

Human rights in EU trade policy

Unilateral measures

SUMMARY

Protection of human rights is one of the EU's overarching objectives in its external action, in line with the Treaty on European Union. One of the EU's main tools to promote human rights in third countries is the generalised system of preferences (GSP), granting certain developing countries preferential trade access to the EU market. Covering 90 third countries, the scheme includes explicit human rights conditionality, providing that preferences can be withdrawn in case of massive and systematic violations of core human rights or labour rights norms.

A special incentive arrangement grants further tariff concessions to countries that ratify and implement a series of international conventions. Based on systematic monitoring by the European Commission, this is the most comprehensive and detailed human rights mechanism established in the framework of EU common commercial policy. In practice, the EU has privileged a strategy of incentivising gradual progress through dialogue and monitoring, rather than withdrawing preferences.

Suspension of preferences under GSP is rarely applied and, when it is, it does not have an immediate and clear impact.

The EU's unilateral trade measures to protect human rights are not limited to the GSP. The EU has taken steps to prohibit or limit trade in items that could cause human rights violations, such as torture and execution items, or dual use goods. New legislation is being considered on conflict minerals, and the European Parliament has asked for a proposal for legislation to ban the import of goods produced using child labour.



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Glossary

Generalised system of preferences (GSP): EU trade regime established in line with the World Trade Organization (WTO) Enabling Clause and granting unilateral trade preferences to developing countries classified as low income or lower middle income economies or as least developed countries. Countries party to a preferential trade agreement with the EU, providing at least the same level of tariff preferences, are excluded after a transitional period.

Everything but Arms (EBA): a special GSP arrangement granting full duty-free, quota-free access for all products except arms and ammunition to countries classified by the United Nations (UN) as LDCs (least developed countries).

Standard GSP: grants customs duty reductions for around 66 % of all EU tariff lines to developing countries classified by the World Bank (WB) as low income or lower-middle income economies and which are not among the LDCs.

GSP+: a special incentive arrangement granting duty-free access for essentially the same 66 % of tariff lines as standard GSP, to countries which are considered especially vulnerable because of a lack of economic diversification and insufficient integration within the international trading system. In order to be granted the GSP+ status, countries have to ratify 27 international human rights, labour rights, sustainable development and good governance conventions, and comply with them, including with their monitoring requirements.

Overview of the GSP system

Established in 1971, the GSP is the oldest EU trade regime contributing to the promotion of human rights. The 1994 [GSP Regulation](#) included the possibility of suspending trade preferences because of forced labour for the first time. The [revised GSP Regulation](#) (2001) made reference to the eight fundamental Conventions of the International Labour Organization ([ILO](#)). In 2005, the scheme was overhauled after the 2003 WTO Appellate Body [found](#) the special arrangement rewarding certain countries for their efforts to fight trafficking in drugs to be discriminatory and thus contrary to WTO rules. A new regulation ([EU](#)) No 978/2012 was adopted in 2012 with effect from 1 January 2014. A three-layered structure comprising: **Everything but Arms (EBA)**; **Standard GSP**; and **GSP+** was introduced in 2005, but the 2012 Regulation modified the access conditions to Standard GSP and GSP+.

