

# The Commission proposal on reforming the Generalised Scheme of Tariff Preferences: analysis of human rights incentives and conditionalities



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## IN-DEPTH ANALYSIS

# The Commission proposal on reforming the Generalised Scheme of Tariff Preferences: analysis of human rights incentives and conditionalities

### ABSTRACT

This study looks at the European Commission's proposal for a new GSP Regulation from human rights and sustainable development perspectives. It focuses on proposed changes to the conditionality provisions with their linked monitoring and dialogue processes that aim to promote human rights, sustainable development and good governance in the beneficiary countries. The Commission's proposal is not revolutionary as it foresees retention of the three existing arrangements (Standard GSP, GSP+ and EBA). However, a limited set of targeted amendments were introduced not only to improve this scheme's response to the evolving needs and challenges of GSP countries but also to reinforce its human rights, labour, environmental and climate dimensions. This In-Depth Analysis provides a detailed examination of these proposed changes to the GSP regulation and formulates various recommendations to strengthen the GSP as a tool for promoting human rights, sustainable development and good governance. It is argued that positive conditionality should be extended to Standard GSP beneficiaries based on a differentiated and staged approach. Moreover, several innovations and amendments need to be clarified, made more ambitious and legally enshrined in the GSP Regulation or other legal acts.

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## List of abbreviations

CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CSO	Civil Society Organisation
DAG	Domestic Advisory Group
EBA	Everything But Arms
EEAS	European External Action Service
EU	European Union
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GSP	Generalised Scheme of Preferences
ILO	International Labour Organization
LDC	Least Developed Country
MFN	Most-Favoured-Nation
MTE	Midterm Evaluation
NGO	Non-Governmental Organisation
REX	Registered Exporter system
SDG	Sustainable Development and Sustainable Development Goal
SEP	Single Entry Point
SOE	State-Owned Enterprise
TBR	Trade Barrier Regulation
TFEU	Treaty on the Functioning of the European Union
TSD	Trade and Sustainable Development
UN	United Nations
UNIC	<i>Unione nazionale industria conciararia</i>
USA	United States of America
VSS	Voluntary Sustainability Schemes
WTO	World Trade Organization

## 1. Introduction

The European Union (EU) has granted trade preferences to developing countries through the Generalised Scheme of Preferences (GSP) since 1971. The GSP offers preferential access to the EU market for goods exported from developing countries by eliminating or reducing import tariffs unilaterally (i.e. on a non-reciprocal basis). The GSP's rationale is to make exporting to the EU market easier for developing countries, thereby promoting their sustainable economic, social and environmental development, with the primary objective of reducing poverty.

The current GSP scheme consists of three distinct arrangements with different beneficiary countries (67 in all) and levels of preferences (see Annex 1).

1. **The Standard GSP**<sup>1</sup>: for low and lower-middle income countries, providing for a reduction or full removal of customs duties on about two-thirds of the EU's tariff lines. This arrangement currently has 11 beneficiaries.
2. **GSP+**: a special incentive arrangement for sustainable development and good governance. To qualify for GSP+, applicant countries must be considered 'vulnerable' in terms of the low diversification level of their exports to the EU and insufficient integration into the international trading system. Under this scheme import duties are reduced to 0 % for the same tariff lines as Standard GSP for countries that have ratified and implemented 27 conventions related to human rights, labour rights, protection of the environment and good governance. This arrangement currently has nine beneficiaries.
3. **Everything But Arms (EBA)**: a special arrangement for least developed countries (LDCs), providing them with duty-free, quota-free access to the EU market for all products except arms and ammunition. The arrangement currently has 47 beneficiary countries.

The GSP currently applies 'positive conditionality' to the GSP+ arrangement, which implies that beneficiaries must ratify and implement the international conventions on human rights, labour rights, environmental protection and good governance listed in Annex VIII of the Regulation (hereafter: 'the listed conventions') in order to benefit from the GSP+ tariff preferences. Conversely, the 'negative conditionality', which applies to all three GSP arrangements, implies that the tariff preferences for beneficiaries can be (partially) withdrawn in cases of grave human or labour rights abuses, including failure to respect the listed human and labour rights conventions' main principles.

The present legal basis for all schemes, Regulation (EU) 978/2012 of 25 October 2012 (hereafter 'the Regulation' or 'the current GSP Regulation'), will expire at the end of 2023. Accordingly, unless a new regulation is adopted, the Standard GSP and GSP+ arrangements will cease to apply on 1 January 2024. Imports from developing countries under the Standard GSP and GSP+ arrangements would thus be subject to the EU's Most-Favoured-Nation (MFN) tariff. However, imports from LDCs would still be covered by the EBA arrangement, which does not carry an expiry date<sup>2</sup>.

On 22 September 2021, the European Commission adopted proposals for a new GSP Regulation (hereafter 'the proposed Regulation') which aims to renew the scheme for a further 10 years (European Commission, 2021). The Commission is proposing to improve some of the scheme's key features, responding to the evolving needs and challenges of GSP countries as well as reinforcing the scheme's social, labour, environmental and climate dimensions. The Commission's overarching objectives with the revised GSP Regulation aim to maintain the present Regulation's essential features, namely poverty eradication as well as support for sustainable development and good governance, while at the same time not jeopardising EU

<sup>1</sup> Throughout this paper, the term 'Standard GSP' is used when referring to the first arrangement described above. The term 'GSP' refers to the whole GSP scheme comprising all three arrangements.

<sup>2</sup> See Art. 43(3) Regulation (EU) 978/2012.

interests (European Commission, 2021a). The Commission wants to update the GSP to improve its overall efficiency and effectiveness in response to future challenges for beneficiary countries, whilst at the same time bringing the scheme closer into line with the EU's trade sustainability principles. As noted by Executive Vice-President and Commissioner for Trade Valdis Dombrovskis when presenting the new proposal, the GSP 'has helped beneficiary countries to diversify their economies and create jobs [and] has also galvanised beneficiary countries into improving human and labour rights, the environment and good governance. [The proposed Regulation] continues to offer generous trade preferences while spurring on more positive change in beneficiary countries' (European Commission, 2021h).

The proposed Regulation envisages making the EU's GSP more focused on reducing poverty and increasing export opportunities for low-income countries, thereby incentivising sustainable economic growth in low-income countries as well as offering new room for engagement on environmental and good governance issues. One of the proposed GSP Regulation's key objectives is to strengthen its contribution to sustainable development, good governance, together with human and labour rights in beneficiary countries. Accordingly, the Commission has proposed various changes to conditionality mechanisms that are embedded in the GSP scheme. Moreover, to improve the effectiveness and efficiency of these conditionality mechanisms still further, the Commission has proposed a number of innovations to provisions for monitoring, transparency and inclusiveness (i.e. engagement with civil society) related to the GSP's conditionality.

This paper will analyse the Commission's new GSP Regulation proposal from a human rights perspective, focusing on suggested changes to conditionality provisions as well as the monitoring and dialogue processes linked to these conditionalities. This paper will first discuss the GSP scheme's key features (Chapter 2) by providing a brief overview of the mechanism's evolution (2.1), the new proposals' background (2.2) and key innovations introduced by the Commission (2.3). Thereafter, an evaluation of the conditionality mechanisms is provided (Chapter 3), followed by a detailed assessment of proposals concerning the withdrawal mechanism (negative conditionality) (Chapter 4), the potential extension of positive conditionality (Chapter 5) and the conditionality mechanisms related to transparency, monitoring and civil society involvement (Chapter 6). Throughout this analysis a number of recommendations are formulated to improve the Commission's proposal, which are summarised in the final chapter (Chapter 7).

## 2. Key elements of the proposed GSP Regulation

### 2.1 Evolution of the EU's GSP regime

The EU's first GSP scheme was introduced in 1971, when a waiver to the MFN principle in Article I of the General Agreement on Tariffs and Trade (GATT) was adopted, enabling developed countries to provide preferential market access to developing countries. This legal basis was made permanent by the GATT's Enabling Clause in 1979, which grants permanent exemption from the MFN principle, thus making it possible for developed countries to unilaterally reduce tariffs paid on imports from developing countries. Since its adoption in 1971, the EU's GSP scheme has undergone several reforms. The first programme was introduced for an initial 10-year period and subsequently renewed until 1991 (UNCTAD, 2016). Major revisions then took place, firstly following the conclusion of negotiations for the GATT Uruguay Round in 1994 and secondly in 2001 by Council Regulation (EC) No 2820/98, which introduced five different GSP arrangements. However, one of these arrangements, for combatting drug production, was challenged by India in the World Trade Organization (WTO), arguing that it was inconsistent with the MFN clause and not justified under the Enabling Clause (Ott, Van der Loo, 2018). In December 2003, the WTO Panel concluded that the 'GSP drug arrangement' was indeed inconsistent with Article I:1 GATT (the MFN principle) and not

justified under the Enabling clause<sup>3</sup>. On appeal, the Appellate Body also concluded in 2004 that GSP preferences must be based on clear criteria; identical treatment should be available to all similarly situated GSP beneficiaries; and there must be a clear link between the preferential treatment provided and the development objective<sup>4</sup>. In response to this WTO ruling, the EU repealed its arrangement and in 2006 introduced Regulation (EC) No. 980/2005, which established the basic structure for the three GSP regimes that are in place today: a general arrangement (Standard GSP); a special incentive arrangement for sustainable development and good governance (GSP+); and the EBA regime for LDCs (Bartels, 2007). This scheme was extended until December 2013, after which Regulation (EU) No. 978/2012 (the current GSP Regulation) was adopted. The current GSP Regulation's key objectives were to: focus better on the countries 'most in need'; improve promotion of core principles for sustainable development and good governance; and enhance stability as well as predictability for all operators (European Commission, 2013). This reform reduced the number of GSP countries from 177 to 88 in 2014 due to stricter eligibility requirements (Gstöhl and De Bièvre, 2018). For example, countries which the World Bank classified as either 'high-income' or 'upper-middle income' for three consecutive years were no longer eligible and nor were GSP beneficiaries that concluded preferential trade agreements with the EU. Moreover, this Regulation loosened the vulnerability criteria for GSP+ beneficiaries<sup>5</sup> and introduced a relaxation of the product graduation threshold (to offset the impact caused by the reduction in GSP beneficiaries) (Siles-Brügge, 2014).

## 2.2 Background of the proposed GSP Regulation

As noted earlier, because the current GSP Regulation will expire on 31 December 2023, the Commission proposed a new GSP Regulation to cover 2024-2034. The Midterm Evaluation (MTE) of the Regulation's implementation concluded that overall GSP was delivering on its objectives but nevertheless put forward a number of recommendations to improve the scheme's effectiveness and efficiency, such as: promoting greater awareness of the scheme in beneficiary countries; using safeguard provisions more effectively; updating the list of conventions on core human and labour rights, environment and good governance principles; as well as ensuring coherence between the EU's GSP and the various free trade agreement (FTA) regimes (European Commission, 2018). Moreover, the MTE called for greater transparency and inclusiveness for stakeholders involved in the GSP. To address these concerns, in 2020 the Commission launched a dedicated two-year project: the Action on GSP Trade Preferences ('GSP Hub'). This initiative aims at increasing the GSP's effectiveness, inclusiveness and transparency, including the GSP+ monitoring process, via a dedicated platform/website along with other activities and engagements with stakeholders<sup>6</sup>. Most respondents to the open public consultation on GSP reform (March 2020-July 2020) also considered that the current Regulation had a limited but positive impact on its sustainable development objectives<sup>7</sup>. In line with the MTE's conclusions, the supporting External Study for the Commission's own Impact Assessment for a new GSP Regulation (hereafter 'the External Study') concluded that the current GSP Regulation delivered on most of its objectives but made several recommendations to improve the GSP instrument's effectiveness (both the MTE and the External Study are discussed throughout this paper) (European Commission, 2021c).

<sup>3</sup> For the report, see: WTO, [European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, Report of the Panel](#), WT/DS246/R, 1 December 2003.

<sup>4</sup> For the report, see: [WTO, European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, AB-2004-1, Report of the Appellate Body](#), WT/DS246/AB/R, 7 April 2004.

<sup>5</sup> The vulnerability criterion implies that a country can only benefit from GSP+ if it is not competitive on the EU market (import-share ratio) and it does not have a diversified export base (diversification ratio).

<sup>6</sup> See [EU GSP Hub](#) webpages.

<sup>7</sup> A summary of the stakeholder consultation is included in Annex 2 of the Commission's Accompanying Impact Assessment Report (European Commission, 2021b).

On 14 March 2019, the European Parliament adopted a non-legislative resolution on the implementation of the GSP Regulation (European Parliament, 2019) which: acknowledged the overall positive impact of GSP on developing countries; welcomed the current GSP Regulation's ability to have brought about an increase in exports from beneficiaries from the EBA and GSP+ arrangements; and officially recognised the important role played by the GSP+ arrangement in promoting international labour rights, human rights, good governance and environmental protection standards in beneficiary countries. However, the European Parliament made a number of recommendations for improving the scheme, including: further encouraging export diversification of beneficiary countries; placing more emphasis on improving environmental standards; reinforcing stakeholders' involvement to ensure better monitoring of the scheme's implementation; introducing additional tariff preferences for products that have demonstrably been produced sustainably; updating the list of conventions with the Paris Climate Agreement; increasing transparency in the GSP+ monitoring procedures; and making targeted use of the withdrawal procedure as a measure of last resort.

The GSP review also fits with the Commission's recent Trade Policy Review, adopted in February 2021 (European Commission, 2021d). 'Sustainability and fairness' are the key elements that underpin the EU's concept of Open Strategic Autonomy, which is central to the Trade Policy Review. The Commission underlined in this document that 'making globalisation more sustainable and fairer should be the underlying driver of trade policy' and that 'EU trade policy should use all the tools at its disposal to support social fairness and environmental sustainability'. The Commission states that its GSP review is one of the main instruments to reach this objective, as it aims 'to further increase trading opportunities for developing countries to reduce poverty and to create jobs based on international values and principles, such as labour and human rights.'

Continuation of the GSP scheme is also in line with EU Policy Coherence for Development (embedded in Article 208 of the Treaty on the Functioning of the European Union (TFEU)) which constitutes a key pillar of EU efforts to enhance development cooperation's positive impact and effectiveness. Moreover, it is part of the EU's political commitment to support sustainable development globally, as reflected in implementation of the United Nations (UN) Agenda 2030 for Sustainable Development and Sustainable Development Goals (SDGs).

At the time of writing of this analysis, both the Council of the EU and the European Council have yet to take positions on the Commission's proposal for a new GSP Regulation<sup>8</sup>. In the European Parliament, the rapporteurs have started their work, but the vote in the lead committee and plenary were outstanding<sup>9</sup>.

## 2.3 Key changes proposed in the new GSP regulation: an overview

As noted earlier, the Commission is not proposing any revolutionary reform of the GSP scheme (the proposal keeps the three existing arrangements in place), but instead introduces a number of targeted amendments that aim to improve some of the scheme's key features. The proposal's objective is not only to improve response to GSP countries' evolving needs and challenges, but also to reinforce the scheme's social, labour, environmental and climate dimensions, whilst at the same time not jeopardising EU interests. In particular, the Commission puts forward GSP improvements which respond to the following future challenges:

<sup>8</sup> For example, on 21 and 22 October 2021 the European Council merely 'held a strategic discussion on EU trade policy', without adopting specific conclusions on the Commission's GSP proposal or other trade issues. The Foreign Affairs Council (Trade) on 11 November 2021 discussed the ongoing review of the implementation and enforcement of sustainable development chapters in EU trade agreements, but did not discuss the Commission's proposal for a new GSP Regulation (see Council of the EU, [Outcome of the Council meeting](#), 13620/21, 11 November 2021).

<sup>9</sup> The status of the procedure in Parliament is regularly updated in the [legislative observatory](#).

1. Facilitate access to GSP+ arrangements for a growing number of LDCs which are graduating from the EBA status;
2. Adjust product graduation thresholds to focus better on preferences for less competitive products and countries;
3. Reflect evolving priorities such as those underpinning the European Green Deal by also extending negative conditionality to environmental and good governance conventions;
4. Update the list of international conventions in a targeted and manageable way, while at the same time not jeopardising the monitoring process;
5. Make the preferences withdrawal process more responsive in urgent cases;
6. Enhance the monitoring and implementation of GSP+ commitments, for instance through increased transparency and participation of relevant stakeholders, *inter alia* through the recently created Single Entry Point (SEP) mechanism for non-compliance related complaints (European Commission, 2021a).

This analysis focuses on proposed changes concerning the GSP's conditionality and related monitoring, transparency and inclusiveness mechanisms that aim to strengthen the GSP's potential for contributing to sustainable development, human rights and good governance in beneficiary countries.

