative measures designed to promote and coordinate public policies relating to indigenous affairs. In conclusion, in view of the relatively limited number of salient shortcomings and significant elements of progress, it is considered that no serious failure to effectively implement the Convention exists.
- 19.6 **Convention concerning Freedom of Association and Protection of the Right to Organise (No. 87):** In June 2013, the Committee on the Application of Standards of the International Labour Organisation (ILO) expressed concerns regarding acts of violence against trade union leaders continuing in 2013, including murders and subsequent impunity. The Committee urged the Government to ensure protection of trade union leaders and members and to carry out investigations. It also urged the Government to take the necessary measures, in consultation with the social partners, to amend the legislation to bring it into conformity with the convention. It recalled as well that an ILO article 26 procedure (request to establish a Commission of Inquiry) is pending over the country. The Committee noted with interest the Guatemalan Government commitment towards a Memorandum of Understanding on the basis of which tripartite measures would be taken to ensure the full application of the Convention and took note of the Government's availability to receive ILO's technical assistance. The Committee also noted that the ILO Governing Body would review progress made by Guatemala in implementation of the convention No. 87. The ILO Governing Body discussed the situation in Guatemala at its session in October 2013 on the basis of findings of the ILO High Level Tripartite Mission which visited the country in September 2013. The Governing Body also took note of a roadmap submitted by the Government outlining actions to be taken in the next three months to address recommendations of the ILO supervisory bodies with regard to convention No. 87. The Governing Body decided to postpone until March 2014 its decision on whether or not to establish a Commission of Inquiry for Guatemala and to assess the situation in the country on the basis of a report of the ILO Office and on the basis of results achieved in implementation of the above mentioned roadmap. In conclusion, it is considered that Guatemala meets the eligibility criteria related to the Convention No. 87; however, a close monitoring of further developments with regard to effective implementation of this Convention by Guatemala and the subsequent conclusions of the ILO supervisory bodies will be necessary.

¹¹ CRC Committee Report of 26 February 2004.

E. Binding undertakings

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

F. Conclusions

21. Guatemala meets eligibility criteria of Article 9(1) of the GSP Regulation, however a close monitoring of further developments as regards effective implementation of in particular the ILO convention No. 87 will be necessary. It would include monitoring of the progress made by Guatemala in implementation of a roadmap presented by the Government in October 2013, as well as following discussion at the ILO Governing Body in March 2014 and subsequent conclusions of the ILO supervisory bodies.

4.3. PANAMA

Vulnerability

22. Panama meets vulnerability criteria in accordance with point (a) of Article 9(1) of the GSP Regulation.

B. Ratification

23. In accordance with point (b) of Article 9(1) of the GSP Regulation Panama has ratified all conventions listed in Annex III of the GSP Regulation.

C. Reservations

24. Panama has made reservations to three Conventions: the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the UN Convention against Corruption.

25. Under the GSP Regulation, these reservations are permissible, as they:

- (a) are not prohibited by the Convention;
- (b) for GSP+ purposes are not considered to be incompatible with the object and purpose of the Conventions as they do not meet criteria of point (c) of Article 9(1). The conventions do not set out a process for determination of the incompatibility with the object and purpose of the convention. Therefore provisions of Article 9(1)(c)(ii) are applied to determine whether the reservations are incompatible with the object and purpose of the convention. No Member State objected to the reservations opposing the entry into force of the convention as between them and Panama.

D. Serious failure to effectively implement

26. The monitoring bodies of four conventions have observed some salient shortcomings regarding Panama's effective implementation of the conventions. However these monitoring bodies have confirmed significant elements of progress and have acknowledged some objective constraints, which restrict country's ability to effectively implement the relevant conventions.

- 26.1 **Convention on the Elimination of All Forms of Racial Discrimination.** The Committee on the Elimination of Racial Discrimination¹² (CERD) observed such

¹² CERD Report of 8 April 2011.

concerns regarding the fact that some indigenous communities have not obtained a region or entity with provision for self-government and communal ownership of land, expulsions and displacements affecting indigenous communities, lack of effective mechanisms for consultations with the indigenous peoples, non-compliance with provisional and unembargoed precautionary measures, the refugee recognition process and statements by Government officials against persons of foreign origin. At the same time, there are significant elements of progress. The CERD welcomed the positive developments, including the adoption of legislation to combat racial discrimination and the creation of the National Commission against Discrimination, and the institutions set up to combat discrimination and to protect and promote human rights, such as: the Ombudsman's Office, the National Council of the Black Ethnic Community and the National Commission for Refugee Affairs, as well as intention to carry out in 2010 a population census which will include questions relating to self-identification for indigenous peoples and Afro-Panamanians. In conclusion, in view of the relatively limited number of salient shortcomings and significant elements of progress, it is considered that no serious failure to effectively implement the Convention exists.