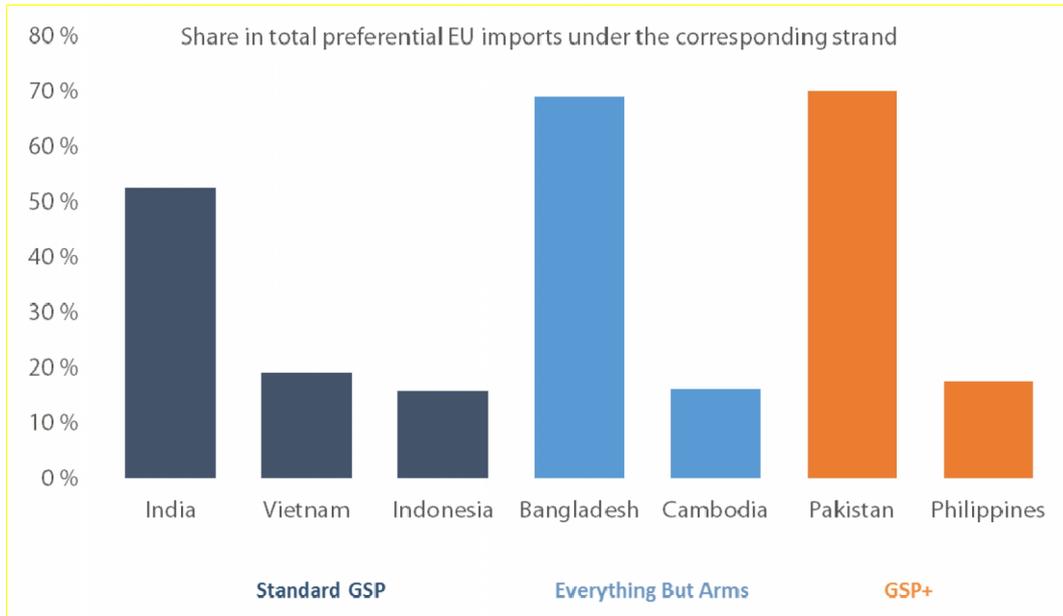
According to recital 7 of the GSP Regulation: 'the scheme should assist developing countries in their efforts to reduce poverty and promote good governance and sustainable development by helping them to generate additional revenue through international trade'.

GSP+ is 'the flagship EU trade policy instrument supporting sustainable development and good governance in developing countries' (as underlined by the European Commission in its 2012 [communication on trade, growth and development](#)).

The total volume of preferential imports to the EU under the three GSP components amounted to almost €51 billion in 2014, representing only 3 % of EU imports from the rest of the world (totalling [€1 692 billion](#) the same year). Therefore the relative importance of the scheme for EU trade in general is quite limited. On the other hand, for some of the countries concerned, the share of preferential exports to the EU is significant, compared to their total worldwide exports (Bangladesh, Pakistan, Sri Lanka) and this partly explains the leverage the EU has been able to garner from its trade preferences in order to promote human rights. The garment sector in the beneficiary countries has benefited most from the scheme. This economic sector has great potential to create

employment, especially for women, lifting people out of poverty. Thus, GSP contributes both directly and indirectly (through its conditionality) to improving human rights. On the other hand, the benefits of the system accrue mainly to a small number of countries. Around 90 % of the total volume of preferential exports to the EU under GSP originates in less than 10 countries, located mainly in South and South-East Asia. In each of the GSP layers, one single country is the source of more than 50 % of all EU preferential imports under the respective layer (see Figure 1).

Figure 1 – Main beneficiaries of the three GSP strands (Standard, EBA, GSP+) in 2014



Data source: Commission [report](#) on the GSP 2014-2015.

Human rights and labour rights conditionality

All three GSP layers include human rights and labour rights¹ conditionality. In fact, there are two levels of conditionality:

- **All GSP countries** have to comply with the **principles** laid down in core human rights and labour rights conventions listed in an annex to the regulation. They are subject to a negative conditionality: the preferences can be withdrawn in case of 'serious and systematic violations' of the principles enshrined in the respective international conventions.
- **The GSP+** in addition contains a positive and much more elaborate conditionality mechanism, also including environment and good governance treaties. Compliance with international norms actually provides the necessary justification under the WTO rules. The scheme is conceived as a way to assist vulnerable developing countries to assume the 'special burdens and responsibilities resulting from the ratification of core international conventions on human and labour rights, environmental protection and good governance as well as from the effective implementation thereof' (recital 11 of the 2012 Regulation).

Given this tight link with international norms, access to GSP+ comes with several strings attached:

- GSP+ countries have to ratify, without expressing prohibited or incompatible reservations, and comply with 27 international conventions on human rights, labour rights, sustainable development and good governance;

- To be accepted into GSP+, countries must accept the reporting requirements and monitoring mechanisms imposed by the 27 conventions without reservation;
- A GSP+ beneficiary country is obliged to cooperate with the European Commission and provide all necessary information to assess its respect of the binding commitments it agrees.