However, the Commission has also proposed several targeted innovations that aim to: (i) contribute to the GSP's objective of contributing to poverty eradication for countries most in need; and (ii) further ensure the protection of EU economic interests in the scheme's functioning. With regard to the former, although the preferences enjoyed by GSP beneficiary countries complying with the requirements of the three arrangements remain unchanged, the Commission has proposed a number of innovations to the GSP Regulation to make sure that trade preferences go to countries that need them the most. Firstly, considering that certain LDCs currently benefitting from the EBA arrangement are expected to graduate from LDC status over the next 10 years<sup>10</sup>, the proposed GSP Regulation facilitates access to the GSP+ arrangement for those 'EBA graduates' by removing the export competitiveness vulnerability criterion for GSP+ qualification (Article 9.2)<sup>11</sup>. This implies that graduating EBA countries will be able to apply for the GSP+ arrangement if they comply with entry criteria, providing them with the opportunity to retain preferential access to the EU market<sup>12</sup>. Secondly, the Commission proposed adjusting the product graduation thresholds (the temporary suspension of tariff preferences for highly competitive products) for the Standard GSP arrangement (a reduction of 10 %) to improve the focussing of preferences on less competitive products and to create more opportunities for other GSP beneficiaries, in particular the LDCs (Annex IV of the proposed Regulation). Thirdly, the proposed GSP Regulation introduces the possibility of updating the eligible countries list based on changes in their trade and development needs (Article 3.2). For example, the Commission proposed the removal of Russia, China, Hong Kong and Macau from the list of eligible countries, which will no longer be considered as developing countries within the revised GSP. Finally, the Commission has introduced a specific process to make sure that cross-regional and extended cumulation of rules of origin responds to the requesting country's development, financing and trade needs (Article 2.13 and 2.14).

<sup>10</sup> 12 LDCs are expected to graduate from EBA over the next 10 years. The economic impact of this would be significant for at least six countries, in particular for Bangladesh (the others are Lao PDR, Myanmar, Nepal, São Tomé and Príncipe and the Solomon Islands (European Commission 2021b; 2021c).

<sup>11</sup> Under the current vulnerability criteria, all the countries expected to graduate from LDC status over the next 10 years could accede to GSP+ to maintain duty free access to the EU market, with the notable exception of Bangladesh (European Commission, 2021c).

<sup>12</sup> The Commission proposed to abolish the 'limited export competitiveness' criterion and only keep the 'lack of export diversification' criterion as measure of beneficiaries' vulnerability (Article 9.2).

To ensure protection of EU economic interests in the new GSP scheme's functioning, the Commission considered that no major changes were required. Hence, the proposed GSP Regulation has introduced only a few technical adjustments aimed at better aligning the automatic safeguards with product graduation (e.g. by changing the calculation method of safeguard thresholds to use import values, rather than volumes) (Article 29.1).

Most of the GSP scheme's proposed changes target the conditionality mechanisms that are embedded within the GSP, including the related monitoring, transparency and inclusiveness mechanisms. The Commission proposed extending negative conditionality (i.e. the withdrawal procedure) for all beneficiaries to environmental and good governance conventions, in addition to core human and labour rights conventions (Annex VI). The Commission also expanded its list of international conventions that need to be complied with by adding: two additional human rights instruments dealing with the rights of people with disabilities and children's rights; two labour rights conventions on labour inspections and tripartite dialogue; one governance convention on transnational organised crime; and the Paris Agreement on Climate change, replacing the Kyoto Protocol (now included in one single list in Annex VI of the proposed Regulation)<sup>13</sup>. Transitional measures (i.e. a transition period of two years) are foreseen for current GSP+ beneficiaries, which would have to reapply to fulfil these new requirements for GSP+ (i.e. ratification of the six additional conventions) (Article 10.8).

Certain changes are also proposed for the withdrawal mechanism: a new urgent withdrawal of preferences procedure is introduced when a rapid response is needed in exceptionally grave circumstances in a beneficiary country, such as grave violations of international standards (Articles 19.16 and 19.17); an assessment of the socio-economic effects for any proposed withdrawal, to consider any negative impact on vulnerable populations (Articles 19.10 and 15.9); the introduction of a withdrawal criterion related to readmission of own nationals by beneficiary countries (Article 19.1(c)); opportunities for extending the withdrawal measures' scope where additional reasons or violations occur (Articles 20 and 16); and increased flexibility for reviewing the scope of withdrawal, by postponing or suspending its application in the event of exceptional circumstances such as a global health or sanitary emergency (Article 19.14).

Finally, the Commission proposed several improvements to the monitoring procedures covering compliance with GSP+ requirements together with increased transparency and the involvement of civil society in its application: the GSP reporting period has been extended from two to three years, thus aligning with monitoring reports of UN international bodies and organisations (Article 14); a requirement has been added for countries applying for GSP+ status to submit a plan of action to demonstrate their effective implementation of the relevant conventions (Article 9.1(d)); and the monitoring and implementation of GSP+ commitments has been modified through increased transparency and participation of relevant stakeholders, including use of the recently created SEP mechanism for non-compliance complaints (recitals 17 and 18).

The specific proposals concerning these GSP conditionality mechanisms, including the related monitoring, transparency and inclusiveness provisions, are detailed further in the following chapters.

<sup>13</sup> These are: Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000); Convention on the Rights of Persons with Disabilities (2007); Convention on Labour Inspection No 81 (1947); Convention on Tripartite Consultations No 144 (1976); The Paris Agreement on climate change (2015); United Nations Convention against Transnational Organised Crime (2000).

**Table 1. Overview of the proposed changes related to positive and negative conditionality**

	<b>Current GSP Regulation (No 978/2012)</b>	<b>Proposed GSP Regulation</b>
<b>Negative Conditionality</b>	Withdrawal mechanism can be triggered only in the event of 'serious and systematic violation' of principles laid down in the 'Core human and labour rights UN/ILO Conventions'. (Art. 19.1(a); Annex VIII)	Withdrawal mechanism is extended to 'Conventions related to the climate, environment and to good governance principles' (one single list of conventions). (Art. 19.1(a); Annex VI)
	-	Faster withdrawal mechanism whenever 'the exceptional gravity of the violations calls for a rapid response'. (Art. 19.16 and 19.17)
	-	Assessment of the socio-economic effects of any proposed withdrawal. (Art. 19.10 and 15.9)
	-	Introduction of a withdrawal criterion related to readmission of own nationals by beneficiary countries. (Art. 19.1(c))
	-	Possibility of extending the scope of withdrawal measures where additional reasons or violations occur. (Art. 16 and 20)
	-	Possibility of postponing or suspending withdrawal in the event of exceptional circumstances such as global health or sanitary emergencies. (Art. 19.14)
	'Export of goods made by prison labour' is listed as a reason that can trigger the withdrawal procedure. (Art. 19.1(b))	Export of goods made 'by internationally prohibited child labour and forced labour, including slavery and prison labour' can trigger the withdrawal procedure. (Art. 19.1(b))
<b>Positive Conditionality</b>	27 international conventions listed in Annex VIII.	32 international conventions listed in Annex VI (six conventions added, whereby the Paris Agreement replaces the Kyoto Protocol). (Annex VI)
	-	Transitional period of two years for GSP+ beneficiaries to ratify and implement the six new conventions. (Art. 10.8)
<b>Monitoring, Transparency and Inclusiveness</b>	No complaint mechanism.	Complaint mechanism introduced through SEP (recitals 17 and 18)
	-	GSP+ applicants need to submit a 'plan of action' on implementation of the listed conventions. (Art. 9.1(d))
	GSP Monitoring cycle two years (Art. 14 and 40)	GSP Monitoring cycle three years. (Art. 14 and 40)

### 3. An evaluation of conditionality mechanisms under the current GSP Regulation

Conditionality is a key feature of the EU's GSP. As noted above, the current GSP Regulation makes tariff liberalisation for beneficiary countries conditional on respect of international conventions on human rights, labour rights, environmental protection and good governance. The GSP Regulation applies two types of conditionality:

1. **Positive conditionality** applies only to GSP+ beneficiaries as this requires the ratification and implementation of 27 conventions on human and labour rights, environmental protection and good governance listed in Annex VIII. Compliance with these conventions is monitored by the European Commission to ensure that there is no serious failure in their effective implementation<sup>14</sup>. Standard GSP and EBA countries do not have to ratify these conventions to benefit from their respective trade preferences.
2. **Negative conditionality** applies to all GSP beneficiaries (i.e. Standard GSP, EBA and GSP+) with respect to human and labour rights. Article 19.1(a) of the GSP Regulation provides that GSP preferences can be withdrawn temporarily in cases of serious and systematic violation of principles enshrined in the human and labour rights conventions listed in Part A of Annex VIII in the GSP Regulation. However, this negative conditionality does not apply to the environmental or good governance conventions listed in Part B of Annex VIII<sup>15</sup>.

In its Impact Assessment Report accompanying the proposals, the Commission highlighted a key problem with the new GSP Regulation, in that its potential for contributing to sustainable development and good governance in beneficiary countries is not being fully exploited (European Commission 2021b).

The **positive conditionality** embedded in GSP+ arrangements is considered to have a limited but positive impact on sustainable development and good governance in beneficiary countries, although it is recognised that this largely depends on their specific domestic circumstances (e.g. domestic political situation, administrative capacity, willingness of the authorities to cooperate) (European Commission, 2021c). Moreover, any causal relationship between the GSP regime and domestic changes in beneficiary countries is difficult to prove. The latest biennial Commission Report concluded that the GSP+ scheme contributed to effective implementation of all 27 listed international conventions (European Commission, 2020a). Progress was noted in relation to children's rights and child labour in a number of GSP+ beneficiaries such as Mongolia, Sri Lanka, Paraguay and Cape Verde. Moreover, various countries have maintained their GSP+ commitments even after having 'graduated' from this arrangement<sup>16</sup>. All GSP+ countries have ratified the eight environmental conventions listed in Annex VIII (see Annex 1), with a number having taken up additional commitments. For example, all beneficiaries under this arrangement have signed the Paris Climate Agreement, sometimes in response to requests from GSP+ monitoring missions (e.g. the Philippines) (European Commission, 2020a). Moreover, countries aiming to join the GSP+ arrangement are encouraged to ratify and implement the listed conventions, as in the case of Uzbekistan<sup>17</sup>. Furthermore, the External Study concluded that GSP+ beneficiaries perform better in reporting on their obligations under human rights and labour rights conventions (European Commission 2020c).

<sup>14</sup> Articles 13 and 14 of the GSP Regulation.

<sup>15</sup> In addition, Article 10.5 addresses the removal of a country from the list of GSP+ beneficiaries if one of the conditions are no longer met. Article 15 concerns the temporary withdrawal of preferences for GSP+ countries.

<sup>16</sup> For example, in 2019, after its graduation from the GSP+ scheme, Paraguay issued its voluntary mid-term report on the implementation of the recommendations of the Universal Periodic Review of the UN Human Rights Council.

<sup>17</sup> For example, Uzbekistan adopted a law on accession to the Cartagena Biosafety Protocol, as part of its agenda to apply for GSP+ (European Commission, 2020).

However, not only are there still outstanding challenges related to compliance with GSP+ requirements, but cases of deterioration have also been reported. In certain GSP+ countries the conditions for freedom of association, freedom of expression and civil society space are shrinking, with many examples of this trend in Pakistan, Bolivia, the Philippines and Cambodia (European Commission, 2020a). Indeed, the Philippines constitutes a noted example, where a number of human rights violations in the context of ‘the war on drugs and terrorism’ have been reported (European Commission, 2020b). Regarding labour rights, concerns on freedom of association remain in Sri Lanka, Pakistan, Bangladesh, Myanmar and Kyrgyzstan (European Commission, 2020a). In the area of environment and climate, GSP+ countries have a good track-record on ratification of the listed conventions, albeit the level of implementation often remains problematic, as with the Montreal Protocol (European Commission 2021c).

These observations are in line with a body of literature on the GSP’s positive conditionality. It is argued that the GSP+ arrangement has had at least a positive impact on the ratification of international conventions, such as the listed International Labour Organization (ILO) conventions (Bartels, 2008; Beke and Hachez, 2015; Orbie and Tortell, 2009). The MTE notes that positive conditionality in the GSP+ arrangement and related monitoring procedures also resulted in better informed and deeper structural dialogues between the EU and GSP+ beneficiaries, which has contributed to improving implementation of the ratified conventions (European Commission, 2018a). However, several authors note that progress in ratification is not always matched with progress in implementation on the ground (Wardhaugh, 2013). The External Study concludes that ‘while some beneficiary countries may struggle with capacity constraints and challenges in implementation and enforcement that may be overcome only in a long-term, for others (or certain groups therein) the existence of a possibility of losing preferences does not provide a sufficient deterrent from pursuing their own agendas which may not be compatible with the objectives of the GSP Regulation’ (European Commission, 2021c). Some authors also call for more clarity, transparency and stakeholder involvement in the GSP+ monitoring system, for example by applying greater transparency about the list of issues (‘scorecards’, discussed in Chapter 6) (European Commission, 2018).

Most studies are much more critical about the GSP’s **negative conditionality**. Many authors have criticised the effectiveness of withdrawal mechanisms, or their infrequent and inconsistent use (Zamfir, 2018; Borchert et. al, 2020; Beke and Hachez, 2015; Portela and Orbie, 2014; Velluti, 2016; van der Ven, 2018). The Commission has indeed used this mechanism only in a limited number of cases: Belarus (2007); Sri Lanka (which was downgraded from GSP+ to GSP in 2010); Myanmar (1997); and more recently Cambodia under the current GSP Regulation (2020). Insufficient transparency and monitoring related to withdrawal procedure have also been criticised (van der Ven, 2018).

For example, various studies and stakeholders in the consultation criticised the Commission for not withdrawing GSP preferences in relation to Myanmar and the Philippines, despite reports of severe human rights violations in these countries (Zamfir, 2018; Borchert et al., 2020). The Commission is reluctant to withdraw preferences and favours instead the fullest use of more ‘constructive’ instruments such as structured dialogues (European Commission, 2018a). As set out in the Trade for All Communication of 2015 (European Commission, 2015), the European Commission and the European External Action Service (EEAS) initiated in 2017 an ‘Enhanced Engagement’ process with Bangladesh, Cambodia and Myanmar. Through this process, the EU is asking for concrete actions and sustainable solutions to serious and systematic shortcomings in respecting fundamental human and labour rights. The European Commission’s report on Enhanced Engagement in 2020 confirms that the withdrawal procedure will be triggered in these cases only ‘as a last resort’ if the Enhanced Engagement fails (European Commission, 2020c). Based on serious concerns about the deterioration of political, human, land and labour rights in Cambodia, the Commission opened a procedure in February 2019 for withdrawal of EBA preferences granted to the country, which eventually led to partial withdrawal of the EBA preferences for Cambodia in 2020 (see below).

The MTE concluded that the GSP's negative conditionality constitutes no effective deterrent for preventing the violation of human or labour rights. As mentioned above, it has been argued that the Commission prefers to use dialogue in attempting to remedy human rights violations instead of activating the withdrawal mechanism due to the limited impact of negative conditionality (Velluti, 2016). Whereas some beneficiary countries struggle with capacity constraints to ratify and implement international conventions, other countries are not sufficiently deterred by the (threat of) withdrawal of GSP preferences.

Hence, negative conditionality in the GSP scheme is regarded as a 'blunt instrument' (Portela and Orbie, 2014; Portela, 2021; Furrutter, 2019). Certain authors even warn about negative side effects that this procedure may trigger. For instance, Portela has stressed the withdrawal procedure's 'crudeness', in that it 'hits the wrong targets' (Portela, 2018; 2021). She argues that this procedure may hurt the local population or economic sectors in beneficiary countries more than the rights-violating governments or non-state actors, which can even contribute to a deterioration of the human and labour rights situation. For example, the withdrawal procedure towards Myanmar mostly hit its textile industry, a sector unconnected to the country's authorities or violations that triggered this procedure (Portela, 2021) (further discussed in Chapter 4 and 6).

Various studies have also criticised the withdrawal procedure's monitoring mechanisms. Whereas such mechanisms are in place for GSP+ countries in the context of positive conditionality, detailed monitoring procedures are lacking in the other two GSP arrangements<sup>18</sup>. This makes it difficult to conduct a systematic evaluation of compliance with the conventions listed in Part A of Annex VIII, particularly as the Commission cannot always rely on reports from the relevant international organisations charged with monitoring the implementation of these conventions<sup>19</sup>. Other authors criticise the lack of transparency in this procedure and call for more clarity about the thresholds which trigger the Commission's decisions for withdrawal.

The **European Parliament** has also called on the Commission to strengthen GSP conditionality mechanisms. In its resolution of 14 March 2019 about GSP implementation, the European Parliament recognised that the GSP+ arrangement can play an important role in promoting international labour rights, human rights, good governance and environmental protection standards in its beneficiary countries. Regarding positive conditionality, the European Parliament stressed that Standard GSP beneficiaries are motivated to ratify and effectively implement international conventions only when they are expecting to join the GSP+ arrangement and receive additional preferences as a result. It is therefore no surprise that in a resolution of 26 November 2020 about the EU Trade Policy Review, the European Parliament called on the Commission to adopt proposals for the new GSP, 'possibly with a view to increasing the number of countries committing to the GSP+ scheme' (European Parliament, 2020).

