

Human rights in EU trade policy

Unilateral measures applied by the EU

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90 third countries, the scheme includes explicit human rights conditionality, providing that preferences can be withdrawn in case of massive and systematic violations of core human rights or labour rights norms.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 under the GSP grants further tariff concessions to countries that ratify and implement a series of international conventions. Based on systematic monitoring by the European Commission, this special scheme is the most comprehensive and detailed human rights mechanism established in the framework of the common commercial policy. While the scheme has been particularly effective in encouraging beneficiary countries to make the necessary legislative and institutional changes, such progress has not been matched at the level of implementation.

Suspension of preferences under GSP has been applied in only a few cases and, when it was, did not have an immediate and clear impact on the human rights situation. In practice, the EU has privileged a strategy of incentivising gradual progress through dialogue and monitoring, rather than withdrawing preferences.

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 equipment, and dual use goods. New legislation has recently been adopted on conflict minerals, and the European Parliament has called for a proposal for legislation to ban the import of goods produced using child labour.

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In this Briefing

- Overview of the GSP system
- Human rights and labour rights conditionality
- History of preference withdrawals
- Biggest EBA and GSP+ beneficiaries: a problematic human rights situation
- Is GSP human rights conditionality effective?
- Other unilateral trade measures to protect human rights
- Role of the European Parliament

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 (LDCs). 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.

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.

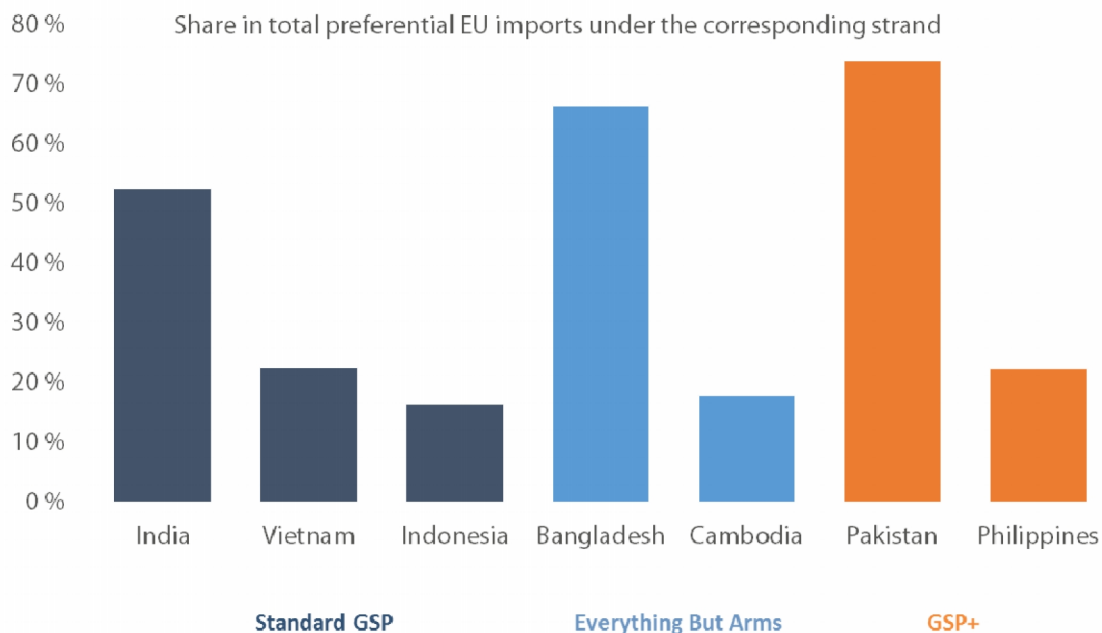
Overview of the GSP system

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+.

The total volume of preferential imports to the EU under the three GSP components amounted to [€62.2 billion](#) in 2016. This was a significant increase from almost [€51 billion](#) in 2014, but GSP imports to the EU still amounted to only 3.6 % of total EU imports from the world (totalling [€1 713 billion](#) in 2016). 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 textile and garment sector in the biggest GSP exporters (see Figure 1) 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. 87 % of the total volume of preferential exports to the EU under GSP originated in 2016 in just six countries, all located 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 2016



Data source: Commission [report](#) on the GSP 2016-2017.

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 negative conditionality: 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 labour rights, respectively). If the European 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 GSP beneficiary 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. When considering the possibility of suspending preferences, the Commission has to assess all available evidence. 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.
- **The GSP+** in addition contains a positive and much more elaborate conditionality mechanism, also including environment and good governance treaties, which rewards the GSP+ beneficiary countries with additional trade preferences for compliance with international norms. This compliance actually provides the necessary justification under 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 14(3)). The shortcomings identified in the implementation of the relevant conventions are included in a score card and addressed through a regular dialogue with the authorities of the beneficiary countries.