The European Commission is the main actor in the procedure for granting and withdrawing GSP+ preferences. To be included under the scheme, interested countries have to apply to the Commission,² which decides by delegated act to accept the applicant country under the GSP+. The Commission has the competence to monitor compliance with the relevant conventions by examining the conclusions and recommendations of the relevant international monitoring bodies. Every two years, the Commission presents a report to the European Parliament and the Council on the ratification status of the respective conventions, the compliance of the beneficiary countries with any reporting obligations under those conventions, and the status of the implementation of the conventions in practice.

The regulation provides for the inclusion of civil society and other actors in this monitoring; that is, the Commission has to assess the information submitted by third parties, including by civil society, social partners, the Parliament and the Council, when it evaluates the implementation of the relevant conventions (Article 16.3). When considering the possibility of suspending preferences, the Commission has to assess all the evidence available. The shortcomings identified in the implementation of the relevant conventions are included in a so-called score card and addressed through a regular dialogue with the authorities of the beneficiary countries. If the Commission establishes violations justifying the suspension, it issues a note about the initiation of a withdrawal procedure. In a first stage, it monitors the situation for six months in the country concerned; during this time the third country can submit its observations. Within a further six months, if no remedial measures have been taken by the third country, it can withdraw the trade preferences by delegated act.

Preferences withdrawal is thus a gradual process that aims to provide enough time to the country under investigation to answer to the concerns related to human rights and labour rights violations and possibly to remedy them.

History of preference withdrawals

According to Article 19.1(a) of the 2012 Regulation, all three GSP arrangements can be withdrawn in case 'of serious and systematic violation of principles laid down in the conventions listed in Part A of Annex VIII' (UN and ILO Conventions on core human rights and, respectively, labour rights). For GSP+ countries, failure to fulfil their more complex obligations with respect to a wider range of conventions (including governance and environmental norms) can lead to suspension. In practice, suspension of GSP preferences has to date only been applied in three cases: Belarus (from GSP), Myanmar/Burma (from GSP) and Sri Lanka (from GSP+).

Country	subject	to	Violations of human rights/labour rights leading to withdrawal of preferences
1997 Myanmar/Burma	GSP		Forced labour
2007 Belarus	GSP		ILO Conventions on freedom of association and on collective bargaining
2010 Sri Lanka	GSP+ (downgraded to GSP)		International Convention on Civil and Political Rights (ICCPR) Convention against Torture (CAT) Convention on the Rights of the Child (CRC)

Complaints have been made regarding other countries: in [1997](#), Pakistan was accused of allowing child labour, and China, which was a GSP country at the time, of labour rights violations, although these did not lead to investigations; in 2008, the Commission launched an [investigation](#) regarding El Salvador, a GSP+ beneficiary, with respect to its compliance with ILO Convention 87 on freedom of association, but [decided](#) not to withdraw preferences; in 2012, an [investigation](#) was launched on another GSP+ country, Bolivia, for failure to implement the UN Single Convention on Narcotic Drugs, but GSP+ status was [maintained](#).

Myanmar/Burma: Trade preferences were suspended for Myanmar in 1997, following allegations of forced labour by the military, which governed the country at the time. The efficacy of sanctions has been disputed, since the country's exports to the EU [doubled](#) between 1990 and 2012; with certain exports unaffected (e.g. oil). In 2013, the EU decided (the first time such a move occurred),³ to re-establish preferences for Myanmar, following the economic and political reforms initiated in the country in 2011, and after ILO decided to suspend its restrictive resolution on Myanmar the same year. Currently, the country qualifies for Everything But Arms (EBA) status. The EU continues to support Myanmar in improving its labour rights situation. Since 2015, the EU has participated in the [Initiative to Promote Fundamental Labour Rights and Practices](#) in Myanmar. Launched in 2014 by Denmark, Japan, Myanmar, the United States, and the ILO. The initiative supports labour law reforms and stakeholder consultation.

