



SCRUTINISING THE NEW GSP+ MECHANISM AFTER TWO YEARS: WILL IT DELIVER ON HUMAN AND LABOUR RIGHTS?

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Trade agreements provide a legal framework for economic exchange between countries or trade blocs such as the European Union (EU). While trade agreements are often solely seen as economic policies to regulate import and export, regulate services, monitor capital and protect investments, EU trade agreements and regulations increasingly include provisions concerning core human and labour rights Conventions. One of these regulations is the EU's Generalised System of Preferences Plus (GSP+).

There are arguably several benefits to gaining a GSP+ status, as it will allow beneficiary countries to increase their export share to the EU significantly. For example, the 10 months following Pakistan's granted status in 2014 trade with the EU increased by USD 1 billion (Euro 924.641.710)¹ Attaining GSP+ status also tends to generate increased investment as it improves beneficiary countries' economic competitiveness. For example, the Philippines, which was granted GSP+ status in December 2014, experienced an increased domestic investment in cycling production facilities². Increased investment, in turn, tends to generate additional jobs and labour market growth. In order for the beneficiary country to maintain the benefit of market access against reduced tariffs they must ensure ratification and implementation of the conventions. Thereby linking an economic incentive to promote the adoption and implementation of core human and labour rights conventions in developing countries.

THE EU'S GENERALIZED SYSTEM OF PREFERENCES PLUS (GSP+)

The EU's GSP+ links the ratification and implementation of core human and labour rights Conventions to trade incentives by providing beneficiary countries with greater access to the

1 <http://www.dawn.com/news/1162303>

2 <http://www.bike-eu.com/home/nieuws/2015/1/shimano-philippine-factory-opened-1014543>

European Market³. GSP+ thereby allowing beneficiary countries to export their products to the European market against reduced or zero import tariffs in return for their compliance with the requirement set out in the scheme.

The main requirements of GSP+ stipulate that countries that want to benefit from the scheme, need to: 1) ratify core human and labour rights conventions, 2) ensure that no "serious failure to effectively implement any of those conventions were identified"⁴, 3), and that they, comply with the reporting requirements. The reporting requirement, include regular dialogue with the EU, submitting their national report to United Nations Human Rights bodies, which allows experts to monitor implementation of the treaty provisions and engagement with the International Labour Organisation (ILO) on the implementation of the core labour conventions.

HOW IS GSP+ MONITORED?

GSP+ beneficiary countries are reviewed every two years by the European Council and European Parliament and is awarded for a period of 10 years. In practice, the adoption and implementation of the core human and labour rights conventions and treaties are based on a continuous dialogue between the EC and the beneficiary country.

These dialogues are based on so called Scorecards, which are drafted by the European Commission and shared with the beneficiary countries. The Score Cards provide a "snapshot of shortcomings in implementation" of the human rights and

3 See Annex VIII of the GSP regulation for a full overview of all conventions http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf

4 http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf Article 9(1)

labour Conventions. The Scorecards are drafted by the EC on the basis of the official UN and ILO reports on the implementation⁵ of international Conventions.

Unfortunately these Scorecards remain secret and not accessible to third parties, these being CSOs or labour rights organisations, thereby leaving out a key player in the process of monitoring the compliance with conventions in practice.

Besides the lack of access to the Scorecards by civil society, there remains ambiguity in assessment in the absence of a definition of a number of key terms in the GSP+ regulation. For example, GSP+ states that “serious and systematic violation’ (Article 19(1) a) of the core human and labour rights⁶ and “other sources of information, provided that they are accurate and reliable” (par 15)⁷, result in failure of compliance.

Even, if countries fail to implement and more importantly renege on core human and labour rights, any sanctions will be deferred as the GSP+ encourages improvement of the human and labour rights conditions.

GSP+ THE ROLE OF THE EUROPEAN PARLIAMENT

Trade is an exclusive competence of the European Union (EU), meaning that the EU is responsible for the commercial policy and trade agreements with third countries, rather than each individual Member State. This also has its implications for the role of the European Parliament (EP), which has become a co-legislator, giving it the power to reject trade agreements and policies that it does not approve of. This also counts for the GSP+ beneficiary countries, which were to be assessed under the new rules set out in the Lisbon Treaty.

The first countries that applied for GSP+, according to the European Commission, were presented to the EP as a batch, which made an individual assessment of each country impossible, because the rejection of one country would automatically mean that all the other countries in the batch would also be rejected automatically. An amendment to change the review process to an individual assessment of each country failed to reach a majority in the Committee on International Trade (INTA), thereby granting all the countries in the batch GSP+ status automatically.