Concerning negative conditionality, the European Parliament stressed that, in line with the Commission's practice, withdrawal of trade preferences should be seen 'as a measure of last resort applied only in cases of serious shortcomings in the effective implementation of the international conventions and a clear lack of willingness and engagement by the beneficiary country to address them' (European Parliament, 2019). It also called for strengthening the GSP monitoring procedures by using all available information and resources, such as reports from international monitoring bodies, *inter alia* the UN, ILO and the Organisation for Economic Co-operation and Development (OECD), as well as including the direct involvement of civil society and social partners in the process. Moreover, the European Parliament asked the Commission to explore further options for the structured, formal and independent participation of civil society, trade union representatives and the private sector in GSP monitoring procedures. Additionally, it insisted on

<sup>18</sup> Articles 13 and 14 of the GSP Regulation.

<sup>19</sup> For example, while ILO members are obliged to report on both ratified and non-ratified fundamental conventions, only ratified conventions are considered by the ILO Committee of Experts and the ILO Committee on the Application of Standards (see [ILO webpages](#)).

greater transparency in the GSP withdrawal processes and GSP+ monitoring procedures, particularly in relation to the 'scorecard exercise' (see below).

Although the European Parliament also considers that the withdrawal procedure should be used as a measure of 'last resort', it has nevertheless on no fewer than 11 occasions urged the Commission to consider withdrawing the preferences of GSP beneficiaries due to their violations of fundamental rights (Ioannides and Inama, 2018; Meissner, 2021). For example, regarding the recent case of Sri Lanka, in a June 2021 resolution the European Parliament asked the Commission to monitor the situation and leverage the GSP+ mechanisms to push for human and labour rights commitments and 'to carefully assess whether there is sufficient reason, as a last resort, to initiate a procedure for the temporary withdrawal' (European Parliament, 2021a). Similarly, in relation to human rights violations by the Myanmar regime, the European Parliament called on the Commission in February 2021 'to launch an investigation pursuant to Article 19(1)(a) of the GSP Regulation with a view to suspending the trade preferences' (European Parliament, 2021b).

After the European Commission's decision for partial withdrawal of Cambodia's tariff preferences under the EBA arrangement as of 12 August 2020, the European Parliament urged the Commission to: (i) insist on clearly defined human rights benchmarks in all its interactions with the Cambodian government; (ii) continue enhanced engagement with authorities; and (iii) assess the effect of partial EBA withdrawal on the most vulnerable segments of civil society (European Parliament, 2021c).

#### 4. An assessment of the proposed withdrawal mechanisms (negative conditionality)

Based on this analysis, it can be concluded that the GSP withdrawal procedure's (thus the GSP's negative conditionality) main weaknesses relate to the following issues:

- Inconsistent and infrequent application by the European Commission;
- Lack of transparency (for example about Enhanced Engagement procedures and the thresholds triggering withdrawal procedures);
- Potential negative impact on local populations or economic sectors, which are not responsible for the violations;
- Duration of the procedure (too long).

The Commission has included several new mechanisms and instruments in its GSP proposal that aim to address these points of critique by ensuring that the withdrawal mechanism is a more effective instrument for contributing to effective implementation of the listed conventions. More consistency and transparency in applying the withdraw procedure and preceding Enhanced Engagement process could have a positive impact on social and human rights in GSP beneficiary countries. This would lead all stakeholders involved to a better understanding of the procedural steps and hence beneficiaries would take the threat of withdrawal more seriously. The Commission's proposals concerning the withdrawal procedure are discussed in this chapter.

## 4.1 Expanding negative conditionality to environmental and good governance convention

As explained above, current GSP arrangements allow the Commission to initiate the withdrawal procedure of Article 19 only in cases of ‘serious and systematic violation of principles’ as laid down in ‘core human and labour rights UN/ILO Conventions’, listed in Part A of Annex VIII<sup>20</sup>. Violations against other listed conventions relating to the environment and good governance principles cannot lead to the withdrawal mechanism’s initiation.

Building upon both the MTE and External Study, the Commission proposed an extension of negative conditionality (i.e. the withdrawal provisions under Article 19.1, point (a)) to cover environmental and good governance conventions. The Annex listing conventions in the proposed Regulation (Annex VI) no longer distinguishes conventions related to human rights from those related to the environment and good governance. It includes instead a single list with all 32 conventions (including the six proposed additions) relating to core human and labour rights UN/ILO conventions as well as others related to the climate, environment and good governance principles. In light of experience from GSP monitoring and withdrawal mechanisms, as currently applied to human and labour rights conventions, the Commission argues that extension of negative conditionality to environmental and good governance conventions would create similar opportunities to engage with such issues not only by supporting the UN SDGs, but also by contributing to the EU’s green agenda for GSP beneficiary countries (European Commission, 2021a).

The extension of negative conditionality to all listed conventions would ‘in principle’ not have an impact for GSP+ countries, which are already expected to have ratified and implemented them under the positive conditionality mechanism. However, for Standard GSP and EBA countries the scope of international conventions, which in cases of ‘serious and systematic violation’ can lead to Enhanced Engagement and the withdrawal procedure, is now extended to environmental and good governance conventions.

However, extension of negative conditionality to these environmental conventions can face practical challenges, especially when it comes to identifying violations of principles established in the Multilateral Environmental Agreements. These agreements often lack systematic monitoring mechanisms or rely on voluntary reporting requirements, which can make it extremely demanding for the Commission to monitor compliance (European Commission, 2021c). Moreover, it should be noted that negative conditionality in relation to the proposed additional human and labour rights conventions could potentially make a number of GSP beneficiaries subject to Enhanced Engagement or even the withdrawal procedure. For example, whereas most countries have already ratified the Convention on the Rights of Persons with Disabilities<sup>21</sup>, only 44 out of 67 GSP beneficiaries have ratified ILO Convention No 81 on labour inspections and some (e.g. India, Bangladesh and Pakistan) face major challenges in its implementation (European Commission, 2021c)<sup>22</sup>.

The Commission’s administrative burden in monitoring ‘serious and systematic’ violations against the listed international conventions would increase significantly from 15 to 32 conventions, with inclusion of the proposed additions. However, the Commission notes that this would not necessarily be the case if ‘no systematic monitoring were to be undertaken, and negative conditionality were to be used only as an instrument of last resort for particularly blatant violations of the conventions’ (European Commission, 2021b). Hence, in order to have a meaningful impact, extension of negative conditionality to the

<sup>20</sup> Additional reasons for withdrawal are listed in Article 19(b)-(e) and relate to export of goods made by prison labour; shortcomings in customs controls on the export or transit of drugs or failure to comply with international conventions on anti-terrorism and money laundering; unfair trading practices related to raw materials; and sustainable fishery.

<sup>21</sup> Exceptions are Eritrea, Niue, South Sudan and Timor-Leste.

<sup>22</sup> For further analysis, see Annex B5-3 of the External Study.

environmental and good governance conventions needs to go hand in hand with strengthening the related monitoring procedures by, for instance, increasingly relying on civil society organisations (CSOs) (further discussed in Chapter 6).

## 4.2 Proposals for improving the withdrawal procedure

In its GSP proposals, the Commission has introduced a number of innovations in the procedure preceding or following the decision (i.e. adoption of the implementing act) to initiate the withdrawal process.

Firstly, the Commission has included in both withdrawal procedures (i.e. for GSP+ beneficiaries (Article 15.9) and for all GSP arrangements (Article 19.10)) a provision that allows the Commission to consider the socio-economic impact of potential withdrawal in the beneficiary country. The proposed new Articles 15.9 and 19.10 state that, in adopting the delegated act which temporarily withdraws tariff preferences, the Commission 'may [...] consider the socio-economic effect of the temporary withdrawal of tariff preferences in the beneficiary country'. This formulation implies (or may imply) that the Commission would not be obliged to conduct such an *a priori* socio-economic impact assessment of the envisaged temporary tariff withdrawal. This formulation also provides the Commission with a good deal of flexibility in determining the exact format and focus of a socio-economic impact assessment. For example, left open would be the issue of whether the Commission would be required to draft the report itself (possibly in conjunction with the EEAS and EU Delegation in the beneficiary country), or if reliance could be placed on reports from international organisations, non-governmental organisations (NGOs) or civil society. Whereas some level of flexibility is needed to give the Commission freedom to tailor this impact assessment to the beneficiary country's specific circumstances, clearer guidelines would help NGOs and civil society in such beneficiary countries to flag up potentially negative impacts on vulnerable groups or economic sectors. While the withdrawal of preferences should be serious enough to encourage compliance in the future, it should at the same time be proportional and avoid negative economic impact on vulnerable groups and human rights. This would also require a level of transparency for this assessment procedure and the possible involvement of civil society (as further discussed in Chapter 6). Whereas the Regulation itself would not be the appropriate place within which to specify the possible scope, focus and format of such an assessment procedure, these details can be specified by the Commission via a Notice or a new delegated regulation establishing the rules related to withdrawal procedures (which would replace the current Delegated Regulation No 1083/2013 that established procedural rules related to the withdrawal procedure and the adoption of safeguard measures). From the European Parliament's perspective, the latter would be the preferred option as it would be able to object the delegated act under the GSP Regulation, giving the European Parliament a formal veto<sup>23</sup>. It should be specified in general terms under which circumstances the Commission should refrain from withdrawing preferences and how the choice of products should be calibrated to minimise impacts on vulnerable groups and human rights by maximising political pressure on governments while combatting unfair competition in the relevant sectors. The External Study has already suggested several factors that need to be included in such a socio-economic impact analysis: volume of export to the EU and the use of preferences; structure of exports to the EU; impact on vulnerable groups such as women and youth together with job creation; as well as the violation's nature and scope (European Commission, 2021c). Significantly, the European Commission undertook such an assessment when introducing the tariff withdrawal for Cambodia in 2020. Although the details of this assessment are not known, the European Commission took 'the social and economic development objectives of the EBA arrangement into account, while maintaining the necessary pressure on the Cambodian authorities to

<sup>23</sup> Delegated acts adopted under the GSP Regulation can enter into force only if no objection has been expressed by either the European Parliament or by the Council within a period of two months of notification of that act or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object (Art. 39.6 of the GSP Regulation).

address the violations of human rights<sup>24</sup>. For instance, in this case the Commission 'paid particular attention to preferences for products that require significant training and investment in skills, thus limiting the impact on Cambodia's overall industrial development'. Bicycles and garment products with higher added value were therefore excluded<sup>25</sup>.

Secondly, to address criticism about the withdrawal procedure often taking too much time (note that the requirement of the socio-economic impact assessment cannot prolong the procedure as provided in the Regulation), the Commission proposed several procedures to deal with urgent cases of exceptionally grave violations. The proposal now provides a shorter withdrawal procedure if the Commission considers that there is sufficient evidence to justify temporary withdrawal due to serious and systematic violations of listed conventions 'and the exceptional gravity of the violations calls for a rapid response in view of the specific circumstances in the beneficiary country' (Articles 19.16 and 19.17). In this case, the withdrawal procedure will be shortened from 18 months under the current Regulation to 7 months maximum<sup>26</sup>. Delegated acts withdrawing the preferences will apply in this procedure one month from its publication in the EU Official Journal.

Thirdly, the Commission also introduced the possibility of extending the withdrawal measure's scope where additional reasons or violations occur (Articles 16 and 20). This implies that the Commission can broaden the scope of tariff withdrawal in cases where violations against the listed conventions further deteriorate after initial withdrawal of preferences. The proposed Regulation also allows the Commission to review (i.e. reduce) the scope of any temporary withdrawal or even postpone and perhaps suspend its application 'in exceptional circumstances, such as a global health or sanitary emergency, natural disaster or other unforeseen events' (Article 19(14)). As with the specific procedure for dealing with cases of grave violations of GSP relevant conventions, any delegated act in this procedure will be adopted with the urgency procedure<sup>27</sup>.

Finally, the Commission also broadened one of the withdrawal criteria enshrined in Article 19. Whereas under the current regulation 'export of goods made by prison labour' is listed as a reason which can trigger the withdrawal procedure, the proposed Regulation broadened this to 'export of goods made by internationally prohibited child labour and forced labour, including slavery and prison labour' (Article 19(1)b). Child labour and forced labour were already covered in the withdrawal procedure by several ILO conventions listed in Annex VIII.<sup>28</sup> However, these core human and labour rights UN/ILO conventions can serve only as a legal basis for the withdrawal procedure under Article 19.1(a) in the event of serious and systematic violation by a beneficiary country. The additional withdrawal criterion mentioned in Article 19.1(b) refers to 'export of goods' by the beneficiary country made by internationally prohibited child labour and forced labour, including slavery and prison labour. This implies that products resulting from

<sup>24</sup> See the Commission's factsheet on the withdrawal of Cambodia's EBA preferences: [Factsheet: withdrawal of Cambodia's preferential access to the EU market \(europa.eu\)](#).

<sup>25</sup> The Delegated Regulation withdrawing the preferences also stated that 'in assessing which products should be affected, the Commission takes into account the economic development needs of Cambodia and the objectives of the GSP Regulation, including the need for Cambodia to diversify its export base. The Commission furthermore takes into account the socioeconomic impact of the withdrawal, including the impact on workers and industries' (Commission Delegated Regulation (EU) 2020/550 of 12 February 2020).

<sup>26</sup> i.e. two months after the publication of the notice in the Official Journal announcing the initiation for the monitoring and evaluation period instead of six; and then maximum five months to decide whether or not to temporarily withdraw the preferences (instead of six).

<sup>27</sup> Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed by the European Parliament or the Council within two months after the notification by the Commission.

<sup>28</sup> Child labour, forced labour and prison labour is covered in Annex VIII by the Convention concerning Forced or Compulsory Labour, No 29; the Convention on the Rights of the Child; the Convention concerning the Abolition of Forced Labour, No 105; the Convention concerning Minimum Age for Admission to Employment, No 138; and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No 182.

child or forced labour (partially) which are manufactured in a third country and then (re)exported to the EU through a beneficiary country can lead to the withdrawal of GSP preferences (even if the beneficiary country complies with the relevant conventions listed in Annex VIII).

### 4.3 The additional withdrawal criterion related to readmission of own nationals

Readmitting own nationals is also included in the Commission's new proposal, which states that the withdrawal procedure of Article 19 (covering the three GSP arrangements) can be initiated in the event of serious shortcomings 'related to the obligation to readmit the beneficiary country's own nationals' (Article 19.1(c)). This proposal was unexpected as neither the MTE nor the External Study discussed or proposed such a linkage between the beneficiary countries' readmission obligations of their own nationals and the withdrawal procedure.

In its own impact assessment, the Commission argues that withdrawing preferences on the current grounds of 'failure to comply with international conventions on anti-terrorism and money laundering [Article 19.1(c)] should be extended to cover other important areas for which international conventions for the respect of human rights and good governance standards exist', such as the area of migration (European Commission, 2021b). The Commission asserts that it is essential for both origin and destination countries to address common challenges, 'such as stepping up cooperation on readmission of own nationals and their sustainable reintegration in the country of origin, in particular in order to avoid a constant drain in active population in the country of origin, with the ensuing long-term consequences on development, and to ensure that migrants are treated with dignity' (European Commission, 2021b). According to the Commission, adding this violation of an obligation to readmit own nationals within Article 19 contributes to the realisation of a key SDG goal<sup>29</sup>, raises the visibility of migration issues and 'has a beneficial effect on migrants as it guarantees that their basic human rights are to be protected' (European Commission, 2021b).

This approach corresponds with the European Commission's increased attention to readmission in its migration policy and the practice of presenting readmission as a development opportunity for third countries. One priority in the New Pact on Migration and Asylum (hereafter 'the New Pact') is to strengthen the external dimension of EU migration policy (European Commission, 2020d). Under this New Pact, engagement with partner countries will be stepped up across all areas of cooperation, particularly in relation to cooperation on return and readmission. The Commission prioritises full and effective implementation of the 24 existing EU agreements and arrangements on readmission with third countries (the EU has so far concluded 18 readmission agreements<sup>30</sup> and 6 arrangements<sup>31</sup>). The revised Visa Code also introduced a conditionality mechanism related to readmission, as the European Commission can propose the application of restrictive or favourable visa measures, depending on the third country's degree of cooperation on readmission<sup>32</sup>. The Commission is now also required to assess readmission cooperation with non-EU countries annually and report to the Council. The New Pact and its implementing documents demonstrate that the Commission aims to link readmission cooperation to other relevant EU policies, instruments and tools, pulling these together strategically. However, a specific link with EU trade policy instruments, in particular the GSP, is not explicitly mentioned anywhere in these documents.

<sup>29</sup> The Commission refers to SDG target 10.7: 'Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies' (European Commission, 2021b).

<sup>30</sup> Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, North Macedonia, Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Armenia, Azerbaijan, Turkey, Cape Verde, Belarus.

<sup>31</sup> Afghanistan, Gambia, Guinea, Bangladesh, Ethiopia and Ivory Coast.

