

HOW TO PROMOTE HUMAN RIGHTS THROUGH THE EU'S GSP+?

EXPLORING THE ROLE OF CIVIL SOCIETY, BUSINESSES AND BENEFICIARY COUNTRIES

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CONTEXT

The present briefing paper looks at the contribution different actors make towards the achievement of fundamental rights through the use of GSP+ from the point of view of civil society organisations. It explores the roles of various sets of actors - civil society, businesses and beneficiary governments - in fostering the protection of fundamental rights in the beneficiary countries, identifying current obstacles and possible solutions.

1. INTRODUCTION

For over forty years, the European Union (EU) has been offering preferential market access to developing countries under its Generalised System of Preferences (GSP). Preferences are offered in the form of a tariff reduction, or full waiver, for a range of products stipulated in the EU legislation, which takes the form of a regulation and is updated at regular intervals. Over time, the configuration of the scheme has evolved: every renewal of the regulation opened the possibility of introducing modifications to the scheme. One of the most significant features introduced in the past two decades has been political conditionality, i.e. the linking of the provision of benefits to compliance with non-economic aims.¹ The EU makes ample use of political conditionality in its external relations. In the GSP, political conditionality has achieved its highest level of sophistication in the GSP+ category. Under the GSP+, beneficiaries are granted additional preferences in exchange for complying with a number of international conventions protecting human rights, the environment and good governance. A key innovation introduced by the latest regulation consisted of limiting the number of beneficiaries to the developing countries most in need, and an improvement in the monitoring of beneficiaries' compliance with these commitments.²

As the largest market in the world, the operation of a scheme giving preferential access constitutes a powerful incentive for developing countries and has considerable potential to advance the promotion of human rights and sustainable development around the world. This briefing paper explores the roles that civil society, businesses and beneficiary countries can play in ensuring that the GSP+ serves its purpose of fostering sustainable economic, social and environmental development in the beneficiary countries, as seen by civil society actors. The paper is structured as follows: The second section outlines the rationale and operation of the GSP+ under the current regulation. This is followed by a third section, identifying and assessing the role of the different actors in the implementation of GSP+ obligations. The fourth looks at the role of business within the scheme, meanwhile the final section concludes and puts forward some recommendations.

2. HOW GSP+ WORKS ON PAPER

In general, trade preferences under the GSP are intended to promote economic growth and respond to the need for sustainable development by generating additional revenue through trade, which can then be reinvested for the benefit of development and to diversify the economy.³ The current GSP system is subdivided into three different arrangements:

- i. The standard or "default" scheme, which provides a tariff reduction to developing countries with vulnerable economies;
- ii. The Everything-but-Arms (EBA) scheme, which provides duty-free access for practically all

¹ Marika Lerch, *Menschenrechte und europäische Außenpolitik*. Wiesbaden: Verlag für Sozialwissenschaften, 2004

² Gabriel Siles-Brügge, "EU trade and development policy beyond the ACP", *Contemporary Politics*, Vol. 20, No. 1, 2014, pp. 49-62.

³ Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a Scheme of Generalised Tariff Preference and repealing Council Regulations (EC) No732/2008, OJ L 303 31.10.2012, at points 7 and 12

- products from the Least Developed Countries (LDCs);
- iii. GSP+, or “special incentive arrangement for sustainable development and good governance”, which provides tariff reductions more favourable than those granted under regular GSP to those countries that implement international conventions. Access to the GSP+ grants the full removal of tariffs on over 66% of tariff lines.⁴

The rationale for the design of GSP+ is to encourage developing countries’ compliance with international conventions advancing the promotion and protection of fundamental rights and sustainable development. As the implementation of these conventions is assumed to generate a financial cost for the beneficiary, the additional revenue generated by the preferential treatment dispensed to its exports is expected to help shoulder that burden. The scheme is available to countries whose economies are scarcely diversified and insufficiently integrated in the international trading system. In order to benefit from the additional tariff reduction, countries are required to have ratified and be implementing a list of 27 conventions related to the protection of human rights, labour rights, good governance and the environment.⁵

The governance of the GSP+ system is shared among the main institutions of the EU, which include the Commission, the Council, and the European Parliament (EP). Briefly, the Commission is in charge of “managing” the operation of the system, while the Council and the EP are responsible for making final decisions on granting or withdrawing access to the scheme. More specifically, the Commission is responsible for monitoring compliance by the beneficiary governments and reporting to the EP on implementation of the conventions. For monitoring implementation, the Commission prepares a “scorecard” for each GSP+ beneficiary to highlight progress and relevant shortcomings that should be addressed by the country in order to effectively implement the 27 conventions. Scorecards are drafted by the Commission based largely on the official UN and ILO reports on the implementation of relevant conventions, and remain confidential.⁶ At least once a year, the Commission, in co-operation with the EU’s External Action Service (EEAS), the European body responsible for the overall management of external relations, conducts a dialogue on GSP+ compliance with the authorities of the beneficiaries. Every two years, the Commission submits a status report on GSP+ implementation to the EP and the Council.

