

June 2020

Recommendations of the GSP Platform¹ in light of the discussion for the new Regulation of the Generalised System of Preferences of the European Union.



The recommendations below have several goals:

¹ The GSP Platform represents a group of human rights and development organizations, trade unions and other stakeholders seeking to advance human rights and labour rights; as well as promote civic space in the context of the trade preferences of the European Union. Civic space entails the freedom of expression, freedom to peaceful assembly and freedom of association. www.gspplatform.eu

1. Improve the labour and human rights situations in beneficiary countries;
2. Ensure that the economic development and employment opportunities created by international trade are in line with international human and labour rights conventions and promote workers' rights and interests;
3. Promote the enforcement of the UN and ILO conventions by GSP beneficiary governments will help companies fulfil their responsibility to respect human rights and the implementation of the Sustainable Development Goals.

Therefore, we call upon the European Union to amend the GSP Regulation in alignment with the goals set out by EU treaties and policies. The suggested amendments will contribute to a more impactful Regulation, enabling it to achieve its full potential. Some of the required amendments are adaptations of aspects that are already working well in other trade policies, while others are new.

1) General observations

When it comes to the overall GSP arrangement, we recognise that each scheme should have built in **conditionalities** that not only promote human and labour rights, but prevent social dumping and human rights abuses linked to conflicts over the use of land and water.

Key to achieving these goals are the predictability, accountability, and transparency of the European Union's Generalised System of Preferences, as was reiterated in the Trade (INTA) and Development (DEVE), as well as the Human Rights (DROI), committees of the European Parliament². In light of these recommendations, made by the European Parliament, we want to present the following considerations:

- a) Overall, there is a need for formalized procedures to increase predictability, accountability and transparency of the EUs Generalized System of Preferences in order to promote both trade, human and labour rights;
- b) Formalization of the GSP+ monitoring process, as well as the Everything But Arms -enhanced engagement process, to promote predictability of the investigation;
- c) Increased predictability, accountability, transparency, in the monitoring process of the EUs System of Preferences, will promote the effective implementation of the conventions promote trade and trust between the EU and Beneficiary countries as well as more job security for workers;
- d) A formalized role needs to be developed for civil society actors, human rights defenders and Trade Unions in beneficiary countries as well as the EU in the monitoring process;
- e) Formalized procedures for the submission of information and reports from civil society actors, such as non-governmental organisations and Trade Unions, should be established to improve the monitoring of the implementation of the UN and ILO conventions;
- f) Procedural rules for redress and arbitration that ensure due implementation of the regulation and enhance the predictability and accountability of the scheme should be established;
- g) A targeted approach for the withdrawal of preferences or temporary increasing import tariffs would be beneficial for the enforcement of human and labour rights standards
- h) Ratification of Annex 8 UN/ILO conventions as well as key environmental standards as conditionality to qualify for EBA;
- i) Extending positive conditionalities to Standard GSP and EBA beneficiaries;

² European Parliament resolution of 14 March 2019 on the implementation of the GSP Regulation (EU) No 978/2012 (2018/2107(INI)) see: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0207_EN.html

- j) Create additional positive incentives for beneficiaries to implement the international conventions after their qualification for GSP, EBA, GSP+;
- k) In view of concerns related to conditionalities and non-discrimination at the level of WTO members, the EU should unilaterally commit itself to binding provisions for EU companies in line with the UN Guiding Principles on Business and Human Rights in their operations along the supply chains, to identify, prevent, mitigate and account for abuses of human rights.

2) Which international Conventions?

The list of International Conventions provided for in Annex VIII of the GSP Regulation is outdated and incomplete. This raises the issue of the possible addition of further Conventions. Any new Convention would need to fulfil certain conditions to be added to the list, e.g. be closely linked with the objective of sustainable development through trade policies; be ratified by all MS and be globally relevant.