Both the Council and Parliament can object to the Commission's delegated acts (to withdraw preferences for all the strands and to include countries under the GSP+). In the Council, a mechanism applies since January 2014, under which the [Working Party](#) on the Generalised System of Preferences issues a confirmation of 'no objection' to the Commission's draft delegated acts.

History of preference withdrawals

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. The [third forum](#) of the initiative took place in January 2018.

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 preferences 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 (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 had imposed unilateral import quotas for Belarus, covering trade in textile and clothing products.⁴ These were [removed](#) in 2017 following the release of political prisoners in Belarus in 2015, together with several positive initiatives undertaken by Belarus, such as resumption of the EU-Belarus Human Rights Dialogue.⁵ Should the human rights situation deteriorate again, the Union can reintroduce the quotas. Currently, Belarus is no longer eligible under the GSP scheme.

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 of jobs, endangering their livelihood.

The impact of trade preference has been a matter of controversy in the country, with the previous administration trying to minimise it for obvious political reasons as they bore the responsibility. 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. According to the same source, in 2013, three years after EU preferences were withdrawn, the sector was suffering an acute shortage of skilled workers. According to the current [Deputy Foreign Minister](#) of Sri Lanka on the other hand, the impact of the GSP+ withdrawal on the country's competitiveness had been very disruptive and the overall loss has been estimated at over US\$1 billion.

The new Sri Lankan government, which came out of the January 2015 elections, made significant progress on human rights ([praised](#) by NGOs) and decided to [reapply](#) for GSP+ in June 2016. GSP+ was [reinstated](#) for Sri Lanka in May 2017, rewarding the major steps undertaken by the country to improve governance and respect for human rights, such as re-establishing the independence of key institutions, ensuring that cases of missing persons are examined; offering better protection of witnesses and victims; releasing people detained under controversial anti-terrorism regulations; and

combating child labour. At the same time, the Commission recognises that a series of issues persist, which will need continuous monitoring.

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

Bangladeshi and Pakistani preferential exports to the EU amount in each case to more than half the total volume of goods exported to the EU under the EBA and GSP+ respectively (two thirds for Bangladesh and three quarters for Pakistan). 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. At the time of the disaster they represented about [10%](#) of its GDP, 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 four progress reports on the implementation of the compact, in 2014, 2015, 2016 and 2017, and participated in compact follow-up meetings. The last report from October 2017 recognises the progress made by the Bangladeshi government, but stressed that 'considerable efforts still need to be made to ensure that real change takes place, and is sustained over the long term, in relation to workers' rights and workplace safety in Bangladesh. The Commission requires further action in areas such as bringing national legislation into line with ILO standards on freedom of association, improving trade union registration standards, investigating anti-trade union acts, and improving the capacity for factory inspection.

International trade unions and civil society organisations have also pointed out that much remains to be done. In particular the brutal crack-down by the government and employers on [workers](#) protesting to demand higher wages and better working conditions in December 2016 in the Ashulia district of the capital drew strong international [condemnation](#), including from European retailers. Global trade unions, including IndustriALL, the ITUC, and UNI, [denounced](#) the failure of the Compact to improve garment factory working conditions, ahead of the Sustainability Compact follow-up meeting in May 2017, and asked the EU to launch an investigation into the country maintaining GSP status. According to the latest [report](#) on Bangladesh released by Human Rights Watch, Bangladeshi authorities failed to implement their commitments under the Sustainability Compact in 2017. For example, there was no accountability for attacks, intimidation and retaliation against workers, particularly those who are unionised.

According to the same report, the general human rights situation is also problematic in the country. Freedom of speech is under significant pressure, and state security forces are not held accountable for secret detentions, enforced disappearances, torture and extrajudicial killings. The situation of women's rights has also deteriorated, as the legal limit of 18-years old for marriage for girls has recently been dropped in undefined 'special' [circumstances](#). In June 2017, the European Parliament adopted a [resolution](#) on the State of play of the implementation of the Sustainability Compact in

Bangladesh. The Parliament called on the government of Bangladesh to make enhanced efforts to improve safety and working conditions and workers' rights in the garment sector. It further expressed its support for a possible EU-wide initiative on the garment sector, with voluntary initiatives and strict codes of conduct, and asked the Commission to consider introducing binding EU legislation on due diligence. It also stressed that the Bangladesh Sustainability Compact could serve as a model for the establishment of similar partnerships with third countries.