Beyond the responsibilities allocated to EU institutions, the regulation foresees roles for each of the three sets of actors,

namely, beneficiary governments, civil society, and the private sector:

- i. Beneficiary governments are responsible for the implementation of the conventions. In addition to their reporting obligations, they must co-operate with the Commission and provide all information necessary to assess its respect of undertakings. In the event that temporary withdrawal is contemplated on grounds of deficient implementation, the burden of proof for compliance is on the beneficiary.⁷
- ii. Civil society and social partners play a role in two different – if related – processes: the regular monitoring of implementation, and the withdrawal procedure. While the Commission relies primarily on the assessments provided by international monitoring bodies in the preparation of scorecards, stakeholders such as civil society, social partners and business associations are convened in open consultations organised by the Commission at different stages of the monitoring process, in an arrangement that goes beyond the letter of the 2012 GSP Regulation.⁸ The same applies in the withdrawal procedure, although the regulation does not mention the stakeholders.
- iii. While the private sector does not receive any explicit role according to the letter of the Regulation, in practice they are considered to be included within the group described as ‘social partners’. The Commission admits the submission of information by businesses in the elaboration of scorecards and reports to the Council and EP.⁹

Individual EU member states do not receive any particular responsibility under the scheme. They must operate under the aegis of the EU institution that gives them a voice, the Council.

3. HOW THE GSP+ WORKS IN PRACTICE: ASSESSING THE CONTRIBUTION OF DIFFERENT ACTORS FROM THE CIVIL SOCIETY PERSPECTIVE

We now turn to examine how civil society in selected beneficiary countries evaluates the role played by each set of actors in the achievement of the political goals of the GSP+. This section is based on the analysis of documents and specialised literature, including submissions by relevant actors, and interviews with civil society practitioners, drawn predominantly from five

⁴ European Commission, “Factsheet on GSP”, 2017, available under: http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155235.pdf (accessed 16 October 2018), European Commission 2017

⁵ Regulation (EU) No 978/2012, Annex VIII

⁶ Justice and Peace Netherlands, „Scrutinising the GSP+ mechanism after two years: Will it deliver on human and labour rights?”, 2016, available at: <https://www.justiceandpeace.nl/wp-content/uploads/2018/05/Factsheet-GSP-after-two-years.pdf>

⁷ Regulation (EU) No 978/2012, § 15 (2)

⁸ Regulation (EU) No 978/2012, at point 15 and §14(3)

⁹ European Commission 2017. The 2012 regulation employs a non-exhaustive formulation, mentioning “information submitted by third parties, *including civil society*” (see §14(3)).

beneficiary countries across various geographical regions: Armenia, Bolivia, Kyrgyzstan, Pakistan, and the Philippines.¹⁰

Scarce awareness of the scheme prevents the development of its full potential

Awareness of the GSP+ system is perceived to be generally lacking: there is considered to be little awareness of the availability, nature, and objectives of the system. When it comes to lack of knowledge among the business community, this can have important consequences in that it can result in a low utilisation of the preferences, which civil society actors regard as disappointing. If the preferences were advertised more, a larger number of enterprises would possibly make use of them. Among GSP+ beneficiaries, Pakistan and Philippines display the highest utilisation rates of trade preferences. Still, even when utilisation rates are relatively high, beneficiary governments are keen for further improvement. Civil society organisations would welcome a widespread utilisation of the preference because this would imply a strengthening of the political component of the GSP+. As a result, they argue that compliance with labour rights would improve too. In consequence, it is feared that beneficiary governments might lose interest in the scheme if they find their companies benefit only marginally. These fears are confirmed by reports that some governments had expressed disappointment at the low utilisation rate of the preferences, which has the effect of weakening the scheme. This concern was common to practically all civil society organisations interviewed, irrespective of their geographical location. Still, it appears to be more pronounced in beneficiaries that joined GSP+ only recently, whose trade with the EU is generally low and whose products are of relatively limited competitiveness.