- a) It is recommended to extend Part B of the Conventions related to the environment and governance principles in Annex VIII of Regulation (EU) No 978/2012 to GSP and EBA beneficiary countries.
- b) It is recommended to add a duty to sign and ratify the Optional Protocol to the International Covenant on Civil and Political Rights, the second Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. It would enhance the enforcement of Convention without increasing the enforcement burden on the EU.
- c) It is recommended to add an obligation to ratify, adhere and cooperate with regional human rights instruments and bodies, where relevant.
- d) Rome Statute of the International Criminal Court
The Rome Statute established four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. Those crimes "shall not be subject to any statute of limitations".[8] Under the Rome Statute, the ICC can only investigate and prosecute the four core international crimes in situations where states are "unable" or "unwilling" to do so themselves; the jurisdiction of the court is complementary to jurisdictions of domestic courts.
- e) Paris Agreement under the United Nations Framework Convention on Climate Change
- f) A number of instruments raise important issues that need particular attention:
 - UNDROP-UN Declaration on the Rights of Peasants and Other People in Rural Areas
 - VGGT - Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests
 - UNDRIP-UN Declaration on the Rights of Indigenous People - and its principles on Free Prior and Informed Consent

- ILO Convention C190 on Elimination of Gender-Based Violence and Harassment in the World of Work

3) Issues regarding the GSP monitoring process, including transparency and inclusiveness

It is essential that the assessment of GSP+ eligibility and continuous monitoring of a GSP+/GSP/EBA beneficiary country be done in a transparent and accountable manner. Scorecards, used for the monitoring of GSP+ beneficiary countries, as well as the countries under enhanced engagement, remain secret and inaccessible to third parties, thereby leaving out a key player in the process of monitoring compliance with conventions in practice.

Furthermore, CSOs, human rights defenders and Trade Unions are key players in supporting beneficiary countries in their achievement of compliance with the conventions, as well as companies that can play a key role when it comes to the implementation of these conventions on the work floor.

We therefore urge the European Commission to make the assessments for eligibility for GSP+, as well as scorecards and any related reports and complaints, publicly available in order to increase transparency and oversight and improve the implementation of conventions.

We also call for the European Commission to formalize the use of the outcomes and results of the Universal Periodic Review process and relevant resolutions of the United Nations Human Rights Council, as well as the Special Procedures, in determining the extent of a beneficiary state's compliance with the GSP scheme.

Furthermore, EBA beneficiaries that reach a 5% percentage share of EBA preferential imports into the EU should automatically be placed under enhanced engagement to prepare them for an eventual graduation to GSP+.

Additionally, those actors from the European Union involved in the overall monitoring process should be clarified, including EU officials and any third parties (consultants). The monitoring mechanism should invite input from Trade Unions, human rights defenders and CSOs in a structured manner.

a) Publicly available jointly negotiated road maps.

The Scorecards that the EU currently uses for monitoring are broadly defined and lack clear demands. This also creates ambiguity for beneficiary countries' governments about what is expected, therefore undermining the effectiveness of the EU's GSP in regards to the implementation of UN and ILO Conventions.

Hence, there is a need, taking into account the priorities identified by the dedicated monitoring bodies (as ILO, special procedures etc) and views of civil society, to develop publicly available road maps that are jointly negotiated between the EU and beneficiary countries that present specific and time-bound human and labour rights benchmarks in an on-going process. As they are based on agreed international standards and also jointly negotiated, they would also improve ownership of the process by beneficiary countries' governments, thereby leading to better outcomes.

These road maps should (1) emphasize the reform of legislation, as well as the degree to which such legislation is implemented and developed through a multi-stakeholder dialogue, (2) assess the

capacity of beneficiary countries' institutions to effectively implement core human and labour rights conventions, and (3) assess the progress of such implementation. The roadmaps should be negotiated in the beginning of the GSP regulation and provide time-bound milestones for the whole lifespan of the GSP regulation. Precedents for a public roadmap can be found in the EU Bangladesh Sustainability Compact, the EU Roadmap with Colombia and Peru, and the US-Colombia Action Plan, as well as the US-Vietnam Labor Plan which was part of the Trans-Pacific Partnership.