Pakistan: is the biggest beneficiary of the GSP+ scheme, coming under the special monitoring mechanism put in place by the EU. 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 %. As the Commission acknowledges in its [2018 report](#), even if Pakistan has ratified the relevant international instruments, the situation with regard to many human and labour rights remains problematic. The Commission mentions the following areas in which there has been no improvement, or the situation has even worsened: enforced disappearances and extrajudicial killings, widespread use of torture, the death penalty and executions; difficult situations of religious and ethnic minorities; freedom of expression, freedom of association and assembly, the situation of human rights defenders and civil society activists. The Commission assessment reflects the concerns expressed by civil society, labour unions and other stakeholders. The suspension of the death penalty moratorium and the resumption of executions in Pakistan has been met with utmost concern. Pakistan was one of the leading [executioners](#) in the world in 2017. 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 [2018 Modern Slavery Index](#), with an estimated 2.13 million people (or 1.13 % of its population) living in modern slavery. This is in clear violation of both UN and ILO conventions. Discrimination against religious minorities also remains a [major concern](#). The country's record on labour rights compliance is poor. The [Pakistan Workers Confederation](#) has pointed out serious implementation shortcomings with regard to labour rights and standards in the country. For example, labour unions, collective bargaining and strikes are forbidden in the export-processing zones.

Women's rights are another area where much progress is still needed. Garment and textile products make up the vast majority of Pakistan's exports to the EU, but unlike in other GSP countries this sector has not benefitted women so much. The textile factory workforce is dominated by men, also as a result of patriarchal attitudes confining women at home. Working women face serious discrimination at work and significant salary [gaps](#). Pakistan is late in fulfilling its reporting obligations under the Convention on the elimination of discrimination against women, its latest national report being overdue since March 2017.

The continuation of the GSP+ for Pakistan is justified by the Commission on the basis of progress made in adopting new legislation and establishing new institutional structures. However, the Commission recognises that at the level of implementation, progress has been partly unsatisfactory due to capacity constraints, difficult circumstances (such as the security situation) and a 'lack of political priority' for required measures. The Parliament has been closely following the human rights situation in Pakistan and has urged GSP+ conditionality to be enforced. 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. In its most recent [resolution from 2017](#) on Pakistan, notably on the situation of human rights defenders and the death penalty, the EP condemned the use of the death penalty in Pakistan following flawed trials, the execution of minors and persons with mental disorders in violation of international standards, deplored the roll-back over respect of human rights and expressed concern over the continued use of the blasphemy law in the absence of adequate safeguards.

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, some 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 has been 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, initially 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 and Sri Lanka led to the reinstatement of preferences. 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 the 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,⁷ the Parliament stated that, if ILO monitoring bodies conclude that a 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 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

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 especially to the situation before the new GSP Regulation.
- The EU has been reluctant to apply sanctions in many cases.

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'.

Progress at legislative level has not yet been matched by progress at the level of implementation in many beneficiary countries. In January 2016, the Commission published its first report on the monitoring of GSP+ countries, and in January 2018 the [second one](#). Both include a detailed case-by-case analysis of compliance of each one of the 27 conventions listed in the annex to the GSP Regulation. Both reports have reached similar conclusions, namely 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. As the GSP system in its current form is relatively recent, it has not yet exhausted its potential for change. Close follow-up and cooperation with beneficiaries can still achieve positive results. 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 have been 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.⁸

In a 2016 [resolution](#) on implementation of Parliament's 2010 recommendations on social and environmental standards, human rights and corporate responsibility, the European Parliament recommended 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 called for social partners and civil society organisations to be given a formal role in GSP and GSP+ monitoring. The EP proposed 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) and 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).⁹ The EU has already adopted several such trade measures, while others are being prepared.

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. The Parliament adopted its position on the proposal in January 2018 and decided to open interinstitutional negotiations. These will begin after the Council has agreed its negotiating position.

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 also be used 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 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 of origin proving they are not related to conflict. The EU has taken further steps to ban the import of conflict related minerals. The recently adopted [Conflict Minerals Regulation](#) (which will apply fully only from 2021) aims at preventing international trade in several minerals from financing human rights abuses. It endorses an obligation of due diligence for importers of potential conflict minerals, with the exception of the smallest importers. This was a [modification](#) to the initial Commission proposal requested by the European Parliament and agreed by the Council. Companies which do not import directly from conflict-affected areas but which use minerals in their production processes are asked to report voluntarily on their due diligence measures.

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.'

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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 To date, this agreement has not been ratified.
- ⁸ 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.
- ⁹ See previous note.

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epgs@ep.europa.eu (contact)

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