Differing perspectives and priorities for GSP+

Other civil society actors complained about the fact that both businesses and beneficiary governments showed interest only in the economic or “technical” component of the GSP+, rather than in the political or **compliance dimension**. This idea was voiced by civil society actors in both long-term beneficiaries and “new arrivals”. Yet, one might venture that they might have different origins in both sets of countries. In new beneficiaries they result from lack of information owing to the novelty of the scheme, i.e. they could be due to an insufficient understanding by the business community about the nature and rationale of the GSP+, or a lack of experience by local authorities in the communication of preferences. By contrast, in long-term beneficiaries, the emphasis on the economic dimension might be by choice. In one case, a civil society organisation reported that the EU Delegation shifted its emphasis from the economic dimension to the

political dimension of GSP+ in its interactions with local actors, highlighting that the approach followed by the Delegation influences the perception of the GSP+. Asymmetries in the awareness of the economic and human rights components of the GSP+ can be explained, at least in part, by the fact that the political side is seen primarily as the responsibility of governments – implementing conventions and reporting on progress – while the benefits are for businesses to reap. Still, this emphasises the need for improved dissemination, not just in terms of reaching a wider audience of stakeholders, but also in terms of promoting a balance in the communication of both components.

Watchdog role of civil society

Civil society organisations see their role as that of a watchdog whose duty is to monitor adherence to conventions, as well as to push governments towards better implementation. Furthermore, the role of civil society is seen as essential to provide information of the situation on the ground, helping identify what should be the more meaningful steps in improving compliance with the conventions. These might depend upon the context on the ground and differ from country to country, however the lack of definition of progress in the context of the scorecards and the absence of indicators make their monitoring role more difficult. The secrecy of scorecards is sometimes viewed as hindering the participation of civil society organisations in the process of monitoring the compliance with conventions in practice.¹¹ The GSP platform, a consortium of international NGOs, suggest the establishment of “roadmaps” to accompany the scorecards.¹² The Mid-Term Review of GSP recommended to improve transparency by publishing agendas of dialogues between the EU and beneficiary governments, as well as a summary report after the meeting.¹³ International civil society actors, organised as the GSP platform, suggested that a complaint mechanism be instituted allowing civil society organisations in the target countries to raise serious concerns and allow for a dialogue with the government on significant matters of contention without resorting to the threat of activating the withdrawal mechanism.¹⁴

CSOs and government: new opportunities for dialogue?

When inquired about whether the GSP+ had created **opportunities for dialogue** with the state authorities, most civil society organisations generally reported that they were already regular interlocutors of the local authorities, having established relationships with them over the years. Cabo Verde constitutes an exception, as the GSP+ scheme was associated with an

¹⁰ Current GSP+ beneficiaries include the five abovementioned countries in addition to Cape Verde, Mongolia, Sri Lanka, which joined the scheme again in 2017, and Paraguay, which will soon graduate from the scheme. Ten interviews were conducted in person or over Skype in October and November 2018: two of them with EEAS/Commission officials and eight with civil society actors with GSP+ experience. The anonymity of all interviews was guaranteed.

¹¹ Justice and Peace Netherlands, p.2

¹² GSP Platform, “Statement”, 2018, available at:

https://gspplatform.eu/wp-content/uploads/2018/07/20180710_GSP_Platform_Statement.pdf, p.3

¹³ European Commission, “Mid-term evaluation of the EU’s Generalised Scheme of Preferences”, Brussels: Development Solutions Europe, 2018, p.8

¹⁴ GSP Platform, p.3

invigoration of civil society.¹⁵ Thus, the establishment of GSP+ did not lead to an intensification of the dialogue between civil society and government. Neither was the tone of the dialogue affected by the GSP+ framework; this was more a function of the political orientation of the government in charge. Instead, changes in government are considered the single most significant determinant setting a more amicable or confrontational tone in the relationship. In the exceptional cases in which relations between the EU and the beneficiary authorities were strained, civil society organisations reported that they could maintain their dialogue with the authorities thanks to their established relationships. They feel that, in a context of tense relations, civil society continued to benefit from their ties with government, although authorities would look negatively upon a perceived association with the EU. A situation of high tension between the beneficiary and the EU may put civil society at the centre of attention. While Sri Lanka was under GSP+ suspension from 2009 to 2017,¹⁶ civil society became a key interlocutor; however, following its reinstatement, the government's interest in engaging with civil society has reportedly subsided.¹⁷ One civil society organisation in another country reported that they were approached by government precisely when the authorities feared that the EU might contemplate a withdrawal of preference. Still, certain GSP+ effects are observable outside the context of such tension. A civil society organisation complained that government authorities tended to approach them only shortly before a review by the EU was looming. Paradoxically, while civil society's disappointment with this timing is justified, it still reveals that the authorities recognise the value of linking up to civil society in the monitoring of GSP+ obligations.