<sup>32</sup> Article 25a(5) Visa Code ([EUR-Lex - 02009R0810-20200202 - EN - EUR-Lex \(europa.eu\)](#))

The inclusion of this new 'readmission withdrawal criterion', as proposed by the Commission, raises certain questions. Firstly, it is not clear if the Commission can trigger the withdrawal procedure when GSP beneficiaries do not comply only with international law obligations related to readmission, or if an insufficient implementation of the beneficiaries' bilateral readmission agreement with the EU would already suffice to trigger the withdrawal procedure<sup>33</sup>. In the spirit of the GSP scheme, which mainly relies on international agreements and conventions, one would assume that it would be the former. Several recitals in the GSP Proposal on this issue refer to international law obligations such as international customary law and multilateral international conventions such as the Chicago Convention on International Civil Aviation<sup>34</sup>. However, important relevant international conventions or instruments such as the 1951 Refugee Convention and its 1967 Protocol are not mentioned. Nor is there any reference to the UN Global Compact for Safe, Orderly and Regular Migration (hereinafter: 'the Global Compact'), which was formally endorsed by the UN General Assembly on 19 December 2018. This is probably to do with certain EU Member States not having signed the Global Compact<sup>35</sup>. Moreover, considering the lack of international bodies that regularly monitor and report on migration issues, in particular readmission obligations, the European Commission would to a large extent find itself facing the exacting task of monitoring the implementation of international readmission obligations by all GSP beneficiary countries<sup>36</sup>.

Many GSP beneficiaries already have readmission agreements with the EU (Sri Lanka, Pakistan, Armenia and Cape Verde) or have non-binding readmission arrangements in place (Afghanistan, Guinea, Bangladesh, Gambia and Ethiopia). Although the Commission's first assessment report on readmission cooperation does not provide details about specific countries, it nevertheless concludes that for more than one third of the countries assessed, the level of cooperation needs to be improved (European Commission, 2021g). Considering the weaker administrative capacities of certain GSP countries which have readmission agreements in place, some of these beneficiaries would face the risk of being subject to the withdrawal procedure if the Commission were to opt for a strict application of this new criterion based on the implementation of bilateral readmission agreements.

Significantly, in a Resolution adopted in May 2021 the European Parliament criticised the European Commission and several Member States for overusing informal agreements on the return and readmission of irregular migrants, which are concluded without due democratic scrutiny and parliamentary oversight. The Parliament urged the European Commission to negotiate and sign formal readmission agreements with third countries instead and called for the Commission to ensure that readmission agreements and agreements for cooperation on border management are concluded only with those third countries that explicitly commit to respecting human rights, including the principle of non-refoulement and rights enshrined in the UN Refugee Convention (European Parliament, 2021d).

Secondly, it is not clear how the proposed readmission withdrawal criterion would contribute to the GSP's key objectives of supporting the eradication of poverty as well as promoting sustainable development and human rights. As mentioned above, the Commission argues in its Impact Assessment Report on the

<sup>33</sup> The Commission refers in its impact assessment only to 'the obligation to readmit own nationals in compliance with international standards' (European Commission, 2021b).

<sup>34</sup> Recital 26 and 27 of the proposed GSP Regulation.

<sup>35</sup> The Global Compact for Safe, Orderly and Regular Migration was adopted at the December 2018 Intergovernmental Conference in Marrakech, Morocco (it was signed by 19 Member States) and was subsequently endorsed by the UN General Assembly in its resolution 73/195 of 19 December 2018. The Czech Republic, Hungary, and Poland voted against the Global Compact. 5 EU Member States abstained (Austria, Bulgaria, Italy, Latvia, Romania). Slovakia did not attend the vote at the UN General Assembly.

<sup>36</sup> Since 2000, the International Organisation for Migration has been producing 'world migration reports'. However, these reports do not cover readmission commitments. The biennial reports adopted by UN Secretary-General, drawing on the United Nations Network on Migration, to report to the Assembly on the implementation of the Global Compact give neither a detailed report of readmission commitments. For the first biennial report on the Global Compact, see [here](#).

proposed GSP Regulation that ‘encouraging beneficiaries to respect the obligation to readmit own nationals and their sustainable reintegration in the country of origin, can contribute to avoiding a drain in active population in the countries of origin, with the ensuing long-term consequences on development’ and ‘has a beneficial effect on migrants as it guarantees that their basic human rights are protected’ (European Commission, 2021b). Moreover, the Commission argues that this proposed readmission withdrawal criterion would contribute to SDG target 10.7 on orderly, safe, regular and responsible migration along with the mobility of people<sup>37</sup>. However, the proposed Regulation refers only to ‘shortcomings [...] related to the obligation to readmit the beneficiary country’s own nationals’. This formulation focuses just on one specific element of the EU’s comprehensive approach to migration: the beneficiary countries’ obligation to readmit own nationals. This proposed withdrawal criterion remains silent on all the other elements of a comprehensive approach to migration and the migration-development nexus, which the European Commission itself prioritised in its New Pact or are laid down in international instruments such as the 2018 UN Global Compact. If the priority of this withdrawal criterion were to be development-oriented, its scope should be extended to the beneficiary countries’ compliance with human rights, including the principle of non-refoulement as well as rights enshrined in the UN Refugee Convention and commitments with regard to the safe and dignified return and readmission, as well as sustainable reintegration, in compliance with international human rights law. The actions listed under ‘Objective 21’ of the Global Compact on cooperation in facilitating safe and dignified return and readmission, as well as sustainable reintegration, can serve as a reference point<sup>38</sup>.

The weak (explicit) link between this proposed readmission withdrawal criterion and sustainable development objectives also raises questions about WTO compatibility. As noted above, the WTO Appellate Body ruled in *EC- Tariff Preferences* that differentiation between developing countries is permitted under the Enabling Clause, provided that it responds positively to the development needs of beneficiary countries<sup>39</sup>. Accordingly, non-trade conditions that differentiate between developing countries in determining eligibility for tariff preferences will not necessarily discriminate, provided they relate solely to a qualifying development need, and all developing countries who share that need receive the relevant preferences. The Appellate Body explained that the required need must be assessed according to objective standards, such as widely recognised standards included in international instruments. Considering the narrow (and vague) nature of this proposed readmission withdrawal criterion and its weak link with development objectives, it could be argued that the proposed provision would not pass this WTO-compatibility test<sup>40</sup>. Finally, as recognised by the European Commission, ‘readmission can be politically sensitive for partners’ (European Commission, 2021g). Hence, to avoid that the use of this new ‘readmission withdrawal criterion’ would jeopardise constructive dialogue on other human or labour rights issues with GSP beneficiaries, this study recommends that the Commission applies it with caution. Moreover, if this withdrawal criterion were to be considered, the Commission should always first conduct a detailed socio-

<sup>37</sup> SDG target 10.7: ‘Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies’ (European Commission, 2021b).

<sup>38</sup> Listed actions under Objective 21 of the Global Compact are for example: ‘Develop and implement bilateral, regional and multilateral cooperation frameworks and agreements, including readmission agreements, ensuring that return and readmission of migrants to their own country is safe, dignified and in full compliance with international human rights law, including the rights of the child, by determining clear and mutually agreed procedures that uphold procedural safeguards, guarantee individual assessments and legal certainty, and by ensuring that they also include provisions that facilitate sustainable reintegration’ and ‘Facilitate the sustainable reintegration of returning migrants into community life by providing them with equal access to social protection and services, justice, psychosocial assistance, vocational training, employment opportunities and decent work, recognition of skills acquired abroad, and financial services, in order to fully build upon their entrepreneurship, skills and human capital as active members of society and contributors to sustainable development in the country of origin upon return’.

<sup>39</sup> For the report, see: WTO, [European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, AB-2004-1, Report of the Appellate Body](#), WT/DS246/AB/R, 7 April 2004.

<sup>40</sup> This WTO-compatibility of the proposed withdrawal criterion with the Enabling Clause was also questioned by Prof. Lorand Bartels during a meeting of the European Parliament’s subcommittee on Human Rights on 10 December 2021, during which a draft version of this study was presented (web streaming available at: [European Parliament Multimedia Platform \(europa.eu\)](#)).

economic and human rights impact assessment about the possible consequences of the tariff withdrawal (as provided in the proposal, see above).

In this context, it should be noted that the United States of America's (USA) GSP scheme includes several conditions that developing countries need to meet to be eligible for GSP treatment that do not relate to development objectives. In the US GSP system, GSP country eligibility changes or modifications in product coverage are made at the discretion of the President, drawing on the advice of the International Trade Commission and the United States Trade Representative. When designating GSP status to developing countries, the President is directed to take into account certain mandatory and discretionary criteria (Congressional Research Service, 2021). Several of these criteria do not have development or human rights objectives. For example, to benefit from US GSP, developing countries may not be a Communist country (with exceptions, such as being a WTO Member); cannot be part of an international cartel that causes disruption to the world economy; may not provide preferential market access to other developed countries that is likely to have adverse effect on US commerce; may not have nationalised or expropriated property of US citizens or corporations; need to recognise or enforce arbitral awards in favour of US citizens or corporations and may not support terrorism<sup>41</sup>. However, several eligibility criteria are related to sustainable development or human rights, as a GSP beneficiary must commit to internationally recognised worker rights, including (i) the right of association, (ii) the right to organise and bargain collectively, (iii) a prohibition on the use of any form of forced or compulsory labour, (iv) a minimum age for the employment of children and a prohibition on the worst forms of child labour, and (v) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health. Moreover, a GSP beneficiary must implement any commitments it makes to eliminate the worst forms of child labour. Other criteria that the President must take into account in determining whether to designate a country as a beneficiary for purposes of the GSP program mainly relate to economic considerations, such as the extent to which such country has assured the USA that it will provide equitable and reasonable access to its markets and basic commodity resources and provides adequate and effective protection of intellectual property rights or has taken action to reduce trade distorting investment practices<sup>42</sup>. For example, in 2019 the Trump administration terminated GSP designation for India following its failure to provide the USA with assurances that it will give equitable and reasonable access to its markets in numerous sectors (India was the largest beneficiary of US GSP)<sup>43</sup>. The USA's practice to withdraw GSP preferences on the basis of these non-development oriented criteria have been criticised for being incompatible with the WTO Enabling Clause (or the criteria set out by the Appellate Body in *EC-Tariff Preferences*) (Shekhar and Janardhan, 2019; Mason, 2004). However, there were also several instances where GSP preferences were partially suspended for reasons related to sustainable development. For example, Thailand's GSP benefits were partially suspended by the USA in 2019 and 2020 on the ground of workers' rights and market access issues, respectively (Congressional Research Service, 2021). The USA also already terminated Bangladesh's GSP eligibility in 2013, following reviews of worker safety and worker rights deficiencies in the country. In 2020, different legislation was proposed in the Congress to modify the GSP's eligibility criteria to cover more conditions related to sustainable development and human rights (like under the EU's GSP). For example, the proposed measures include provisions that would add eligibility criteria on gender equality and human rights, good governance, environmental law and regulation as well as revising the provisions on worker rights<sup>44</sup>.

<sup>41</sup> Art. 19 U.S.C. § 2462(b)(2) of the GSP Statute.

<sup>42</sup> Art.19 U.S.C. § 2462(c) of the GSP statute.

<sup>43</sup> USTR, '[Unites States will Terminate GSP Designation of India and Turkey](#)', 4 March 2019.

<sup>44</sup> See for example the bill introduced by Representative Blumenauer to modify and extend the GSP program ([H.R. 8884](#)).

## 4.4 No withdrawal of preferences for specific economic operators

The European Commission decided not to introduce a withdrawal procedure aimed specifically at targeting economic operators in beneficiary countries who violate principles enshrined in the listed conventions. Whilst the current GSP regulation does not provide this option, it does nevertheless introduce the possibility of withdrawing tariffs ‘in respect of *certain* products originating in a beneficiary country’ (Art. 19.1)<sup>45</sup>. For example, for the first time on 12 February 2020 the European Commission adopted a ‘partial’ withdrawal of trade preferences for products imported from Cambodia due to serious and systematic violations of human rights<sup>46</sup>. As noted above, in assessing which products should be affected, the Commission took into account ‘the economic development needs of Cambodia and the objectives of the GSP Regulation, including the need for Cambodia to diversify its export base’ together with the socio-economic impact of withdrawal, including any knock-off effect for workers and industries. Following this analysis, the Commission withdrew tariff preferences in the sectors of low added-value garment products, footwear, travel goods and sugar<sup>47</sup>, but did not specify in the delegated regulation how, or to what extent, these sectors are linked to Cambodia’s labour and human rights violations (e.g. serious and systematic violations of principles of the International Covenant on Civil and Political Rights) (the Commission’s discretion in selecting the targeted sectors is further discussed in Chapter 5.1).

Because the GSP’s withdrawal procedure can target only the governments of beneficiary countries, and not economic operators that are directly or indirectly responsible for human and labour rights violations, this procedure is considered to be a ‘blunt’ and ‘crude’ instrument (Portela, 2018). This is not so in the case of sanctions adopted under the Common Foreign and Security Policy (CFSP). These sanctions may target governments of non-EU countries, as well as companies, groups, organisations or individuals through arms embargos, travel bans, asset freezes, or other economic measures such as restrictions on imports and exports. These sanctions are aimed directly at those responsible for the very policies or actions that the EU is seeking to influence, while as much as possible reducing any unintended consequences.

Research has indicated that there is often a coherence between GSP withdrawal and CFSP sanctions: until recently most cases of GSP withdrawal were preceded by CFSP sanctions (e.g. in relation to Myanmar and Belarus, but not in the case of Sri Lanka) (Portela and Orbie, 2014). This was not the case for Cambodia, where in 2020 the EU applied the GSP withdrawal procedure without any preceding or accompanying CFSP sanctions. Moreover, the inverse relationship does not apply: most countries under CFSP sanctions do not face GSP withdrawals, even if these measures have been considered, as in the cases of China, India and Russia (Portela and Orbie, 2014).

Several authors have therefore called for the introduction of an option to withdraw tariffs for economic operators in GSP beneficiary countries who are responsible for severe breaches of fundamental rights (Richardson et al., 2017; Portela, 2018). For example, Portela has proposed that the withdrawal procedure should be complemented with provisions allowing for the ‘blacklisting’ of companies (Portela, 2018)<sup>48</sup>. In order to ban specific exporters, the Commission could use the EU’s Registered Exporter system<sup>49</sup>, a database of economic operators that are certified to export under the GSP and FTAs (Richardson et al., 2017).

<sup>45</sup> Emphasis added.

<sup>46</sup> Sri Lanka, a GSP+ beneficiary country, has previously had its tariff preferences under the GSP Regulation fully withdrawn. Belarus’ GSP preferences remain fully withdrawn due to the political situation in the country.

<sup>47</sup> See [Commission Delegated Regulation \(EU\) 2020/550 of 12 February 2020 amending Annexes II and IV to Regulation \(EU\) No 978/2012 of the European Parliament and of the Council as regards the temporary withdrawal of the arrangements referred to in Article 1\(2\) of Regulation \(EU\) No 978/2012 in respect of certain products originating in the Kingdom of Cambodia](#).

<sup>48</sup> This author notes that these measures could be justified under WTO law under the trade-restricting exceptions covering public morals (Articles XX GATT) or security (Article XXI GATT).

<sup>49</sup> [REX – Registered Exporter system \(europa.eu\)](#).

Such a surgical approach would refine the withdrawal procedure, thereby enabling the Commission to tailor its GSP withdrawal mechanism to target the entities responsible for human or labour rights violations, without affecting vulnerable populations or other economic operators. Moreover, it could target violations that are largely perpetrated by economic operators (e.g. labour rights), or by State-Owned Enterprises (SOEs) that are directly or indirectly controlled by the beneficiary country's government.

The introduction of such a procedure would, though, face various practical and political challenges. Firstly, the Commission would not have sufficient resources to monitor compliance with fundamental rights enshrined in the GSP scheme for all companies in the beneficiary countries. The Commission also argues that targeting individual operators risks passing on the burden of ensuring compliance with rights enshrined in international conventions from the beneficiary country's government to the private sector, which would be against the GSP's overall aim of promoting sustainable development (European Commission, 2021b). Secondly, in many cases it is not possible to identify economic operators who are responsible for a GSP beneficiary's human or labour rights violation (an exception to this could be SOEs directly or indirectly under control of the government of the beneficiary country). For certain violations, for example (re)introduction of the death penalty, there is no private sector involvement (van der Ven, 2018). Thirdly, there is a risk that this mechanism would not be applied in a uniform way and would therefore discriminate between different economic operators in beneficiary countries. For instance, it could well be that only 'high profile' or visible cases come to the Commission's attention and not violations by small and medium enterprises. Use of the SEP system in the GSP's monitoring procedure, as proposed by the Commission (see Chapter 4.4), can be a useful mechanism in bringing non-compliance by economic operators to the Commission's attention. Fourthly, targeted sanctions on economic operators would have an impact only if these companies export to the EU. For companies that are active only in their domestic markets, any impact would be limited (European Commission 2021c).