Belarus: In 2007, the EU decided to withdraw GSP trade preferences to Belarus because the country did not comply with its obligations under the ILO Conventions on freedom of assembly and collective bargaining. In accordance with the procedure in force at the time, the Commission recommended that sanctions be withdrawn, and the Council approved the recommendation in December 2006. Since Belarus failed to improve its compliance with ILO norms, preferences were withdrawn in June 2007. This occurred in a political context that was particularly tense in the country. Withdrawal of GSP was not explicitly undertaken as a political sanction. The [2008 GSP Regulation](#) admitted, however, that reinstatement of preferences was impossible due to the political situation in both Myanmar and Belarus (recital 23). Belarus could continue trading with the EU, but Belarussian exports became subject to standard non-preferential tariffs; the country is not a WTO member and thus not entitled to Most Favoured Nation (MFN) status. Since 2010, the EU imposes unilateral import quotas for Belarus, covering trade in textile and clothing products.⁴ These quotas could be [removed](#) in the near future, as the country has made some progress on human rights (political prisoners were freed).⁵

Sri Lanka: the country benefited from GSP+ from 2005 until 2010, when preferences were withdrawn because of massive and systematic human rights violations committed during the final stages of the civil war in 2008 and 2009. The main sector, which substantially

benefited from GSP+, was the ready-made garment industry, which is instrumental in generating employment and reducing poverty in Sri Lanka. The potential negative consequences on employment and poverty showcase the kind of dilemma the EU faces when deciding on sanctions. Indeed, the EU decision was [criticised](#) because it deprived poor people from rural areas of jobs and their livelihood (around 250 000 persons work in the industry, while an estimated 1 million people depend on the sector for their living).

The impact of trade preference withdrawal was ultimately likely smaller than initially feared. Certain estimations put this at -1 % of GDP and -1.1 % of employment, while the increase in poverty may be higher. In October 2013, the Minister of Investment Promotion [declared](#) that loss of the GSP+ had caused the closure of 25 apparel factories, forcing almost 10 000 people out of work. However, some of those factories, together with their employees, were taken over by larger companies. In 2013, three years after EU preferences were withdrawn, the sector was suffering an acute shortage of skilled workers. The economic and social impact of EU sanctions was therefore limited, although probably most harmful for unskilled and therefore more vulnerable garment workers.

The new Sri Lanka government, elected in January 2015, made significant progress on human rights ([praised](#) by NGOs) and decided to [reapply](#) for GSP+ in June 2016.

EBA and GSP+ biggest beneficiaries: a problematic human rights situation

Bangladeshi and Pakistani preferential exports to the EU amount in each case to more than two thirds of the total volume of goods exported to the EU under the EBA and GSP+ respectively. Both countries face enormous challenges, which highlight the complexity of EU conditionality.

Bangladesh: Bangladesh is the biggest beneficiary of the EBA scheme. Its ready-made garment sector is the main producer of goods exported to the EU. After the Rana Plaza disaster in 2013, when a building hosting garment factories collapsed, resulting in over 1 000 dead, the country became the focus of international attention, including on its disastrous compliance with labour rights. Exports to the EU are vital for the country's economy, representing about [10 %](#) of its GDP and securing 2.5 million jobs. Since the Bangladeshi government, as well as companies in the sector, were ready to make efforts to improve the situation, the EU decided against withdrawal of trade preferences. This contrasts with the action taken by the USA, which suspended its GSP preferences for the country following the disaster. However, this did not affect the garment industry, as the sector was not covered by US GSP.⁶ In the aftermath of the Rana Plaza disaster, a [sustainability compact](#) ('compact for continuous improvements in labour rights and factory safety in the ready-made garment and knitwear industry in Bangladesh'), was launched in order to improve labour, health and safety conditions for workers. The compact is a joint initiative between the Bangladeshi government and Canada, the EU, the USA and the ILO. Initial commitments made under the compact included reforming Bangladeshi labour law, recruiting additional inspectors to check factories, and improving building safety. Since its adoption, the Commission has released three progress reports on the implementation of the compact, in 2014, 2015 and 2016, and participated in compact follow-up meetings. The [third progress report](#), released in August 2016, while acknowledging improvements in enhancing building and workplace safety, notes that progress on workers' rights has been mixed. The legislative framework was improved, leading to an increase in trade union registrations, but further improvements are still needed, including in the legislation covering export processing zones (EPZs), where

national labour law does not apply. Full freedom of association and collective bargaining rights remain to be assured. The EU report reflects the ILO position in its [report](#).