THE ROLE OF CIVIL SOCIETY

Civil society is said to be important in this review process, although civil society engagement is not explicitly stipulated in the regulation⁸. Engagement with CSOs is also recognised and stipulated in a number of other EU policies, such as the in the

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5 http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153231.pdf

6 http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf p.10

7 http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf p. 3

8 Ostrom (1990); Rosenstone and Hansen (1993); and Verba, Schlozman and Brady (1995).

EU roadmaps for the engagement with CSOs and the EU Action Plan on Democracy and Human Rights, to name a few. CSOs play an important mediating role between individual members of society and the government, but more importantly the performance of governments is improved dramatically when they deal with organised CSOs as opposed to non-organised individuals. Thus, only the reports of the official United Nations and ILO monitoring bodies can be used by the European Commission to assess progress made by the beneficiary countries. Therefore, it remains unclear how to ensure input and strengthen the regulation in line with the norms of transparency and partnership prompted by the European Union.

In principle, embedding rights mechanisms into trade agreements can serve as an effective tool for ensuring oversight and compliance. Unfortunately, the content of rights provisions are negotiated in a secretive, non-transparent manner, lacking input from civil society and thereby missing an opportunity to enhance the improvement of labour conditions and human rights standards.

Consequently, the combination of lack of clarity and transparency inevitably begs the question: how can the GSP+ system effectively influence social change in beneficiary countries if sanctions are absent? This is especially pertinent as in 2016, the EU's GSP+ beneficiary countries (e.g. Pakistan, Mongolia, Cabo Verde) will undergo a first round of progress reviews on the implementation of core labour and human rights conventions that are part of GSP+.

HOW TO STRENGTHEN THE REGULATION?

EU trade with third countries, and GSP+ in particular, does not serve the EU's economic and political goals only: it is also a tool to promote human rights and democracy in third countries. GSP+ could be a valuable scheme, as it provides a framework in which governments need to uphold the substantial guarantees for the protection and promotion of human rights. However, its promises might remain unfulfilled given a number of transparency issues that threaten its sustainability/legitimacy as a dual mechanism.

The GSP+ framework should be strengthened to achieve its full potential. The EC is encouraged to take the following steps to increase the transparency and effectiveness of the GSP+ mechanism while simultaneously improving labour and human rights in beneficiary countries.

- As a first step, DG Trade in the European Commission should make public its Scorecards, not only to highlight specific issues in the beneficiary countries, but also allowing CSOs to work on improving these identified issues.
- Each beneficiary country should be assessed individually on their labour and human rights record. Thus, the EU/EP should refrain from addressing countries as a batch as was the case when the first group of beneficiary countries were granted GSP+ status. This will furthermore allow for a stronger human rights and labour assessment to take place.
- Regular public CSO debriefs on the dialogues with beneficiary countries should take place. This is already the case with human rights dialogues and the process could be emulated to GSP+.
- Civil Society Organisations (CSOs) need to be involved during all phases of consideration for GSP+ eligibility – i.e. application, monitoring, and review – and the EC should provide clear information on how third parties can submit input. This is of particular importance during the application stage, which may be the point at which the conditionalities of GSP+ are taken most seriously by applicant countries.
- It is imperative that definitions in the regulation are clarified, such as the use of “other sources of information provided that they are accurate and reliable”. The ambiguity in wording allows for a broad interpretation. Clarification of the definitions used would clarify the means through which engagement with the regulation can be improved.
- Furthermore; Involvement of NGO in beneficiary countries, also serves as a means to legitimize NGOs, making them partners of the government that can assist with the implementation of the human and labour rights conventions. NGO are currently often seen as threats in several of the beneficiary countries.
- Finally, it is imperative that all ambiguity in the framework is removed and current human and labour rights benchmarks within GSP+ are clarified. Clear benchmarks, based on pre-established, well-defined and accessible criteria, should be incorporated into the GSP+ framework, to facilitate CSOs, EU and EU Member States in verifying any progress made by third countries.

Not only will the mentioned measures allow for more transparency in the GSP+ framework, but they will make the scheme more effective by empowering civil society in beneficiary countries to pressure governments over compliance with labour and human rights agendas. Positive externalities will include better business and investment environment to the benefit of beneficiary countries and international investors. After all, good labour and human rights conditions are also good for business.

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