26.2 **International Covenant on Economic, Social and Cultural Rights.** The Committee on Economic, Social and Cultural Rights¹³ (CESCR) observed such concerns regarding the persisting disadvantage faced in practice by members of indigenous communities, non-sufficient level of minimum wage to provide for basic needs and non-payment of it in practice and persistent problem of child labour, especially in rural areas. At the same time, there are significant elements of progress. The CESCR welcomed Panama's efforts to implement the Convention, including the enactment of laws promoting equality between men and women, the setting up of the National Women's Council and other women's offices in various ministries as well as the active participation of organizations of civil society in this process of legal reform, the significant reductions in levels of child mortality and malnutrition, and steady improvement in other indicators of human development, and the establishment of a territorial demarcation (comarca) for the Nöbe-Buglé indigenous community. The CESCR acknowledged constraints hampering the country's ability to implement the convention, namely economic and social underdevelopment in rural areas and inequality in access to productive resources, together with the dominant position held by the urban population in social programmes. In conclusion, in view of the relatively limited number of salient shortcomings, significant elements of progress and the constraints impeding implementation, it is considered that no serious failure to effectively implement the Convention exists.

26.3 **Convention on the Elimination of All Forms of Discrimination Against Women.** The Committee on Elimination of All Forms of Discrimination against Women¹⁴ (CEDAW Committee) observed such concerns regarding multiple forms of discrimination as well as violence on grounds, such as sexual orientation and gender identity against certain groups of women, the discrimination faced by women in prison and allegations of physical, verbal and sexual abuse committed against them by police officers, as well as the provisions included in the Civil Code that discriminate against women with regard family and marriage. At the same time, there are significant elements of progress. The CEDAW Committee welcomed the

¹³ CESCR Report of 8 December 1999

¹⁴ CEDAW Committee Report of 8 April 2008.

Panama's efforts made to implement the Convention, including the adoption of Law No. 4, establishing Equal Opportunities for Women, and a number of legislative measures designed to promote the advancement of women and gender equality, including legislative amendments in the area of electoral law, penal law, employment and education, the introduction of a number of programmes, policies and plans designed to promote the advancement of women, including the National Plan for Preventing and Addressing Domestic Violence and for Civil Coexistence, the establishment of the National Institute for Women (INAMU) with the main objective of coordinating and monitoring compliance with issues relating to equality of opportunity for women. In conclusion, in view of the relatively limited number of salient shortcomings and significant elements of progress, it is considered that no serious failure to effectively implement the Convention exists.

- 26.4 **Convention on the Rights of Child.** The Committee on Rights of the Child¹⁵ (CRC Committee) observed concerns regarding lack of a comprehensive national plan of action for all children, non-application of the principle that affords primacy to the best interests of the child, Introduction of curfews for children in three major Panamanian cities, the recurrent cases of fires in juvenile detention centres and the police action during these fires, introduction of the reform to make General Adoption Act more flexible that may hinder the achievements in the adoption system, proposed changes to existing legislation aimed at separating pregnant girls into special education facilities, which is a serious violation of their rights, various reforms to the legislation on administration of juvenile justice that may lead to a denial of the rights of children in conflict with the law and poor conditions of the juvenile detention centres. At the same time, there are significant elements of progress. The CRC Committee welcomed Panama's efforts to implement the Convention, including the Law No 61/2008, which establishes safeguards for Panamanian children in international adoptions and is harmonized with the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption, as well as adoption of the following institutional and policy measures: the Comprehensive Plan of Action for Early Childhood (PAIPI), the establishment of an independent Child Rights Observatory, the Advisory Council on Early Childhood, the National Secretariat for Children, Adolescents and Family (SENNIAF), the National Institute for Women, the National Secretariat on Disabilities and an observatory for the rights of the child with the participation of civil society. In conclusion, in view of the relatively limited number of salient shortcomings and significant elements of progress, it is considered that no serious failure to effectively implement the Convention exists.

E. Binding undertakings

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

F. Conclusions

28. Panama meets eligibility criteria of Article 9(1) of the GSP Regulation.

¹⁵ CRC Committee Report of 7 November 2001.