International trade unions and civil society organisations have also pointed out that much remains to be done. Several [global trade unions](#) found that Bangladesh has failed to deliver on its commitments and asked the EU to use its trade preferences to oblige the country to comply. According to Human Rights Watch, the [challenges](#) to unionisation remain daunting, both at the legal level (at least 30 % of a factory's workers have to join in order to establish a labour union), and at practical level (there are reports of physical assault; intimidation and threats; dismissal of union leaders; and false criminal complaints against workers). In practice, it was possible to create unions in only 10 % of factories.

The general human rights situation is also problematic in the country. Freedom of speech is under [significant pressure](#), and enforced disappearances, likely perpetrated by state security agents, have become [routine practice](#).

On 29 April 2015, the European Parliament adopted a [resolution](#) on the second anniversary of the Rana Plaza disaster, in which it welcomed the EU-led initiative to launch the compact, but also expressed concern about the situation in EPZs, where trade unions remain banned and working conditions, health and safety standards are poor. Parliament further noted the important role played by the EBA initiative in Bangladesh's economic development and its contribution to improving material conditions for millions of people, in particular women. Parliament also required sound conditionality in the area of human and labour rights, without which EBA and GSP risk exacerbating low standards in worker protection.

Pakistan: is the biggest beneficiary of the GSP+ scheme, coming under the special monitoring mechanism put in place by the EU. As the Commission acknowledges in its 2016 report, even if Pakistan has ratified the relevant international instruments, the situation with regard to many human and labour rights remains problematic. Enforcement of human rights conventions in the country remains deficient because of social attitudes, the weakness of state institutions, and the legal uncertainties emanating from the devolution of power.⁷

To give two examples of major problems: the suspension of the death penalty moratorium and the resumption of executions in Pakistan was strongly criticised by civil society. While abolition of the death penalty is not among GSP+ conditions, Pakistan maintains the death penalty for a large number of crimes (including blasphemy), some of which do not fall into the category of 'most serious crimes', contravening the International Covenant on Civil and Political Rights (ICCPR), which is one of the 27 GSP+ conventions with which the country has to comply. With regard to labour rights, Pakistan ranks sixth in the world on the [2016 Modern Slavery Index](#), with an estimated 2.1 million people (or 1.13 % of its population) living in modern slavery. This is in clear violation of both UN and ILO conventions.

Economic benefits from GSP+ are significant. In 2014, the first year of GSP+ status, exports to the EU increased by almost [€1 billion](#), or in relative terms by 21.5 %. Given the importance of GSP+ exports for creating employment (75 % of exports are garments and textile products – a sector that is labour intensive) and thus for reducing poverty, any suspension of preferences could be counterproductive. Taking into account the progress achieved at both legal and institutional levels, with the implementation of the relevant international norms, the Commission has decided to continue GSP+ for the country.

In its resolutions on Pakistan ([2014](#) on blasphemy laws and [2015](#) on the situation following the Peshawar school attack), the European Parliament underlined that GSP+ status comes with strings attached and called upon the Commission to strictly monitor Pakistan's compliance.

Is GSP human rights conditionality effective?

Whether conditionality has been effective is the subject of a complex debate. To qualify for EBA or standard GSP, a country has to fulfil purely economic criteria. It is inevitable that eligible states will include some with a problematic human rights situation. Because suspension of preferences has a limited economic impact and/or because the political regime does not wish to bend to external pressure, such countries are unlikely to react to the threat of or actual withdrawal of preferences. Unlike the case of EBA and Standard GSP, for GSP+ status, countries must apply individually. When they do, they have a clear interest in the scheme, and EU leverage is more significant.