4. THE ROLE OF BUSINESS: COMPLEXITIES AND UNTAPPED POTENTIAL

The assessment of the role of the business community presents a complex picture. The private sector can play a key role in putting pressure on the government to address shortcomings. However, sometimes importers, for example, might not be aware of labour rights violations occurring several layers further up the supply chain. As Georgios Altintzis, from the International Trade Union Confederation explained, outsourcing of production can result in the outsourcing of responsibility.¹⁸ Sometimes, the willingness of private actors to adhere to human rights differs depending on whether labour rights or human rights more broadly are in question. A poor human rights record is detrimental to the reputation of the country and by

implication, bad for business. Accordingly, contributing to the promotion of human rights is often in the interest of business. By contrast, some stakeholders did not feel that businesses are always committed to the protection of labour rights: when guaranteeing labour rights conflict with the objective of producing as cheaply as possible, some suppliers favour the latter. Finally, there are limits to the influence that the private sector can exert on the human rights situation, depending on the nature of the rights endangered: while adherence to labour conventions is the task of businesses, it is felt that there is little they can do to prevent the perpetration of gross human rights violations. In order to associate the private sector closer to the GSP+ scheme and to clarify the role they are expected to play, civil society actors have suggested that the United Nations Guiding Principles on Business and Human Rights be integrated in GSP+ conditionality.¹⁹

5. CONCLUSIONS AND RECOMMENDATIONS FOR STAKEHOLDERS

Overall, the civil society stakeholders interviewed reported similar experiences with the GSP+ system, despite the geographical dispersion of the beneficiaries. Room for improvement can be identified in a number of areas to which stakeholders can contribute:

- A central and widespread concern is a lack of awareness of the scheme by important in-country stakeholders. To some extent, asymmetries in the knowledge of the EU scheme are to be expected: Businesses regularly trading with European companies are informed of the scheme by their trading partners, while others have less exposure to EU policies. However, the lack of awareness seems to be a recurrent problem and prevents the scheme from displaying its benefits to the full, both in economic and human rights terms. The Commission is already aware of this issue, which was raised in the Mid-Term Review.²⁰ Still, civil society can contribute to this dissemination effort: their role and possible modalities of co-operation with the EU Delegations and beneficiary governments could be further clarified.
- In particular, civil society can contribute to ensure that the communication of the GSP+ arrangement adequately covers its political side. For example,

¹⁵ Democracy Reporting International, "How to promote human rights through EU trade policies?", 2018, available under: <https://democracy-reporting.org/wp-content/uploads/2018/12/GSP-Brussels-Conference-Report.pdf>, p.2.

¹⁶ Clara Portela and Jan Orbie (2014) "Sanctions under the EU's Generalised System of Preferences (GSP): Coherence by accident?", *Contemporary Politics* Vol.20, No.1, pp. 63-76.

¹⁷ Democracy Reporting International, p.2.

¹⁸ Democracy Reporting International, p.2.

¹⁹ United Nations High Commissioners for Human Rights, "Guiding Principles on Business and Human Rights", 2011, available under https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

²⁰ European Commission, "Report from the Commission to the European Parliament and the Council on the application of the Regulation (EU) No 978/2012 applying a Scheme of Generalised Tariff Preference and repealing Council Regulations (EC) No732/2008", Brussels 4 October 2018, p.8.

businesses need to be more aware not only of the technical component related to tariffs, but also of the human rights component of the GSP+.

- A key point of criticism concerned the lack of indicators for “progress” in scorecards. In the absence of benchmarking, beneficiary authorities can claim that minimal steps constitute “progress”. The definition of indicators could ensure that only meaningful improvements are reported as such. The definition of “roadmaps” as an alternative to confidential scorecards has been proposed as a way to remedy this issue.²¹ Again, the Commission is aware of the need to improve transparency in GSP+ monitoring and is looking into ways of doing so while involving civil society more closely.²²
- While the private sector remains key to GSP+ implementation, their role remains unspecified in what remains primarily a government to government scheme. Proposals to integrate the United Nations Guiding Principles on Business and Human Rights in GSP+ commitments, and possibly to subject it to conditionality, could align businesses to the GSP+ scheme and foster dialogue with government and civil society on human and labour issues.

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²¹ GSP Platform, p.3

²² Commission 2018, p.8