b) Incentives in the roadmaps

After qualification of GSP/GSP+/EBA based on the ratification of the UN and ILO Conventions as well as key environmental standards, a more positive approach is suggested in which beneficiary countries receive additional tariff reduction or additional goods are added to the list of products (currently Annexes V and IX of Regulation (EU) No 978/2012) in case a beneficiary country attains the human and labour rights benchmarks listed in the publicly available jointly negotiated road maps. In this way they can gain additional access to the EU market. Secondly, the roadmaps should also serve to align trade policy with foreign policy and development cooperation.

c) Targeted consequences

Targeted sanctions could entail partial withdrawal, focused to specific sectors. This should be considered in case of specific violations in line with the mutually negotiated roadmaps, or in case of overall violations. Also, the possibilities of withdrawing export certification from specific economic operators should be considered, with a system of “blacklisting” in the Registered Exporter system.

4) Issues related to the process for withdrawing GSP preferences

A more positive approach is suggested in which beneficiary countries receive additional tariff reduction or additional goods are added to the list of products (currently Annexes V and IX of Regulation (EU) No 978/2012) in case a beneficiary country addresses the human and labour rights shortcomings identified in the road maps (see above).

The monitoring cycle should remain 2 years. Given that roadmaps should span the lifecycle of the regulation, the specific timeframes in the roadmaps give beneficiary countries ample time to amend legislation and implement it. The commitments in the roadmaps should provide the basis for the monitoring cycle.

A first assessment needs to be made public before consultations happen with the beneficiary country, trade unions, civil society and business. A (repeated) lack of progress and/or (severe) human rights violations should give rise to an investigation with a light of possible (partial) withdrawal. Lack of progress can be measured both by failures to meet identified benchmarks in the roadmap, as well as by the opinions and recommendations of UN expert monitoring bodies (e.g., the human rights treaty bodies and Special Procedures experts, and the ILO supervisory mechanisms) that are issued during the period (currently under article 19).

Targeted sanctions should be limited to specific sectors, in case of specific violations in line with the action plan. Furthermore, the possibilities of withdrawing export certification from specific economic operators should be considered, with a system of “blacklisting” in the Registered Exporter system.

5) A formal enforcement and compliance mechanism

The Commission has to ensure the respect of the EU law and is bound by the principles of good administration, transparency and public participation. A formal and transparent compliance mechanism within the GSP scheme that allows all interested parties to submit petitions on alleged labour, and human rights violations on companies or states benefiting from the duty-free access to the EU under the GSP-list, would contribute to better regulation. Such a mechanism could, for example, be hosted by the EU's Chief Enforcement Officer.

Among its specificities, this mechanism could be used to trigger an official investigation of a GSP, EBA or GSP+ beneficiary country. It should then include public hearings allowing specifically representatives from CSOs and Trade Unions to testify. These should take place on a country-by-country basis. It should also have determined time limits for investigation and resolution.

An amendment to the EU's Trade Barriers Regulation (TBR) would be most cost effective to this end. Therefore, a future enforcement mechanism should allow for complaints submitted by non-governmental organisations, trade unions and workers' organisations, human rights defenders and affected populations as well as Member States.

Being formal, the compliance and enforcement mechanism would ensure the EU is in a better position and empowered in its role to monitor and enforce of its trade partners' compliance with the social and environmental obligations contained in the EU's GSP and other trade policies.

- a) it would be there to facilitate and secure the effective monitoring of social and environmental obligations. Being formal and subject to public rules, civil society and trade unions would be given procedural assurances that their complaints would be taken seriously by the Commission and that complainants would be protected from harassment, while the Commission would be empowered to investigate such complaints.
- b) it would increase public support to the EU, enhancing the accountability of the Commission by ensuring that its decisions are transparent and subject to review. It would also importantly reinforce predictability, by providing greater insight and clarity on the thresholds used for both positive and negative conditionality.
- c) the registration of complaints and subsequent decision-making process being formalised it would increase confidence and transparency and provide a public record regarding the compliance of social and environmental obligations in the EU's GSP.

This mechanism aiming to monitor and ensure full implementation and respect of the EU new regulation, a unilateral legislation, the EU is free to set up this instrument unilaterally.