Accordingly, introducing a withdrawal mechanism that can specifically target economic operators in beneficiary countries is not recommended<sup>50</sup>. The GSP's key focus has always been on pushing beneficiary countries' governments towards compliance with human and labour rights as well as sustainable development principles. The EU has various other instruments in place to target those guilty of human or labour rights violations or failure to honour sustainable development principles in third countries. For example, in addition to 'traditional' CFSP sanctions, the EU adopted its new 'global human rights sanctions regime' in 2020. This instrument allows the EU to target individuals, entities and bodies – including state and non-state actors – responsible for, involved in or associated with serious human rights violations and abuses in third countries (Eckes, 2021). The regulation establishing this sanction regime states that in its application (when determining human rights violations) 'regard should be had to customary international law and widely accepted instruments of international law'<sup>51</sup>. Significantly, the regulation lists several international conventions that are also included in the GSP's Annex VIII (or proposed Annex VI)<sup>52</sup>.

<sup>50</sup> The External Study suggested that a targeted withdrawal mechanism can be 'tested' as a pilot only with regard to GSP countries subject to a formal withdrawal procedure. However, this could also lead to an incoherent application within the GSP scheme as economic operators breaching human or labour rights in GSP countries not subject to the withdrawal procedure would not be covered by this procedure.

<sup>51</sup> See [Council Regulation \(EU\) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses](#).

<sup>52</sup> These are: Convention on the Prevention and Punishment of the Crime of Genocide (1948); International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Civil and Political Rights (1966); International Covenant on Economic Social and Cultural Rights (1966); Convention on the Elimination of All Forms of Discrimination Against Women (1979); Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Convention on the Rights of the Child (1989); Convention on the Rights of Persons with Disabilities (2007)

In addition, the European Commission recently proposed, or envisages proposing, other instruments that can target economic operators in third countries who are violating human or labour rights or sustainable development commitments, such as the forthcoming proposal on sustainable corporate governance covering *inter alia* mandatory environmental, human and labour rights due diligence; and the recent proposal for a regulation to curb EU-driven deforestation and forest degradation<sup>53</sup>. Another option that has been considered is the integration of Voluntary Sustainability Schemes (VSS) in the EU's GSP (Marx, 2018; Marx et al. 2018)<sup>54</sup>. In the context of withdrawing GSP preferences, the integration of VSS might take the form of exempting VSS certified products from the preference withdrawal. In this option, the preferential tariff would continue to be applied to certified products, while non-certified products would be subjected to MFN tariffs. However, the same authors (Marx, 2018; Marx et al. 2018) note that there are also some reservations to such an approach. For example, the integration of VSS in the GSP might fundamentally change the regime's state-to-state nature and thus could provide an argument for state officials in beneficiary countries to claim that the private sector should also comply with requirements and hence share responsibility with the state. Moreover, the integration of VSS might negatively affect preference utilisation because economic operators may not be able to prove that they fulfil the criteria, or choose not to do so because certification costs outweigh the preference's benefits.

To conclude, while introducing a withdrawal procedure for specific economic operators in the GSP framework is not recommended, the new GSP regulation should be aimed at contributing to a coherent application of all recent or envisaged EU instruments that can target human rights or sustainable development violations by economic operators in third countries. Whereas the most appropriate instrument to outline such an integrated approach would be a Joint Commission and EEAS Communication, the new Regulation can already refer in its preambles to these instruments, envisaging a complementary approach.

## 5. Extending positive conditionality to Standard GSP and EBA arrangements

### 5.1 Costs and risks related to extending positive conditionality to Standard GSP and EBA arrangements

There is a consensus that the GSP+ arrangement's positive conditionality has been effective in incentivising beneficiary countries to ratify the listed international conventions and work on their implementation. Hence, one option to strengthen this positive conditionality within GSP schemes generally would be to seek extension into the Standard GSP and/or EBA arrangements. Beneficiaries under these two schemes are currently not required to ratify the international conventions listed in Annex VIII to be eligible for respective GSP preferences. In this new scenario, Standard GSP and EBA beneficiaries would also be obliged at least to ratify the listed conventions and thus undergo monitoring by the international bodies that these conventions establish (the 'ratification only option'). A more ambitious option could also involve Standard GSP and EBA countries effectively being obliged to implement these conventions (the 'ratification and implementation option').

<sup>53</sup> See [European Green Deal: Commission adopts new proposals \(europa.eu\)](https://ec.europa.eu/europe-press/european-green-deal-commission-adopts-new-proposals)

<sup>54</sup> The United Nations Forum on Sustainability Standards defines Voluntary Sustainability Schemes as 'standards specifying requirements that producers, traders, manufacturers, retailers or service providers may be asked to meet, relating to a wide range of sustainability metrics, including respect for basic human rights, worker health and safety, the environmental impacts of production, community relations, land use planning and others'. They aim to promote sustainability in global value chains through standard setting, often based on existing international conventions, and monitoring practices.

The GSP consultation process illustrated that any extension of positive conditionality to all GSP countries would be supported by various stakeholders, including representatives of: the EU footwear industry; international trade unions; NGOs such as Human Rights Watch; and the GSP Platform. However, other stakeholders have warned that such an extension could overburden administrative capacity, especially that of the smallest and least developed GSP beneficiaries<sup>55</sup>.

In its proposal for a new GSP Regulation, the European Commission has opted to maintain positive conditionality only for GSP+ beneficiaries, as it believes that extension to the Standard GSP and EBA arrangements would not be effective. Four specific reasons are cited. Firstly, it is argued that the ratification requirement for Standard GSP and EBA countries would not immediately lead to effective implementation. It would be a necessary condition, but not sufficient to ensure promotion of human rights, labour standards or good governance on the ground. This would be particularly so in GSP countries with weak governance, poor civil society mechanisms and lack of adherence to the rule of law. However, it is recognised that pressure from the international human rights or labour standards bodies as a result of ratification may slowly work towards alignment of national legislation and practice with the listed conventions listed (European Commission, 2021b). Secondly, the Commission considered that Standard GSP and EBA countries may face capacity constraints in the ratification and implementation of additional conventions. Administrative costs and time needed for ratification of the conventions will vary from country to country depending on: the level of political will; the beneficiaries' current legislation; as well as the degree of cooperation with civil society and international monitoring bodies. Thirdly, the Commission holds that expanding positive conditionality to Standard GSP and EBA beneficiaries could lead to a large group of the least developed countries being denied duty-free quotas from free market access, because they lack the necessary resources for ratifying or implementing international conventions (European Commission, 2021b). Finally, as this option would require monitoring resources to check implementation by the beneficiary countries and engaging with them in a sustained dialogue (similarly to the present case for GSP+ countries), the Commission notes that there would be a significant additional cost factor for the European Commission and the EEAS (professional staff, mission costs, additional technical assistance to GSP countries, etc.) (European Commission, 2021b).

Extending positive conditionality to Standard GSP and EBA countries would, therefore, imply these countries would face a choice between: (i) having to ratify the remaining conventions listed in Annex VIII (Annex VI in the new GSP proposal) to maintain their preferential access to the EU market; or (ii) not ratifying these conventions and consequently having to downgrade from their GSP scheme to the EU's MFN status. As observed in the External Study, Standard GSP or EBA countries will probably opt to leave were the costs (administrative, financial and political) associated with ratification of the conventions higher than the economic benefits.

Annex I of this study gives an overview of the ratification record for those conventions listed in Annex VIII by GSP countries. It can be observed that for most GSP or EBA countries the ratification gap is relatively low regarding human rights and ILO conventions. The Genocide Convention appears to be the only convention which is not ratified by a considerable number of Standard GSP and EBA countries. Many Standard GSP beneficiaries such as Bhutan, the Cook Islands, Niue, Micronesia and Myanmar still need to ratify most of the human and labour rights conventions. In the case of EBA, only South Sudan has more than five conventions to ratify in this area. The ratification track record for environmental agreements and governance conventions is generally improving.

However, this overview also illustrates that the ratification gap of individual GSP and EBA beneficiaries varies substantially across countries, with around 35 of them needing to ratify only 2 conventions or less.

<sup>55</sup> A summary of the consultation process can be found in Annex B1 of the External Study.

Extending positive conditionality to this group of beneficiaries would therefore not imply significant effort. However, 9 countries would still need to ratify more than 10 conventions, hence requiring considerable effort to remain in their respective GSP arrangements. Significantly, most of the countries with a high ratification gap are those with small and vulnerable economies<sup>56</sup>. Perhaps surprisingly, EBA countries' ratification record is in general slightly better than that of the Standard GSP countries. Human rights and ILO conventions would require more effort than the environmental and good governance conventions.

The administrative and resource burden of ratifying the remaining conventions varies in accordance with EBA and Standard GSP country and the terms of any given convention. Stakeholders have indicated that the average time needed for domestic ratification (e.g. preparatory analysis, public consultation, constitutional and legislative requirements as well as signature for ratification) varies from six months to two years (European Commission, 2021b). The administrative process also gives rise to financial and human resources costs, which will be permanent as beneficiary countries will carry ongoing implementation and reporting obligations. Accordingly, many LDCs could face administrative and capacity problems in the ratification process. Some conventions may also relate to sensitive political issues for the governments of beneficiary governments and thus imply high political costs.

The External Study reveals that the number of conventions ratified directly correlates with the level and importance of exports to the EU, in that countries with high levels of exports to the EU need to ratify fewer conventions (e.g. Sao Tomé (Standard GSP) as well as Sierra Leone, Malawi, Bangladesh, Mozambique and Madagascar (EBA)). Hence, for these countries the cheaper alternative is ratification and they would probably decide, therefore, to ratify the remaining conventions to maintain their GSP preferences. Conversely, there is a significant ratification gap for those countries that export little to the EU. The impact for this group of countries would thus be limited if they were to lose their GSP preferences, the economic benefits from which would be outweighed by ratification costs (e.g. South Sudan, Haiti and Somalia (EBA) along with Tuvalu, Bhutan and Micronesia (Standard GSP)). Hence, as indicated earlier these countries would probably drop out of their GSP schemes. For another group of EBA and GSP countries, economic benefits from the GSP regime will not be sufficient to incentivise any push towards ratification and implementation of the remaining conventions. The External Study has also identified a group of GSP and EBA countries that may struggle to comply with the positive conditionality requirements (e.g. Afghanistan, Yemen, Democratic Republic of Congo, Myanmar, Eritrea, Cambodia, Bangladesh and Nigeria).

Furthermore, the External Study demonstrates that those countries which would benefit most from the ratification requirement in terms of human and labour rights, would at the same time be most likely to drop out of the GSP regime (European Commission, 2021c). This would imply that monitoring and dialogue mechanisms (e.g. Enhanced Engagement) embedded in the GSP would no longer be available in these countries, thereby increasing the risk of deterioration in human rights, as well as social and environmental conditions. There is also a large group of GSP and EBA beneficiaries for which both the costs and benefits of ratification under positive conditionality would be limited<sup>57</sup>. For these countries it is difficult to predict if they would 'bridge the ratification gap' to remain in the GSP, or simply prefer to drop out.

Merely being required to ratify the listed conventions would have minimal impact on human and labour rights as well as environmental conditions in the Standard GSP and EBA countries, as it would not guide any of them towards effective implementation of the conventions. Whereas ratification is a necessary condition for implementation, it is not sufficient to promote human and labour rights on the ground. As noted above, it is particularly the application procedure and monitoring mechanisms along with forms of political dialogue in the GSP+ arrangement that provide sufficient incentives for beneficiary countries to

<sup>56</sup> Bhutan, Micronesia and Niue are not ILO members and therefore have not ratified any of the ILO Conventions.

<sup>57</sup> These are for example in the case of EBA: Yemen, Mali, Djibouti, Zambia, Sudan, Afghanistan, Gambia, Tanzania; and in the case of Standard GSP: Syria, Indonesia, Nepal, Angola, Congo.

implement and ratify the listed conventions. Accordingly, to have any meaningful impact, the ratification requirements must be extended to implementation.

This requirement would imply additional administrative and resource burdens for GSP countries, such as reporting obligations and time resources required to transition into full implementation. An analysis of the conventions listed in Annex VIII of the Regulation illustrates that EBA and Standard GSP beneficiaries would vary according to country characteristics and convention requirements but would need: a number of years (three to seven) for ratification; progress towards implementation; and subsequently evaluation by the international monitoring bodies, as provided in these conventions (European Commission, 2021c). Even today very few GSP+ beneficiaries are up to date with their reporting requirements established by the ratified conventions (European Commission, 2020a). Extending positive conditionality to Standard GSP and EBA countries would therefore require lengthy transition periods. The Commission also notes that if the GSP+ monitoring procedures were to be extended to Standard GSP and EBA countries, the resources required (e.g. staff and travel costs for missions) would substantially increase. More precisely, the number of countries to be monitored would be 6 times higher, expanding from 11 to 67 (European Commission, 2021b).

## 5.2 A staged and differentiated extension of positive conditionality to Standard GSP beneficiaries

Although the Commission has recognised the positive impact that GSP+ mechanisms can have on human and labour rights situations in beneficiary countries, it decided not to extend positive conditionality to the standard GSP and EBA countries as this would: (i) imply high ratification and compliance costs; (ii) entail the risk that beneficiaries decide not to transfer to the new GSP regime; and (iii) incur significantly more administration costs for the European Commission. However, in its impact assessment the European Commission did not consider the option of extending positive conditionality only to Standard GSP countries (this was suggested, but not analysed in the MTE and the External Study)<sup>58</sup>. Such a scenario would have a number of benefits:

- LDCs would not face the risk of dropping out of their GSP schemes (i.e. EBA). Preferential market access provided under EBA to the most vulnerable and poor countries would thus remain unconditional. This would be in line with the 2013 WTO Ministerial Decision on Duty-Free Quota-Free Market Access for Least-Developed Countries, in which WTO Members agreed to provide duty-free quota-free market access for at least 97 % of products originating in LDCs<sup>59</sup>. EBA beneficiaries would though still be covered by negative conditionality (i.e. the withdrawal procedure) and related dialogue processes (Enhanced Engagement) should there be serious and systematic violations of the listed conventions.
- Most countries which are considered to have a high risk (i.e. negative cost-benefit) of dropping out of their GSP schemes through extension of positive conditionality to their GSP arrangement can be found in the EBA scheme (e.g. Afghanistan, Yemen, Myanmar, Eritrea, Cambodia and Bangladesh). For example, only EBA countries are currently subject to Enhanced Engagement dialogues (i.e. Bangladesh, Cambodia and Myanmar). Very few Standard GSP beneficiaries would face a high risk of exiting from their GSP schemes (e.g. Republic of Congo). The flanking measure to support countries that risk falling out of Standard GSP schemes can therefore be targeted on a select group of beneficiaries.

<sup>58</sup> The External Study analyses in detail only the option to extend positive conditionality to both the Standard GSP and EBA arrangements. However, in its conclusions it suggests the option to only extend positive conditionality to the Standard GSP countries.

<sup>59</sup> See [WTO | Ministerial conferences - Ninth WTO Ministerial Conference - Briefing notes](#).

- Considering the experience already gained from GSP+ arrangements, extending positive conditionality to the Standard GSP countries could be advantageous in terms of sustainable labour and human rights situations in beneficiary countries. Crucial large strategic partners of the EU such as India and Indonesia would be subject to the GSP's positive conditionality.
- The Commission's additional administrative and financial resource requirements for monitoring implementation of the listed conventions by Standard GSP countries would imply a significant, but still manageable increase, in that there would be an extra 11 Standard GSP beneficiaries over and above the current 9 GSP+ countries. This would be much more manageable than extending the same monitoring requirement to all 67 GSP countries.

However, considering that a large group of EBA beneficiaries are expected to graduate from their LDC status, these countries would also be subject over time to positive conditionality requirements, adding to the European Commission's monitoring costs. Moreover, there is also a possibility that several of these countries could drop out of the revised GSP scheme.

To guarantee that extending positive conditionality to Standard GSP countries contributes to the GSP's objectives in promoting human rights, sustainable development and good governance, flanking and transitional measures would need to be established, guaranteeing that Standard GSP beneficiaries would prefer to ratify and implement the missing conventions rather than exit from the GSP scheme and move to the EU's MFN treatment. The following options could be considered:

- **A phased approach:** from the moment that new GSP Regulations enter into force (1 January 2024), Standard GSP countries would be given a maximum transitional period to ratify and implement the remaining conventions listed in the new Annex VI. During this transitional period the beneficiary countries would still maintain their Standard GSP preferential market access to the EU (reduction or full removal of customs duties on two thirds of EU tariff lines), but not as yet the GSP+ treatment (full tariff reduction of basically the same tariff lines). Once the Commission has positively evaluated the ratification and/or implementation of remaining conventions, it can then use a delegated act to grant GSP+ treatment to the applicant. Standard GSP countries would also be obliged to submit an action plan to the Commission for effective implementation of the remaining conventions (in line with the Commission's proposal in the new Article 9(d), see below).

There would be two alternatives for granting GSP+ treatment in this scenario: (i) the Commission could offer GSP+ treatment to a Standard GSP country once it has *ratified* all conventions and submitted its action plan for implementation; or (ii) the Commission could offer GSP+ treatment to the standard GSP beneficiary only after positive evaluation of the remaining conventions' *ratification and effective implementation*. In the latter case, the same political eligibility criteria and application procedure for current GSP+ applicants should apply (e.g. based on monitoring bodies' most recent conclusions under those conventions, as is currently so with the GSP+ arrangement (Article. 9(b-f)). The transition period should be long enough to give Standard GSP countries time to ratify remaining conventions or, for the second alternative, allow the Commission to conduct a first assessment of international reporting commitments under the listed conventions. Considering previous estimated timescales for ratifying and implementing missing conventions, the transitional period would be maximum of 3-4 years for the first alternative and 7-8 years for the second<sup>60</sup>.