Given the limited number of cases in which suspension of preferences was applied (only three), it is impossible to make any meaningful generalisation about its effectiveness. The three countries which lost preferences, Belarus, Myanmar and Sri Lanka, did not take meaningful measures to remedy the situation. The latter two have in the long run initiated substantial political reforms accompanied by a regime change, which in the case of Myanmar led to the reinstatement of preferences; in the case of Sri Lanka, this is likely to happen in the near future. The only country of the three whose economy was significantly affected by the loss of preferences was Sri Lanka. Nevertheless, it is impossible to assess the relative importance of EU trade measures among a myriad of other factors driving regime change and political and economic reforms.

The EU's scope for action is circumscribed by the position taken by the relevant international monitoring bodies. The Commission is obliged to take their conclusions into account in cases of GSP+ suspension. In practice, preferences in the case of Belarus and Myanmar were suspended after ILO discovered serious violations of its conventions. When reinstatement occurred, in the case of Myanmar, this was preceded by ILO withdrawal of its restrictive resolution. The tight connection with ILO reports was also visible in other cases. For example, when Uzbekistan was accused of using child and forced labour, including with the complicity of the [government](#), in its cotton fields, the Commission considered that since ILO has not established serious and continued failures to implement the relevant Conventions, it was not necessary to withdraw trade preferences. The Parliament also considered the ILO position crucial. In a [2011 resolution](#) on a European Communities-Uzbekistan partnership and cooperation agreement and bilateral trade in textiles,⁸ the Parliament stated that if ILO monitoring bodies conclude that serious and systematic breach of Uzbekistan's obligations exists, the Commission should consider initiating temporary withdrawal of the GSP.

The system's most effective leverage is not primarily based on the real use of sanctions, but on its strength to act as a deterrent due to the consequences of a potential loss of trade preferences. According to the Commission, sanctions should only be applied in

Criticism expressed in the [academic literature](#):

- The EU is inconsistent in applying sanctions towards countries that are the subject of serious ILO criticism, e.g., Belarus was not the gravest case of labour rights violations.
- The procedure for granting and withdrawing trade preferences lacks transparency. This criticism applied to the situation before the new GSP Regulation.
- The EU has been reluctant to apply sanctions in many cases.

extreme cases, while in most other cases incentives, being more effective, are preferable to sanctions. By providing preferential access, the GSP system motivates beneficiary countries to maintain their market access and therefore pay attention to human rights violations. The system opens a channel of communication and dialogue on a wide range of human rights issues. That this approach privileges monitoring and dialogue, with sanctions deployed only in the most extreme cases is reaffirmed in the European Commission's [trade for all](#) strategy. As the experience with Bangladesh and Myanmar demonstrates, establishing additional mechanisms to promote labour rights with other international actors can be an effective way to address shortcomings, albeit with limitations.

By providing additional preferences, compared to standard GSP, GSP+ conditionality is considered to be more effective – potentially stronger than the conditionality imposed by the human rights clauses in bilateral free trade agreements (FTAs). For example, an analysis of the FTA with Columbia [shows](#) that the previous GSP+ conditionality was stronger, since the EU could more easily suspend trade preferences. GSP+ is particularly effective in encouraging countries to ratify relevant international instruments in order to qualify. According to the [Commission](#), GSP+ is an 'incentive-based approach which generates momentum for positive change'.

As the GSP system in its current form is relatively recent, it has not yet exhausted its potential to encourage improvements. Problems persist mainly at the implementation level. Although many countries covered by GSP+ have ratified the required international conventions, still experience serious difficulties with implementation. In January 2016, the Commission published its first report on the monitoring of GSP+ countries, which includes a detailed case-by-case analysis of compliance of each one of the 27 Conventions listed in the annex to the GSP Regulation. The report notes that all beneficiary countries have made progress, especially at the level of putting the legislative and institutional frameworks in place, and of reporting obligations, but much remains to be done at the implementation level in certain countries. According to the report, 'beneficiaries are expected to demonstrate serious efforts towards tackling the identified problems'.