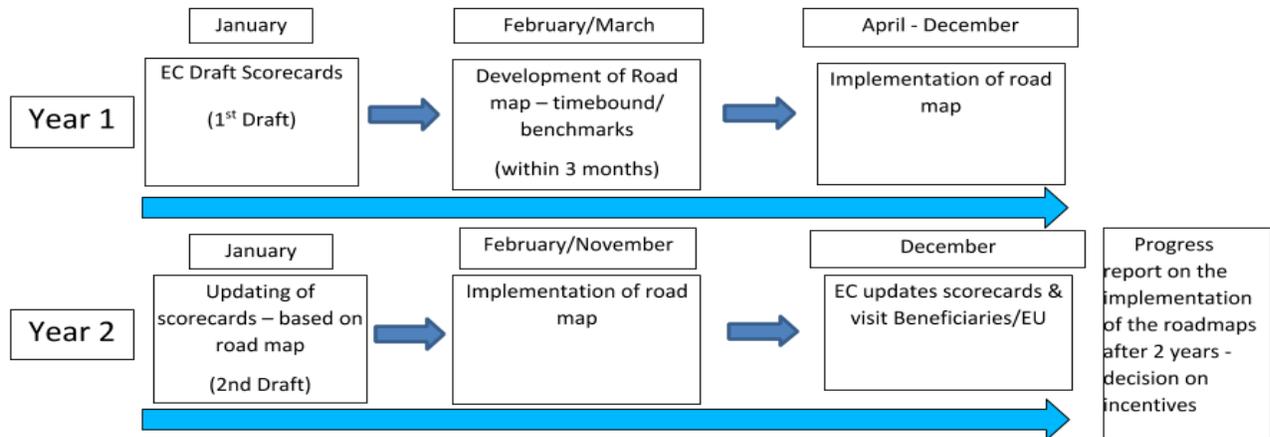
6) Funding for monitoring

In order to implement all the above-mentioned recommendations, we recommend that the EU allocate additional sufficient financial, human and technical resources in order to advance labour and human rights monitoring in the EU's GSP schemes, based on the publicly negotiated roadmaps for independent civil society actors, including non-governmental organizations and trade Unions.

7) GSP+/EBA/GSP: a tool for the promotion of civic space for civil society

One of the positive aspects of GSP+ is the requirement that beneficiary countries implement core human and labour rights conventions, including the monitoring process that has already been set-up by the European Union. In turn, this process has supported beneficiary countries to establish additional government bodies, if they have not already been created, such as the Treaty Implementation Cells, which are used by Civil Society Organisations (CSOs), Trade Unions and Human Rights Defenders (HRDs) as avenues for dialogue with their respective governments. As has been demonstrated, GSP+ has the potential to carve out space for CSOs to continue their work.

New 2-year Monitoring Cycle



Detailed explanation of new elements of the monitoring cycle

Scorecards

- Outline the main areas of concern
- Increased transparency needed to promote the role of stakeholders in the monitoring process

Roadmap

- Outlines how the main areas of concern listed in the scorecards are addressed;
- They contain benchmarks that are time bound;
- Jointly developed with key stakeholder: NGOs, Trade Unions and Beneficiary governments and businesses;
- EU Plays a coordinating role, and provides funding through their financial instruments.

Positive incentives

- Road Map tied to incentives

Possible incentives:

- Receive additional tariff reduction

- Additional goods are added to the list of products

Monitoring Cycle

- 2-year monitoring cycle remains.
- After 2-year, 1st assessment period to receive positive incentives or not based on road map.
- After 4- years 2nd assessment period to receive positive incentives or not based on road map
- After 6-years, 3rd assessment period to receive positive incentives or not based on road map
- After 8-years, 4th assessment period to receive positive incentives or not based on road map

Sanctions

- Targeted sanctions are limited to specific sectors, in case of specific violations in line with the mutually negotiated roadmaps.
- Withdrawing export certification from specific economic operators should be considered, with a system of “blacklisting” in the Registered Exporter system.