- **A differentiated approach.** Standard GSP countries would maintain their Standard GSP preferences during the transition period. Any beneficiary not complying with convention requirements after the transition period would lose Standard GSP treatment and fall back to MFN terms. However, countries

<sup>60</sup> As discussed in Chapter 4, the proposed Regulation provides a transitional period of two years for current GSP+ beneficiaries to reapply to fulfil the new requirements for GSP+ (ratify the six additional conventions).

that have already received a positive evaluation from the Commission before the transition period is over can already be granted GSP+ treatment. This differentiated approach would 'reward' the best performers that deliver first on convention ratification or implementation.

- **Negative conditionality:** Throughout this procedure, negative conditionality (as strengthened in the Commission's proposal and discussed above) would remain applicable. Standard GSP countries that throughout this transition period are responsible for serious and systematic violation of the principles enshrined in the listed conventions, could be subject to Enhanced Engagement and the withdrawal procedure.
- **No automaticity:** Standard GSP countries that do not comply with ratification and implementation requirements after the transitional period would in principle exit from the GSP scheme and revert to MFN terms. However, exiting from the GSP regime under these circumstances would not happen automatically, but would require a decision from the European Commission (delegated act). This would allow the Commission to engage in a 'last resort dialogue' with the beneficiary country not only to press for ratification and implementation of the missing conventions, but also to tailor support and assistance for specific needs and situations. However, in order to maintain a level-playing field for all GSP+ beneficiaries, a final deadline for compliance needs to be established. This could, for instance, coincide with termination of the new Regulation's application on 31 December 2033. This would imply *de facto* harmonisation between Standard GSP and GSP+ regimes. In the event of a positive evaluation being given in the new GSP Regulation's upcoming mid-term review, *de jure* harmonisation between the Standard GSP and GSP+ regimes can be established in the next GSP Regulation.
- To cushion any increased administrative burden for the EU in monitoring this additional group of countries, it should increasingly **rely on reporting and monitoring by other actors** such as UN bodies, NGOs and other CSOs (these options are detailed in Chapter 6).
- Specific **transitional procedures need to be established for LDC countries that graduate** from the EBA arrangement. Considering that several Standard GSP countries are among the biggest GSP exporters to the EU (e.g. India and Indonesia), a detailed economic impact assessment should assess whether the GSP's safeguard measures need to be adjusted to protect the EU's economic interests and whether the export diversification criterion (Article 9(a)) should be maintained.
- **Tailored technical and financial assistance** (for example under the Neighbourhood, Development & International Cooperation Instrument – NDICI/Global Europe) would need to support the beneficiaries in making their transitions to this new GSP scheme.

## 6. Monitoring, transparency and civil society involvement

### 6.1 The European Commission's margin of discretion in GSP procedures

A robust monitoring system is essential for ensuring effective dialogue and implementation of the listed conventions in beneficiary countries. This supports oversight of the GSP+ monitoring procedure and keeps the withdrawal procedure (for all GSP arrangements) credible. There is a consensus that these procedures have been at least partly successful in promoting effective implementation of the relevant conventions. However, there is a demand for some improvements. As noted above, various studies, European Parliament Resolutions and civil society contributions to public consultations have all demanded not only that the monitoring process be made more transparent, but also that civil society's involvement be strengthened and formalised. Certain weaknesses in the system have been identified: (i) an absence of public access to the written communication of GSP+ monitoring, including the 'list of issues' (formerly known as the 'scorecards'); (ii) a lack of formal structures for civil society involvement; and (iii) the absence

of a complaint mechanism linked to GSP+ monitoring. Although the 2012 GSP reform improved civil society's inclusion in the monitoring process, stakeholder engagement remains underdeveloped (Richardson et al., 2017). Strengthening these monitoring procedures by increasing engagement with civil society and other stakeholders (e.g. international organisations), would also lower the Commission's administrative burden, particularly if extension of positive conditionality to the Standard GSP arrangement were to be considered (see Chapter 5.2).

On the one hand, more clarity and transparency concerning monitoring and withdrawal mechanisms reduce the European Commission's margin of discretion in these procedures, thereby providing predictability and legal certainty for all stakeholders involved, including the European Parliament. However, on the other hand, the flexibility that these procedures provide to the European Commission allows for a tailored approach to deal with specific needs and political sensitivities attributed to certain cases. It is, for example, recognised that the Commission enjoys a broad margin of discretion in determining whether or not the withdrawal procedure should be initiated if there has been a breach of GSP commitments. In a recent case before the European Ombudsman, various NGOs and trade union organisations argued that the Commission acted arbitrarily as it failed to initiate the withdrawal procedure under Article 19 of the GSP Regulation for Bangladesh, despite clear evidence that the country had violated fundamental labour rights (European Ombudsman, 2020). The Ombudsman observed that Article 19.3 of the GSP Regulation, which empowers the Commission to initiate the withdrawal procedure where it finds 'sufficient grounds' to do so, does not clearly define what constitutes 'sufficient grounds' or the criteria upon which the Commission should assess this. The Ombudsman recognised that deciding whether or not to launch a withdrawal procedure 'involves complex policy judgments' and argued that the Commission consequently 'has a broad margin of discretion in determining when to do so.' It was concluded that the Commission's case-by-case approach is therefore appropriate and justified.

The Court of Justice of the European Union (CJEU) also came to a similar conclusion in a case brought by the Italian tanning industry association (*Unione nazionale industria conciaria* (UNIC), Case T-338/14 UNIC v Commission). In this case UNIC challenged the Commission's decision not to initiate the withdrawal procedure against GSP preferences granted to India, Pakistan and Ethiopia under Article 19(d) (concerning serious and systematic unfair trading practices, including those affecting the supply of raw materials). The General Court argued in an order that any decision to initiate the GSP's withdrawal procedure 'depends solely on the Commission's choice', as the GSP Regulation gives the Commission a wide margin of discretion in this procedure (CJEU, 2015)<sup>61</sup>.

Significantly, a recent order on 22 November 2021 from the CJEU (General Court) also confirmed that companies or business associations in GSP beneficiary countries affected by the EU's withdrawal of GSP preferences cannot challenge this before the Court. In a case before the CJEU (Case T-454/20 Garment Manufacturers Association in Cambodia v Commission), Cambodia's garment manufacturers association, affected by the EU's partial withdrawal of Cambodia's EBA preferences in 2020 due to the country's human and labour rights violations, brought an action for annulment against the Commission's decision (i.e. Delegated Regulation 2020/550) that partially withdrew these GSP preferences (CJEU, 2021). The applicant claimed *inter alia* that the Commission 'failed to properly assess the proportionality of the partial temporary withdrawal of customs preferences for the Cambodian garments, footwear and travel goods sectors'<sup>62</sup>. However, the Court dismissed the action as inadmissible because the Cambodian garment manufacturers association was not 'directly and individually concerned' by the Commission's withdrawal decision (as

<sup>61</sup> Moreover, the Court argued that the letter in which the Commission informed UNIC about its decision to not initiate the withdrawal procedure does not constitute an act open to challenge withing the meaning of Article 263 TFEU and therefore dismissed the action as inadmissible.

<sup>62</sup> See [EUR-Lex - 62020TN0454 - EN - EUR-Lex \(europa.eu\)](#).

required by Article 263 TFEU and the Court's established case-law on this)<sup>63</sup>. This implies, somewhat paradoxically, that if a company or business association in a GSP beneficiary country wants to challenge the Commission's decision on the withdrawal of GSP preferences because it has no link or relation with the violations that triggered the withdrawal procedure, it would not be able to do so before the CJEU because of basically the same reason: they were not responsible for – or involved in – the withdrawal process.

## 6.2 The proposed Action Plan and extended monitoring cycle

Although the Commission has recognised the need to improve transparency and civil society's involvement in GSP monitoring processes, the proposed Regulation includes only a few innovations in this regard. Firstly, Article 9.1(d) added a requirement for GSP+ candidate countries to submit a plan of action (hereafter 'action plan') for the effective implementation of GSP conventions as part of the GSP+ application procedure. Although GSP+ applicants were already required to provide 'comprehensive information concerning the ratification of the relevant conventions' (Article 10.2), this action plan would also require applicants to outline how effective implementation of the conventions would be completed. If these action plans are sufficiently specific and comprehensive, they can be a useful tool not only with the application procedure, but also in monitoring effective implementation of the listed conventions thereafter. Several stakeholders called for such individualised roadmaps for each beneficiary country that spell out 'specific and time-bound human and labour rights benchmarks' (GSP Platform 2020; van der Ven, 2018). The proposed action plans seem to be a step in that direction. Moreover, country-level analyses of GSP+ beneficiaries demonstrate that the monitoring mechanism is less effective than the application procedure in influencing a country to implement reforms (European Commission, 2020c). Such an action plan can therefore be a useful tool to bridge between the GSP+ application and implementation processes. However, the GSP proposal states that these action plans need to be drafted by the beneficiary country alone and not by – or jointly with – the European Commission. This had been so with the EU's joint Association Agendas or partnership priorities adopted with several European Neighbourhood Policy countries<sup>64</sup>. Hence, in order to support beneficiary countries with the drafting of these action plans, the Commission should issue guidelines on the expected format and content of these documents, thereby enabling beneficiary countries to address comments from the European Commission on draft versions. For example, the Commission can require the applicant to provide a timetable of remaining implementation commitments and steps required to be taken under national law, which will facilitate timely detection of non-compliance. Moreover, making this action plan public would allow all stakeholders involved, including civil society, to monitor its implementation and flag issues of non-compliance. However, disclosing these documents would introduce a risk that beneficiary countries would be reluctant to commit to specific or detailed commitments, which in turn would lead to 'blunt' action plans. Accordingly, as a compromise the Commission could publish detailed reports on the commitments enshrined in these documents (for example in the context of its GSP reporting obligations to the Parliament and Council), without disclosing politically sensitive commitments from the beneficiary country.

Another novelty in the proposed Regulation is extension of the GSP+ monitoring cycle from two to three years, aimed at streamlining and better synchronising with international monitoring bodies' reports (Arts. 14 and 40). This suggestion was also made in the External Study, which considered the two years cycle too short for beneficiary countries to plan their actions for addressing any shortcomings identified. The Commission also committed to complementing this three years' monitoring cycle with an additional 'out-

<sup>63</sup> The Court argued that 'the applicant's members are neither responsible for the tariff preference withdrawal procedure nor the findings of serious and systematic violations of human rights in Cambodia, which are attributable to that beneficiary country of a preferential tariff scheme. Thus, the direct concern of the applicant's members cannot be based on the mere fact that they suffer material consequences caused by changes to Cambodia's status, since that type of indirect consequences is not sufficient to satisfy the criterion requiring impact on the legal situation of the person concerned in order to establish a direct concern'.

<sup>64</sup> On this issue, see Van der Loo (2016).

of-cycle' monitoring exercise or the submission of intermediate progress reports, where there are reasons for concern or when the beneficiary country is supposed to take additional steps further towards Enhanced Engagement (European Commission 2021a/b). However, this proposal is not enshrined in the proposed Regulation. Accordingly, to formalise this option, a reference to this issue should be made in the Regulation (e.g. in the recitals or Article 40 on the Commission's reporting obligations).

### 6.3 Introducing a complaint mechanism: the Single Entry Point

It has been argued that the role of civil society in GSP+ monitoring procedures could be strengthened through the introduction of a complaint mechanism (van der Ven 2018; Richardson et al., 2017). This might constitute an additional layer of monitoring which would allow stakeholders to monitor compliance consistently and flag non-compliance to the European Commission<sup>65</sup>.

The Commission has introduced in its proposal a complaint mechanism through integrating the recently created Single Entry Point mechanism. In July 2020, the Commission appointed the Chief Trade Enforcement Officer, tasked with improving trade policy enforcement. Hence, in November 2020 the Commission launched a new complaints mechanism, the SEP, as part of its increased efforts to strengthen the enforcement and implementation of trade commitments<sup>66</sup>. Building on the Trade Barrier Regulation's (TBR) principles<sup>67</sup>, this Single Entry Point provides centralised contact for all EU-based stakeholders who want to lodge a complaint on: (i) market access issues; (ii) non-compliance with Trade and Sustainable Development (TSD) as well as GSP commitments. The SEP has developed two complaint forms, one on market access and another on TSD/GSP. Both are available on the Access2Markets portal<sup>68</sup> where EU stakeholders can make submissions directly to the SEP. This new complaint system aims to: streamline internal processes; tackle market access issues and non-compliance with TSD/GSP commitments; and improve prioritisation of enforcement action (European Commission, 2021d).

Integrating SEP into the GSP Regulation is a positive evolution as it allows various stakeholders to flag to the Commission possible violations of the listed conventions by GSP beneficiaries, not only in relation to GSP+ arrangements, but also Standard GSP and EBA schemes. This complaint mechanism can be used for monitoring procedures under the GSP+ regime as well as detecting serious and systematic violations that can trigger the withdrawal procedure (for all GSP arrangements). However, several features of the SEP system should be addressed to make sure that it can serve as a proper complaint mechanism for all GSP stakeholders.

**Firstly**, as specified in Commission operating guidelines on the SEP (European Commission, 2021d), the complaint mechanism is open to EU Member States and individual companies, business/trade associations, CSOs and citizens from the EU<sup>69</sup>. Contrary to complaints concerning market access, complainants do not

<sup>65</sup> Under the US GSP scheme, the GSP Subcommittee conducts annual reviews of the GSP programme, in which it considers a wider range of petitions. Any interested party (e.g. embassies, government agencies, US foreign firms) may petition the GSP Subcommittee that the GSP eligibility of any current GSP beneficiary be reviewed. For example, recently the American Federation of Labor and Congress of Industrial Organizations and/or the International Labor Rights Forum initiated GSP eligibility reviews for Azerbaijan, Georgia, Kazakhstan and Uzbekistan on the grounds of worker rights or child labour concerns. For an overview, see: [Ongoing Country Reviews | United States Trade Representative \(ustr.gov\)](#)

<sup>66</sup> See [Access2Markets Contact page \(europa.eu\)](#)

<sup>67</sup> See [Regulation \(EU\) 2015/1843 of the European Parliament and of the Council of 6 October 2015 laying down Union procedures in the field of the common commercial policy in order to ensure the exercise of the Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organization.](#)

<sup>68</sup> See [Access2Markets Welcome home page \(europa.eu\)](#)

<sup>69</sup> The operating guidelines state that the following entities can submit a complaint: a. Citizens of any EU Member State; b. EU Member States; c. Entities having their registered office, central administration or principal place of business within the Union; d. Industry associations of EU companies; e. Associations of EU employers; f. Trade unions or trade union associations formed in accordance with the laws of any EU Member State, or g. NGOs formed in accordance with the laws of any EU Member State.

need to demonstrate that the notified violation concerns them directly<sup>70</sup>. The main weakness of this system in regard to the monitoring of GSP commitment is that entities (e.g. NGOs, trade unions, or citizens) from the GSP beneficiary countries are not eligible to submit a complaint directly. This significantly reduces the SEP's relevance for GSP monitoring as civil society stakeholders from beneficiary countries cannot rely on this mechanism to flag up breaches of the listed conventions to the European Commission. Such stakeholders are often directly affected by the human or labour rights violations of their own governments and/or have valuable information concerning alleged violations. At best, the SEP allows EU entities to make a complaint 'on behalf of other persons or entities'. Thus, in theory EU CSOs would be able to submit a complaint 'on behalf of' CSOs in beneficiary countries. Local CSOs will, though, still be able to bring a violation to the Commission's or EEAS' attention through existing 'informal' procedures, such as civil society meetings, Commission monitoring missions and EU Delegations.

**Secondly**, submission requirements for complaints are rather demanding. A complaint mechanism can be effective only if complainants are required to provide the main factual and legal elements of the issue at stake. This safeguards the quality of complaints received, avoids frivolous submissions and facilitates the Commission's assessment. Most submission requirements in the SEP are reasonable. Complainants must indicate the legal basis for any complaint (e.g. the grounds under the GSP Regulation justifying withdrawal of preferences) and must give a factual description of the GSP violation. Significantly, the SEP complaint mechanism distinguishes between violations deriving from a law and others stemming from practice, 'recognising that the latter is just as serious as the former' (European Commission, 2021d). Complainants also need to 'indicate' (thus not 'prove' or 'demonstrate') whether: other entities have previously sought redress for the same measure through procedures before national authorities (e.g. domestic courts) or by approaching EU institutions; or relevant international organisations (e.g. ILO) have undertaken any action in relation to the alleged breach. Whilst the information that GSP complainants are required to provide is less demanding than that for TSD breaches or market access issues<sup>71</sup>, various requirements remain rather challenging. For example, if the complainant alleges that GSP preferences should be withdrawn in respect of a third country, there must be some explanation as to why and how the grounds for initiating a withdrawal procedure are met (e.g. serious and systematic violations of the listed conventions). However, as discussed in Chapter 5.1, the Regulation does not specify in detail what constitutes a 'serious and systematic' violation of conventions' principles, mainly to provide the Commission with an appropriate level of discretion in this procedure. It will therefore be important for the Commission to assist in a targeted manner those stakeholders who encounter difficulties with meeting the submission criteria. The Commission's SEP operating guidelines foresee a pre-notification system which would allow complainants to engage on a voluntary basis with the European Commission to receive support and guidance on the precise amount of information required. However, this document describes this process only for market access and TSD complaints<sup>72</sup>. Although the Commission foresees a follow-up mechanism after having received any GSP complaint, which allows time for direct engagement with the complainant in a deficiency process so as to communicate potentially outstanding information and evidence, an informal pre-notification mechanism should also be provided explicitly in the operating guidelines for GSP complaints.