With its comprehensive mechanism, the GSP+ is also a good experimental ground for testing ways to monitor and assist third countries, which could be applied to other GSP beneficiaries, as recognised in the trade for all strategy, too

Several proposals were made by civil society organisations and other commentators to improve the system:

- carry out an impact assessment of any trade measures to be taken in response to human rights violations and balance any negative impact on the local population and affected workers against its possible effectiveness;
- overcome the narrow alternative 'maintaining-withdrawing preferences', particularly in the EBA and standard GSP schemes, by introducing additional mechanisms. One [proposal](#) is to institute an obligation on economic operators who want to export to the EU to enforce respect of human rights and labour rights. Companies would be required to put in place due diligence practices, in line with the UN guiding principles on business and human rights.
- [modify](#) the standard GSP and EBA schemes, to blacklist companies responsible for serious human rights violations, which wish to export to the EU.

To be compatible with WTO rules, any such modification would have to be non-discriminatory toward third countries.⁹

In a 2016 [resolution](#) on implementation of Parliament's 2010 recommendations on social and environmental standards, human rights and corporate responsibility, the European Parliament recommends clarification, either through a delegated act or through the forthcoming revision of Regulation (EU) No 978/2012, of the definitions of a 'serious failure to effectively implement' an international convention, and of 'serious and systematic violation of principles' contained in an international convention. Parliament also calls for social partners and civil society organisations to be given a formal role in GSP and GSP+ monitoring. The EP proposes to introduce corporate social responsibility in the GSP Regulation, to ensure transnational corporation compliance with human and labour rights, and to reform WTO rules to institute supply chain due diligence and transparency requirements, building on the UN guiding principles for business and human rights.

Other unilateral trade measures to protect human rights

Sanctions under the GSP consist of the annulment of trade preferences granted unilaterally by the EU and do not amount to trade restrictions strictly speaking, since the countries concerned revert to trading with the EU on non-preferential terms. The EU can also adopt trade restrictions in the framework of its common foreign and security policy, on grounds that are more or less explicitly related to grave human rights violations or/and in connection with UN Security Council sanctions. Examples of such measures include the trade restrictions adopted against Syria (the [embargo](#) on exports to Syria of equipment that can be used for internal repression, and of weapons; the import ban on oil from the country) or the weapons embargo against China, instituted through a declaration of the European Council after the 1989 Tiananmen massacre and still in place.

In the framework of its common commercial policy, the EU can institute certain unilateral trade restrictions in order to protect human rights. They have to be in line with WTO rules if they affect trade with countries that are WTO members ([164](#) states are WTO members).¹⁰ The EU has already adopted several such trade measures, while others are being prepared.

Prohibiting trade in items that can be used to violate human rights

Trade in dual-use items

In line with the 2015 [trade for all](#) strategy, which seeks modernisation of EU policy on export controls to prevent the misuse of digital surveillance and intrusion systems that results in human rights violations, the [Commission](#) published a [proposal](#) to recast the Dual-use Regulation (No 428/2009) on 28 September 2016. The proposal contains provisions related to the control of exports of cyber-surveillance technologies to countries with authoritarian or repressive governments. Such systems may be used to infiltrate the computer systems of human rights activists leading to their imprisonment and even death, thus violating fundamental human rights.

Trade in items that could be used for torture, ill treatment and executions

Since 2004, the EU has an export control system in place covering goods that can be used for [executions or torture](#) and other forms of ill treatment. Trade in items designed specifically for such items is prohibited, except when intended for display in a museum, while trade in items that have legitimate purposes, but could be used also for torture or executions, is made subject to authorisation. This system has proved particularly effective with regard to medicinal substances used in executions, of which the EU is a major exporter. Restrictions on such trade have made executions particularly difficult in the USA. The export control system has been a further [tightened](#), to include related services such as advertising, brokering or transit through EU territory.

Restricting imports of products whose production is related to human rights violations*Conflict minerals*

In 2002, the EU adopted [Regulation \(EC\) No 2368/2002](#), implementing the Kimberley Process certification scheme for the international trade in rough diamonds. Recognising the devastating impact of conflicts fuelled by trade in diamonds and the gross human rights violations engendered in the trade, the regulation bans all imports into the European Union of rough diamonds that are not accompanied by an appropriate certificate proving they are not related to conflict. The EU has taken further steps to ban the import of conflict related minerals. The [proposal](#) for a conflict minerals regulation, the subject of an ordinary legislative procedure since 2014, aims at preventing international trade in several minerals from financing human rights abuses. The regulation has not yet been adopted but after a [political agreement](#) was reached in June 2016, the final draft was [agreed](#) in trilogue negotiations in November 2016. The final agreement endorses an obligation of due diligence for importers of potential conflict minerals, with the exception of the smallest importers, a [modification](#) to the initial Commission proposal requested by the European Parliament.