<sup>70</sup> In the TBR, only EU enterprises or association can trigger the procedure and need to demonstrate material injury such as financial losses, reduced profit margins, redundancies, a surge in imports or a fall in exports.

<sup>71</sup> For example, for TSD complaints, the complainant needs to provide the Commission information on the possible economic consequences of the violation for EU operators, including SMEs. Complainants concerning market access need to demonstrate that the barrier directly concerns them and need to provide detailed information about the economic impact of the potential barriers.

<sup>72</sup> For example, the documents states that the Commission will provide support, notably for SMEs, encountering difficulties in navigating the FTAs.

**Thirdly**, the SEP as a complaint mechanism for GSP violations seems to have only a vague legal status rather than being based on a legal act, contrary to trade barrier complaints under the TBR, for instance. Moreover, this mechanism is barely mentioned in the proposed GSP Regulation<sup>73</sup>. The only two instruments that 'establish' the SEP are the complaint forms on the Access2Markets platform and the Commission's operating guidelines (European Commission, 2021d). The latter provides some details about the eligibility criteria for complaints, the pre-notification mechanism, the Commission's follow-up on complaints and prioritisation of enforcement action<sup>74</sup>. By not establishing the SEP complaint mechanism on the basis of a regulation, the Commission maintains a large margin of discretion and flexibility in its application and implementation. Whereas the need for such a level of flexibility is recognised (see Chapter 5.1), the vague legal foundations of the SEP create uncertainty for potential complainants and raise questions about transparency. Various important procedural elements within the SEP complaint procedure are not specified sufficiently. For example, the operational guidelines remain rather vague on issues related to confidentiality. It is vital that complainants can be reassured about raising complaints anonymously. This will be so particularly if the mechanism is opened up to complaints from civil society stakeholders in GSP beneficiary countries. NGOs or CSOs must not be placed in positions where they would fear retaliation measures from their respective governments. Moreover, contrary to the TBR, the Commission's reporting and transparency commitments to the Council as well as the European Parliament about the SEP system's use and implementation are not specified<sup>75</sup>. It is therefore important that all these SEP procedural elements are clarified and put on a sound legal footing. For example, the SEP complaint mechanism can be established on the basis of regulation, or can be integrated within an amended TBR Regulation. A less far-reaching option would be to clarify further some of the SEP's procedural aspects, for example in the envisaged guidance notice that the Commission aims to adopt (see Chapter 6.4). One advantage of the SEP's flexible legal nature is that its functioning can be easily modified, as it does not require a legislative procedure. The Commission has already stated in its recent FTA enforcement report that the SEP's coverage and functionality will be further upgraded in 2022, for example by reviewing its operating guidelines, based on continual feedback from stakeholders (European Commission, 2021f).

**Fourthly**, stakeholders still need to discover this new tool for TSD/GSP complaints. Since its launch in November 2020, the SEP has been contacted more than 60 times with regard to possible complaints, resulting in 17 formal complaints received (European Commission, 2021f). However, all formal complaints to date have focused on market access barriers and not yet on TSD/GSP issues. According to the Commission, this results from the additional complexity of potential cases in the area of sustainable development, but also the greater familiarity of business stakeholders with existing market access work (European Commission, 2021f). The Commission's proposal to integrate the SEP in the GSP, together with ongoing revision of the TSD chapters, is expected to lead to the first TSD/GSP complaints in the near future.

## 6.4 Transparency and civil society involvement

It has been argued that procedural clarity for all actors involved would result from increased transparency, which could be achieved by making available a more detailed description of the monitoring process, including the required benchmarks or procedural steps to be met by beneficiaries (European Commission,

<sup>73</sup> The SEP system is only mentioned in recitals 17 and 18, which state that the SEP 'should be integrated within the framework of this Regulation'.

<sup>74</sup> For example, the complainant will be informed as to whether the complaint leads to an enforcement action accompanied by an enforcement action plan to tackle the issue raised. The Commission 'might' also provide periodic updates on specific actions undertaken, depending on their sensitivity and confidentiality. Prioritisation will be based on three criteria: the likelihood of resolving the issue, the legal basis, and the economic/systemic impact for market access barriers and the seriousness of the violation for TSD/GSP issues.

<sup>75</sup> For example, under the TBR Regulation the Commission needs to inform the Member States in the event that it decides to initiate, conduct or terminate formal international consultation or dispute settlement procedures (Art. 14) and needs to report on the implementation of the TBR on its annual trade defence measures report (Art. 15).

2021c). It would allow the European Parliament and civil society actors to use the GSP+ monitoring procedure to hold beneficiary countries to account on implementation of the conventions. The disclosure of documents exchanged as part of GSP+ monitoring would further open up the process to civil society, which could improve their involvement and foster a coherent push for the same reforms, in line with the European Commission or international bodies. Moreover, it has been argued that providing more details on how GSP beneficiaries deal with non-compliance might create 'learning effects' across beneficiary countries (European Commission, 2021c).

A specific issue which has been much debated is the possible disclosure of 'the list of issues' (formerly referred to as 'scorecards'), prepared annually by the Commission and EEAS. This contains an overview of progress made by any given country and a list of the most significant shortcomings in the beneficiaries' effective implementation of the listed conventions (European Commission, 2019). This list of issues is not public and is meant to stimulate dialogue and build a relationship of trust with GSP country authorities, given the sensitive (often political) nature of the issues involved (European Commission, 2018a). As the application of this list is not formally described in the GSP Regulation, practical or informal measures can be adopted to improve its transparency. For example the External Study considers how the list of issues could be made public to some extent, as proposed in the study's inception report: (i) publication of a full original text; (ii) publication of a part based on publicly available sources (e.g. recommendations of international bodies) and a delayed disclosure of parts which may require temporary confidentiality until the EU and the beneficiary country reach an agreement on its content; or (iii) publication of a meaningful summary of the list of issues.

However, the Commission expressed its preference for not completely disclosing any documents exchanged as part of the GSP monitoring process. The Commission argues that potential benefits from disclosure 'would be outweighed by the need to consider other factors such as confidentiality' and maintaining a certain degree of confidentiality 'to ensure the effectiveness of the monitoring process' (European Commission, 2021b). The Commission holds that it already provides a summary of the issues discussed in its regular GSP reports to the European Parliament and the Council, as well as an indication of priority issues needing attention in the next monitoring cycle. However, these reports provide information on the individual countries' list of issues only in a condensed form and do not reveal any specific recommendations or milestones defined by the Commission (van der Ven, 2018). Similarly, the Commission's 2020 report on Enhanced Engagement with the three EBA countries (Bangladesh, Cambodia, Myanmar) includes for each country a section with actions that the beneficiaries are expected to take, but without providing an indicative timetable (European Commission, 2020c). As argued above in relation to the proposed action plans that beneficiaries are now required to adopt, the Commission could perhaps compromise by reporting in more detail on the priorities defined in the list of issues without extending to total disclosure. It may be possible for the Commission to publish the 'implementation gaps' identified and its recommended action points (which are mainly based on reports by other international bodies), but keep replies from the beneficiaries confidential. This would provide all stakeholders involved with sufficient information to monitor implementation of the priorities defined in these documents, without jeopardising trust between the Commission/EEAS and the beneficiary country.

Although the Commission does not intend to disclose the list of issues, it has declared in its proposal for the GSP Regulation (in the explanatory memorandum) that it will improve transparency and communication about the various stages of GSP monitoring through 'publishing guidance on the monitoring process as developed through administrative practice, on the actors involved and the opportunities for civil society's involvement' (European Commission, 2021a). This information will be published on the GSP Hub and/or the Commission GSP website (European Commission, 2021b). Such a description, which was called for by the External Study and several stakeholders in the consultation, aims to provide more transparency about different steps in the monitoring process. This document should in

particular provide more details about the Enhanced Engagement procedure, which lacks any detailed description and is not even mentioned in the GSP Regulation. In addition, it should provide clear indications about different benchmarks to be met in the GSP+ application and monitoring procedures. This would make the Commission's actions and decisions more predictable in the context of GSP. However, this should not completely supersede the flexibility and discretion that the Commission needs in applying these procedures.

A specific proposal that has been suggested to increase civil societies' involvement in GSP monitoring procedures is the establishment of Domestic Advisory Groups (DAGs). These are now established in the new generation of EU FTAs. In most trade agreements since the 2011 EU-Korea FTA, an advisory group is set up in the EU and the partner country to advise on implementation of the TSD chapters in EU FTAs (Marx and Van der Loo, 2020). Typically, they establish DAGs within each party, a joint meeting of the DAGs (DAG-to-DAG meeting) and of the Parties, as well as open Civil Society Meetings. The establishment of DAGs could address the request by NGOs to have an institutionalised role for civil society actors in the monitoring process. DAGs could fulfil several functions: (i) they would strengthen the monitoring process' legitimacy through further inclusion of CSOs; (ii) they would provide a forum for dialogue to raise awareness about the monitoring process and the issues identified; (iii) they could monitor implementation of the conventions and signal progress as well as new issues; and (iv) they could offer concrete recommendations on further implementation of the conventions (Marx and Van der Loo, 2020; Martens et al., 2020). However, the functioning of DAGs established in the context of EU FTA has been criticised (Orbie et al., 2016; Marx and Van der Loo, 2020; Martens et al., 2020). In particular, identified as DAG meeting weaknesses are: the number of participants and composition (lack of diversity and unclear selection process); issues related to the transparency and funding; as well as the limited role in complaint and dispute settlement procedures.

The Commission is currently reviewing its 2018 15-point Action Plan on the effective implementation and enforcement of TSD chapters in trade agreements<sup>76</sup>. This review covers all relevant aspects of TSD implementation and enforcement, including: the scope of commitments; monitoring mechanisms; the possibility of sanctions for non-compliance; the essential elements clause; as well as the institutional set-up and resources required (European Commission, 2021d)<sup>77</sup>. Based on the outcome of this review, the establishment of DAGs in the GSP+ monitoring process should be considered.

## 7. Conclusion and recommendations

Although GSP's importance for the EU is limited in economic terms, it is one of the oldest trade instruments in the EU's trade policy, covering more than 60 countries and 2 billion people. It is thus a key instrument in the EU's trade policy (and EU external action in general) for promoting human rights, sustainable development and good governance. Considering that the promotion of sustainable development and human rights has become an integral part of EU trade policy (as highlighted in the recent Trade Policy Review and constitutionally required since the Treaty of Lisbon)<sup>78</sup>, the GSP will remain one of its centrepieces.

The impact of current GSP Regulation on human rights promotion and sustainable development in beneficiary countries is mixed. Although positive conditionality embedded in the GSP+ arrangement is considered to have a limited but positive impact, particularly through related dialogue and monitoring practices, the withdrawal procedure has been found to have a number of weaknesses.

<sup>76</sup> See [Open public consultation on the Trade and Sustainable Development \(TSD\) Review - Trade - European Commission \(europa.eu\)](https://ec.europa.eu/eu-external/publications/open-public-consultation-on-the-trade-and-sustainable-development-tsd-review-trade-european-commission)

<sup>77</sup> A comparative analysis of TSD provisions for identification of best practices to support the TSD review is currently being prepared: [Comparative Analysis of TSD Provisions for Identification of Best Practices to Support the TSD Review \(lse.ac.uk\)](https://www.lse.ac.uk/TradePolicy/Comparative-Analysis-of-TSD-Provisions-for-Identification-of-Best-Practices-to-Support-the-TSD-Review).

<sup>78</sup> On this issue, see Ott and Van der Loo (2018).

As most stakeholders are mildly positive about the current GSP Regulation, the Commission did not propose any revolutionary reforms. Whilst it proposed retention of the three arrangements (Standard GSP, GSP+ and EBA), a limited set of targeted amendments were introduced not only to improve some of the scheme's key features in response to the evolving needs and challenges in GSP countries but also to reinforce the scheme's social, labour, environmental and climate dimensions.

Most of the proposed changes can be found in conditionality mechanisms embedded in the GSP, including their monitoring, transparency and inclusiveness procedures, aimed at promoting human rights, sustainable development and good governance in beneficiary countries. In particular, the Commission aims to strengthen the withdrawal procedure with a number of targeted amendments and innovations, including: extending the withdrawal procedure to the listed environmental and good governance conventions; faster procedures for urgent cases; the requirement for a socio-economic impact assessment; introduction of a withdrawal criterion related to readmission of own nationals; and possible extension of withdrawal measures' scope to cater for additional issues or violations. The Commission did not consider the GSP scheme to be an appropriate instrument for targeting specific economic operators in beneficiary countries that are violating fundamental human and labour rights.

The Commission's proposal concerning the GSP's positive conditionality are more limited (adding six conventions to the GSP+ scheme). Extending positive conditionality to the Standard GSP and EBA arrangements was not an option for the Commission as this would introduce the risk of beneficiaries dropping out of the scheme altogether.

The Commission's proposal also envisages increasing the GSP's transparency, monitoring and inclusiveness. However, only a few formal (i.e. legal) changes have been introduced in the proposed Regulation, such as the requirement for GSP+ applicants to submit an action plan on implementation of the listed conventions and extension of the monitoring cycle from two to three years. Other proposed changes in this area are not clearly enshrined in the new Regulation, but rely instead on soft-law instruments (i.e. the commitment to publish 'guidance' on the monitoring process and the integration of the SEP as a complaint mechanism).

The changes introduced clearly aim to address the concerns and suggestions raised by the MTE, the External Study and relevant European Parliament Resolutions. Only a few elements included in the Commission's proposal were not considered or suggested by stakeholders (e.g. the withdrawal criterion related to readmission). Whereas the proposed GSP Regulation makes an effort to strengthen the negative and positive conditionality mechanisms which are aimed at promoting human rights and sustainable development, several innovations and amendments need to be clarified, made more ambitious and legally enshrined in the GSP Regulation or other legal acts. Accordingly, this analysis proposes a number of recommendations:

- **Socio-economic impact assessment:** Clarify the possible scope, focus and format of the socio-economic impact assessment required as part of the withdrawal procedure. Specific issues that should be assessed are: (i) the volume of exports to the EU; (ii) the use of preferences; (iii) the structure of exports to the EU; (iv) the nature and scope of the violation; and (v) the potential impact on vulnerable groups or economic sectors. A detailed summary of this report should be made public. The format of these socio-economic impact assessments can be specified in a Commission notice or in a new Commission delegated regulation establishing the rules related to the withdrawal procedure (which would replace the current Delegated Regulation No 1083/2013).
- **Additional withdrawal criterion on readmission obligations of own nationals:** The legislator should specify in the Regulation how, and under which circumstances, this procedure would be used. In particular, it should be clarified if non-compliance with bilateral readmission agreements or

arrangements would suffice to trigger the withdrawal procedure and how the Commission intends to evaluate these obligations. Its scope should be extended to the beneficiary countries' compliance with international human rights law and commitments about safe and dignified return and readmission, as well as sustainable reintegration. The actions listed under 'Objective 21' of the Global Compact on cooperation in facilitating these commitments can serve as a reference point. Preference should be given to international law obligations for the application of this procedure.

- **Addressing human rights and labour violations by economic operators:** While introducing a withdrawal procedure for specific economic operators in the GSP framework is not recommended, the new GSP regulation should aim to contribute to a coherent application of all recent or envisaged EU instruments that can target human rights or sustainable development violations by economic operators in third countries (e.g. the global human rights sanctions regime and envisaged/proposed human rights and environmental due diligence instruments). Whereas the most appropriate instrument to outline such an integrated approach would be a Joint Commission and EEAS Communication, the new Regulation can already refer in its preambles to these instruments, envisaging a complementary approach.
- **Extension of positive conditionality to Standard GSP beneficiaries:** Positive conditionality should be extended to Standard GSP beneficiaries. This implies that such beneficiaries would be required to ratify and implement the listed conventions, but would then be granted the same tariff preferences as GSP+ beneficiaries. So as to safeguard against Standard GSP countries dropping out of this revised GSP scheme, flanking and transitional measures would need to be established, based on the principles detailed in Chapter 5.2 (e.g. a differentiated and phased approach, no automaticity, targeted assistance and transitional measures for graduating EBA countries). An economic impact assessment should assess whether the GSP's safeguard measures need to be adjusted and whether the export diversification criterion should be maintained.
- **The Action Plan (GSP+):** The Commission should issue guidelines on the expected format and content of action plans required in the GSP+ application process, for instance a timetable of remaining implementation commitments and steps required to be taken under national law. The Commission should publish detailed reports on the commitments enshrined in these documents (for example in the context of its GSP reporting obligations to the Parliament and Council).
- **Formalising the 'out-of-cycle' monitoring** option or submission of intermediate progress reports (e.g. in the Regulation's recitals or Article 40 on the Commission's reporting obligations).
- **The Single Entry Point as a complaint mechanism:** The SEP should be opened up to accept complaints from stakeholders and CSO in beneficiary countries. Moreover, the SEP needs to be given a sound legal footing in clarifying various procedural aspects, such as: confidentiality; transparency; reporting requirements; and an informal pre-notification mechanism for TSD and GSP complaints. The SEP can be established on the basis of a new regulation, or can be integrated within an amended TBR Regulation.
- The Commission should publish more **detailed summaries of the 'list of issues'** adopted in regard to the GSP+ monitoring process, including the identified 'implementation gaps' and its recommended action points (which are mainly based on reports by other international bodies).
- The Commission's envisaged **guidance on the monitoring process** should provide details about the Enhanced Engagement process and clear indications about the different benchmarks to be met in the GSP+ application. However, procedural details about withdrawal and monitoring procedures not covered in the basic act (i.e. the Regulation) (e.g. rules related to deadlines, transparency, rights of the parties, involvement of civil society, confidentiality and review) should be enshrined in a delegated act,

not just in Commission notices, to make sure that the European Parliament is formally involved (by the objection procedure laid down in Art. 36 of the Regulation).

- Based on the ongoing TSD review's outcome, **the establishment of DAGs** in the context of the GSP+ monitoring process should be considered.

## Bibliography

- Bartels, L., '[The WTO Legality of the EU's GSP+ Arrangement](#)', *Journal of International Economic Law*, Vol 10 No 4, 2007, pp. 869-886.
- Bartels, L., [The Application of Human Rights Conditionality in the EU's Bilateral Trade Agreements and Other Trade Arrangements with Third Countries](#), EXPO/B/INTA/2008/57, European Parliament, Brussels, 2008.
- Beke, L. & Hachez, N., 'The EU GSP: A Preference for Human Rights and Good Governance? The Case of Myanmar', In: Wouters, J., et al. (eds), *Global Governance Through Trade: EU Policies and Approaches*, Edward Elgar Publishing, Cheltenham, 2015, pp. 185–213.
- Borchert, I, et al., '[The Pursuit of Non-Trade Policy Objectives in EU Trade Policy](#)', Working Papers, University of Sussex, Université Libre de Bruxelles (ECARES), CEPR, CESifo, CEP, 2020.
- Congressional Research Service, [General System of Preferences \(GSP\): Overview and issues for Congress](#), CRS Report, 7 January 2021.
- Court of Justice of the European Union, Case T-454/20, [Garment Manufacturers Association in Cambodia v Commission](#), Order of the General Court of 22 November 2021.
- Court of Justice of the European Union, Case T-338/14, [Unione nazionale industria conciaria \(UNIC\) v European Commission](#), Order of the General Court (Fifth Chamber) of 27 January 2015.
- Eckes, C. '[EU global human rights sanctions regime: is the genie out of the bottle?](#)' *Journal of Contemporary European Studies*, 2021, pp. 1-15.
- European Commission, [Proposal for a Regulation on applying a generalised scheme of tariff preferences and repealing Regulation \(EU\) No 978/2012](#), COM(2021) 579 final, 2021a.
- European Commission, [Impact Assessment Report Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on applying a generalised scheme of tariff preferences and repealing Regulation \(EU\) No 978/2012 of the European Parliament and of the Council](#), Staff Working Document, SWD(2021) 266 final, 2021b.
- European Commission, [Study in support of an impact assessment to prepare the review of GSP Regulation No 978/2012](#), 2021c.
- European Commission, [Trade Policy Review - An Open, Sustainable and Assertive Trade Policy](#), COM(2021) 66 final, 2021d.
- European Commission, [Operating guidelines for the Single Entry Point and complaints mechanism for the enforcement of EU trade agreements and arrangements](#), 2021e.
- European Commission, [Report on Implementation and Enforcement of EU Trade Agreements](#), COM(2021) 654 final, 2021f.
- European Commission, [Return and readmission: improving cooperation within the EU and with external partners](#), Press Release, IP/21/503, 2021g.
- European Commission, [Commission proposes new EU Generalised Scheme of Preferences to promote sustainable development in low-income countries](#), News Archive, 22 September 2021h.
- European Commission, [Report on the Generalised Scheme of Preferences covering the period 2018-2019](#), JOIN/2020/3 final, 2020a.
- European Commission, [The EU Special Incentive Arrangement for Sustainable Development and Good Governance \('GSP+'\) assessment of the Philippines covering the period 2018 – 2019](#), Joint Staff Working Document, SWD(2020) 24 final, 2020b.
- European Commission, [Report on EU Enhanced Engagement with three Everything But Arms beneficiary countries: Bangladesh, Cambodia and Myanmar](#), Joint Staff Working Document, SWD(2020) 19 final, 2020c.

- European Commission, [New Pact on Migration and Asylum](#), Communication, COM(2020) 609 final, 2020d.
- European Commission, [European Union's GSP Scheme](#), Factsheet, May 2019.
- European Commission, [Midterm Evaluation of the Generalised Scheme of Preferences](#), Staff Working Document, SWD(2018) 430 final, 2018.
- European Commission, [Trade for all. Towards a more responsible trade and investment policy](#), Publications Office of the European Union, Luxembourg, 2015.
- European Commission, '[Revised EU trade scheme to help developing countries applies on 1 January 2014](#)', Press Release, MEMO/13/1187, 19 December 2013.
- European Ombudsman, [Decision in cases 1056/2018/JN and 1369/2019/JN on the European Commission's actions regarding the respect for fundamental labour rights in Bangladesh in the context of the EU's Generalised Scheme of Preferences](#), 2020.
- European Parliament, [European Parliament resolution of 10 June 2021 on the situation in Sri Lanka, in particular the arrests under the Prevention of Terrorism Act](#), P9\_TA(2021)0290, 2021a.
- European Parliament, [European Parliament resolution of 11 February 2021 on the situation in Myanmar](#), P9\_TA(2021)0054, 2021b.
- European Parliament, [European Parliament resolution of 11 March 2021 on the mass trials against the opposition and civil society in Cambodia](#), P9\_TA(2021)0087, 2021c.
- European Parliament, [Resolution of 19 May 2021 on human rights protection and the EU external migration policy](#), P9\_TA(2021)0242, 2021d.
- European Parliament, [Resolution of 26 November 2020 on the EU Trade Policy Review](#), P9\_TA(2020)033, 2020.
- European Parliament, [Resolution of 14 March 2019 on the implementation of the GSP Regulation \(EU\) No 978/2012](#), P8\_TA(2019)0207, 2019.
- Fürutter, M., '[The Transnationalized Reality of EU Sanctioning: A New Research Agenda beyond the Study of Effective Economic Sanctions](#)', *Journal of European Public Policy*, 2019, pp. 1585–1597.
- GSP Platform, [Recommendations of the GSP Platform in light of the discussion for the new Regulation of the Generalised System of Preferences of the European Union](#), July 2020.
- Gstöhl, S. & De Bièvre, D., *The Trade Policy of the European Union*, Bloomsbury Publishing, London, 2018.
- Ioannides, I. & Inama, S., [The Generalised Scheme of Preferences Regulation \(No 978/ 2012\): European Implementation Assessment](#). European Parliamentary Research Service, PE627.134, 2018.
- Martens, D., et al., [Domestic Advisory Groups in EU Trade Agreements. Stuck at the Bottom or Moving up the Ladder?](#), Friedrich Ebert Stiftung, 2020.
- Marx, A., '[Integrating Voluntary Sustainability Standards in trade policy: The case of the European Union's GSP scheme](#)', *Sustainability*, Vol 10 No 12, 2018, pp. 1–22.
- Marx, A., et al., [What Role can Voluntary Sustainability Standards play in the European Union's GSP Scheme?](#), Report for the German Ministry of Development Cooperation, Leuven Centre for Global Governance Studies, 2018.
- Marx, A. & Van der Loo, G., [Democratic legitimacy in EU trade policy. Assessing the achievements and challenges of increased transparency in EU trade policy](#), Reconnect Paper, KU Leuven, 2020.
- Mason, A. '[The Degeneralization of the Generalized System of Preferences \(GSP\): Questioning the Legitimacy of the U.S. GSP](#)', *Duke Law Journal*, Vol. 54 No 2, 2004.
- Meissner, K. L., '[Requesting Trade Sanctions? The European Parliament and the Generalized Scheme of Preferences](#)', *Journal of Common Market Studies*, Vol 59 No 1, 2021, pp. 91–107.

- Orbie, J., et al., [Civil Society Meetings in European Union Trade, Agreements: Features, Purposes, and Evaluation](#), CLEER Papers, No 3, 2016.
- Orbie, J. & Tortell, L., [The New GSP+ Beneficiaries: Ticking the Box or Truly Consistent with ILO Findings?](#), *European Foreign Affairs Review*, Vol 14 No 4, 2009, pp. 663–81.
- Ott, A. & Van der Loo, G., 'The nexus between the CCP and the CFSP: achieving foreign policy goals through trade restrictions and market access', In: Blockmans, S. & Koutrakos, P. (eds), *Research Handbook on the EU's Common Foreign and Security Policy*, Edward Elgar Publishing, Cheltenham, 2018, pp. 230-254.
- Portela, C., 'Trade preference suspensions as economic sanctions', In: Van Bergeijk, P. & Ledda, G. (eds), *Research Handbook on Economic Sanction*, Edward Elgar Publishing, Cheltenham, 2021, pp. 264-280.
- Portela, C., [Enforcing Respect for Labour Standards with Targeted Sanctions](#), Friedrich-Ebert-Stiftung, Singapore, 2018.
- Portela C. & Orbie J., [Sanctions under the EU Generalised System of Preferences and Foreign Policy: Coherence by Accident?](#), *Contemporary Politics*, Vol 20 No 1, 2014, pp. 63-76.
- Richardson, B., et al., [Labour Rights in Export Processing Zones with a Focus on GSP+ Beneficiary Countries](#), Study EP/EXPO/B/DROI/FWC/2013-08/Lot8/13, European Parliament, Brussels, 2017.
- Shekhar, S. & Janardhan, S., [Mercantilist Concerns in US GSP Law: Termination of GSP Benefits to India](#), *Global Trade and Customs Journal*, Vol 14 No 7, 2019, pp. 391-397.
- Siles-Brügge, G., [EU Trade and Development Policy Beyond the ACP: Subordinating Developmental to Commercial Imperatives in the Reform of the GSP](#), *Contemporary Politics*, Vol 20 No 1, 2014, pp. 49-62.
- UNCTAD, [GSP Handbook on the Scheme of the European Union](#), 2016.
- Van der Ven, C., [Sustainable Trade Preferences for the 21st Century: Fine-Tuning the EU's General System of Preferences to Make It a More Effective Tool for Development](#), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), 2018.
- Van der Loo, G., *The EU-Ukraine association agreement and deep and comprehensive free trade area: a new legal instrument for EU integration without membership?*, *Studies in EU External Relations*, Vol 10, Brill, Leiden, 2016.
- Velluti, S., [The Promotion of Social Rights and Labour Standards in the EU's External Trade Relations](#), CLEER Paper, Vol 5, 2016, pp. 83–113.
- Wardhaugh, B., [GSP+ and Human Rights: Is the EU's Approach the Right One?](#), *Journal of International Economic Law*, Vol 16 No 4, 2013, pp. 827–46.
- WTO, [European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, Report of the Panel](#), WT/DS246/R, 1 December 2003.
- WTO, [European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, AB-2004-1, Report of the Appellate Body](#), WT/DS246/AB/R, 7 April 2004.
- Zamfir, I., [Human Rights in EU Trade Policy: Unilateral Measures Applied by the EU](#), PE 621.905, European Parliament Research Service, 2018.

# Annex 1 - GSP beneficiaries and state of play of the ratification of the listed conventions in GSP Regulation No 978/2012

		Core human and labour rights UN/ILO Conventions (Annex VIII Part A)														Conventions related to the environment and to governance principles (Annex VIII part B)											TOTAL RATIFICATIONS		
		Convention on the Prevention and Punishment of the Crime of Genocide	International Convention on the Elimination of All Forms of Racial Discrimination	International Covenant on Civil and Political Rights	International Covenant on Economic, Social and Cultural Rights	Convention on the Elimination of All Forms of Discrimination Against Women	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	Convention on the Rights of the Child	Convention concerning Forced or Compulsory Labour No 29	Convention concerning Freedom of Association and Protection of the Right to Organise No 87	Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively No 98	Convention concerning Equal Remuneration of Men and Woman Workers for Work of Equal Value, No 100	Convention concerning the Abolition of Forced Labour, No 105	Convention concerning Discrimination in Respect of Employment and Occupation, No 111	Convention concerning Minimum Age for Admission to Employment, No 138	Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No 182	Convention on International Trade in Endangered Species of Wild Fauna and Flora	Montreal Protocol on Substances that Deplete the Ozone Layer	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal	Convention on Biological Diversity	UN Framework Convention on Climate Change (1992)	Cartagena Protocol on Biosafety	Stockholm Convention on the persistent Organic Pollutants	Kyoto Protocol to the UN Framework Convention on Climate Change	UN Single Convention on Narcotic Drugs	UN Convention on Psychotropic Substances	UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	UN Convention against Corruption	TOTAL RATIFICATIONS
1	Congo	GSP	0	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	25	
2	Cook Islands	GSP	0	0	0	0	1	0	1	0	0	0	1	0	0	1	0	1	1	1	1	1	1	0	0	1	1	14	
3	India	GSP	1	1	1	1	1	1	1	1	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	25	
4	Indonesia	GSP	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
5	Kenya	GSP	0	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	25	
6	Micronesia	GSP	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	1	1	1	1	0	1	1	1	1	1	12	
7	Nigeria	GSP	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
8	Niue	GSP	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0	1	1	1	1	1	0	0	1	1	9	
9	Syria	GSP	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
10	Tadjikistan	GSP	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
11	Vietnam	GSP	1	1	1	1	1	1	1	0	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	25	
	TOTAL RATIFICATIONS		5	8	7	8	10	8	11	9	5	7	8	8	8	9	8	11	10	11	11	10	11	9	9	11	11		
1	Armenia	GSP+	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
2	Bolivia	GSP+	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
3	Cape Verde	GSP+	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
4	Kyrgyz Repub	GSP+	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
5	Mongolia	GSP+	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
6	Pakistan	GSP+	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
7	Philippines	GSP+	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
8	Sri Lanka	GSP+	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
9	Uzbekistan	GSP+	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
	TOTAL RATIFICATIONS		9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	9	
1	Afghanistan	EBA	1	1	1	1	1	1	1	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	24	
2	Angola	EBA	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
3	Bangladesh	EBA	1	1	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
4	Benin	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
5	Bhutan	EBA	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	0	1	1	1	1	13	
6	Burkina Faso	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
7	Burundi	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
9	Central Africa	EBA	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
10	Chad	EBA	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
11	Comoros	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
12	Congo (DRC)	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
13	Djibouti	EBA	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
14	Eritrea	EBA	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
15	Ethiopia	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
16	Gambia	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
17	Guinea	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
18	Guinea Bissau	EBA	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
19	Haiti	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	25	
20	Kiribati	EBA	0	0	0	0	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	1	0	1	0	0	0	18	
21	Laos	EBA	1	1	1	1	1	1	1	0	0	1	0	1	1	1	1	1	1	1	1	1	0	1	1	1	1	23	
22	Lesotho	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
23	Liberia	EBA	1	1	1	1	1	1	1	1	1	1	0	1	1	0	1	1	1	1	1	1	0	1	1	1	1	24	
24	Madagascar	EBA	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
25	Malawi	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
26	Mali	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
27	Mauritania	EBA	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
28	Mozambique	EBA	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
29	Myanmar	EBA	1	0	0	1	1	0	1	1	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	20	
30	Nepal	EBA	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
31	Niger	EBA	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
32	Rwanda	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
33	Sao Tome and	EBA	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	25	
34	Senegal	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
35	Sierra Leone	EBA	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
36	Solomon Islan	EBA	0	1	0	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	0	1	21	
37	Somalia	EBA	0	1	1	1	0	1	1	1	1	1	0	1	1	0	1	1	1	1	1	1	1	1	1	0	0	21	
38	South Sudan	EBA	0	0	0	0	1	1	1	0	1	1	1	1	1	0	1	1	1	1	1	0	0	0	0	0	0	14	
39	Sudan	EBA	1	1	1	1	0	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	25	
40	Tanzania	EBA	1	1	1	1	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	
41	Timor-Leste	EBA	0	1	1	1	1	1	1	1	1	1	0	1	0	1	0	0	0	1	1	0	0	1	0	0	1	17	
42	Togo	EBA	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	27	
43	Tuvalu	EBA	0	0	0	0	1	0	1	0	0	0	0	0	0	1	0	1	1	1	1	0	1						

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