Fighting trade in products produced using child labour

The European Parliament has requested a legislative proposal on banning EU imports of products made using [child labour](#). In a July 2016 [resolution](#), Parliament repeated its demand, made in a 2010 resolution, 'for a balanced and realistic proposal for legislation', including measures such as labelling child-labour-free products and prohibiting imports of goods made with child labour. However, in a 2013 [staff working document](#), the Commission expressed reservations towards the concept of such a legislative proposal considering that a traceability mechanism would be very difficult to implement for certain supply chains and would also be costly for poor countries.

Role of the European Parliament

The Lisbon Treaty granted Parliament the competence to adopt 'the measures defining the framework for implementing the common commercial policy', together with the Council, under the ordinary legislative procedure. The European Parliament was co-legislator on the regulation establishing the GSP, and plays the same role for legislation establishing other unilateral trade measures to protect human rights. The Commission plays a central role in granting GSP+ preferences and in withdrawing all GSP scheme preferences, acting through delegated acts. The Parliament and the Council can object to a Commission decision, but cannot ask expressly for a country to be excluded from GSP.

The European Parliament has several times invoked GSP conditionality in its resolutions, requesting that the Commission use conditionality requirements more consistently. According to [academic research](#), the Parliament is considered to have a more favourable view of sanctions. The Commission considers sanctions as a measure of last resort, while 'the EP and civil society at large, on the other hand, are said to be 'in favour of a stronger, more consistent and clearer use of the human rights clause and related sanctions', thereby clearly favouring the 'stick' approach.'

Given that the strengthening of Parliament's role has taken place recently, through the adoption of the Lisbon Treaty, scope remains for enhancing interinstitutional cooperation. The EU strategic framework for human rights encourages greater cooperation between the European Commission and Parliament on human rights in general. According to [commentators](#), 'this collaboration still remains "ad hoc" without any clear guidance as to how to systematically ensure cooperation on a recurring basis.'

Main references

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Endnotes

- ¹ This briefing addresses both the topic of human rights and labour rights in EU unilateral trade measures. There is a significant overlap between the two, as most ILO Conventions listed in the GSP regulation deal with rights that also appear in UN core human rights treaties: prohibition of forced labour and of child labour, freedom of association, and prohibition of discrimination.
- ² The details of the procedure have been laid down in a [Delegated Regulation](#) (EU) No 155/2013.
- ³ Given Myanmar's progress with labour reforms and strengthened workers' protection, the USA has decided in September 2016 to [reinstate the GSP](#) system for the country.
- ⁴ The imposition of textile quotas is an instrument the EU can use with countries that are not WTO members. Such measures would be very hard to justify for WTO member states, as quotas for textiles [were phased out](#).
- ⁵ GSP cannot be reinstated, since, as an upper middle-income economy, the country no longer qualifies.
- ⁶ The [US Generalized System of Preferences \(GSP\)](#) is a programme designed to promote economic growth in the developing world. It provides for duty-free entry into the US market for some [5 000](#) products originating in a wide range of designated beneficiary countries, including many least-developed countries, but does not grant benefits for textile products, which are excluded from the scheme.
- ⁷ See Commission working staff document annexed to the 2016 GSP [Report](#), p. 190.
- ⁸ To date, this agreement has not been ratified.
- ⁹ An open question remains whether WTO rules (particularly the public morals as well as the public health exceptions under the GATT), allow for restrictive trade measures to be introduced to protect human rights extraterritorially (EU unilateral measures aim mainly to protect human rights in its partner countries). For example, in order to assure legal certainty for the Kimberly process, a WTO waiver was requested. For more information on the topic, see: *Balancing Human Rights Environmental Protection and International Trade*, Emily Reid, 2015, chapter 8.
- ¹⁰ See previous note.

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