

## IMPACT OF EUROPEAN UNION TARIFF PREFERENCES ON INTERNATIONAL HUMAN RIGHTS TREATIES / Adam Máčaj

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**Abstract:** *Tariff preferences of the EU seek to, inter alia, incentivize third countries through more beneficial scheme of preferences to act in accordance with international human rights standards and other values prioritized by the EU. The aim of this contribution is to assess whether this motivation has real impact on third countries as regards their approach to core international human rights treaties and provide answer to the question whether improved tariff preferences influenced conduct of those countries, as regards accession to the said treaties and expansion of their territorial applicability. Through this assessment, the research seeks to analyse impact the positive conditionality had on acceptance and ratification of human rights treaties by countries that have not showed previous inclination to ratifications without the prospect of obtaining tariff preferences by the EU. The central method is to consider the international human rights treaty ratification years of all states benefitting from the EU regime of tariff preferences. By comparing the time of ratifying the required human rights treaties, and the year in which the respective states became beneficiaries of tariff preferences, the study confirms that, save for several specific cases, the states receiving tariff preferences had little to no new obligations in terms of ratifying human rights conventions they were previously not bound by.*

**Key words:** *EU; GSP; Tariff Preferences; Human Rights Treaties; Human Rights Treaty Ratification*

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### 1. INTRODUCTION

The European Union (hereinafter "EU") is an actor whose capabilities and influence stretch far beyond internal market within its Member States (hereinafter "MSs" or singular form "MS"). It has been so long before current crisis threatening values of the EU threatened to undermine pillars of mutual trust, and long before the EU territory bridged the East-West divide. Albeit belated in comparison to traditional goal of internal market and economic integration, the EU has, over decades, firmly positioned itself as a value-oriented international organization. Moving beyond the economic lens, values, over time explicitly recognized in Art. 2 of the Treaty on the European Union (hereinafter "TEU"), have provided one of the unifying narratives for EU action. The values found their role to play in a multitude of areas, spanning rule of law, protection of human rights, or judicial independence, at the EU level, but their influences also manifested before judicial bodies of the MSs (Blanke and Mangiameli, 2013; di Gregorio, 2019; Schorkopf, 2020). This role

has, over the years, manifested itself in a variety of settings as well, including not only relationship between the EU and its MSSs, including in areas where the EU does not have competence of its own (Kováčiková and Blažo, 2019, p. 222), but also throughout the process of its enlargement, as part of its accession criteria,<sup>1</sup> and its external relations as well (Mokrá, 2020; Schroeder, 2021; Smilov, 2006), for example in the area of trade agreements through human rights clauses with trade partners of the EU (Bartels, 2014; Mckenzie and Meissner, 2017).

It is the area of EU and the impact of its values on external relations that is the research presented in this paper devoted towards. Even within the specific issue of trade relations of the EU with third countries, a variety of trade-associated measures and human rights considerations exist. For the sake of comprehensiveness, this research does not aim to consider value and human-rights-oriented measures in external relations or trade relations of the EU in their broad scope. Rather, the article places its focus at one particular area where the EU devoted its *economic* influence towards *value* influence worldwide, even in the absence of trade agreements and negotiations with individual partners, namely the scheme of tariff preferences.

The reason why tariff preferences specifically became an instrument of EU values stems from the conditional benefits for third countries that they receive only in case they follow specific course of conduct desired by the EU to promote its values throughout the world, in particular developing parts thereof. Accordingly, the paper focuses on the assessment of the impact these tariff preferences brought to the development of this value promotion. It aims to achieve this goal through analysing the particular area of ratifications of international human rights treaties.

The question to be explored is whether the developing countries receiving the tariff preferences were motivated, by the desire to improve their position in the Generalized Scheme of Preferences (hereinafter "GSP"), to ratify some of the international human rights treaties they were not state parties to before. The hypothesis to be verified is that the ratifications to international human rights treaties by countries receiving the increased benefits of the special GSP regime (hereinafter "GSP+") were not motivated by the prospect of improved tariff preferences. Should this prove to be the finding, this paper will then explore other reasons why GSP+ is, or at least in the future could be, beneficial to the promotion of EU values outside its borders.

With a view to achieving these goals, a comprehensive overview is provided, considering what the tariff preferences in the EU comprise, what positive and negative modalities of conditionality mean, and what they require of the beneficiary states. The text subsequently provides short analysis of (in)effectiveness of negative conditionality as applied by the EU in the scheme of tariff preferences thus far, before turning to analysing whether the positive conditionality of the tariff preferences is any different. For this purpose, the relevant data are synthesized about all international human right conventions mandatory under the GSP+ with the years in which the GSP+ beneficiaries (current, as well as former) have ratified them. The data are then compared to the years in which the GSP+ beneficiaries have joined the scheme, in order to ascertain, whether the convention ratifications by states may have been influenced by the prospects of fulfilling conditions required to join the GSP+, or whether available information suggest that the incentives to ratify previously unratified conventions were negligible, or whether other factors incentivized the beneficiaries.

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<sup>1</sup> Art. 49 TEU.

## 2. TARIFF PREFERENCES IN THE WORLD OF VALUES OF THE EUROPEAN UNION

In its external relations, much like *vis-à-vis* its own MSs, the EU has by now entered a domain in which it is determined to bring its values to life and oversee their observance. The values of the EU are presented as one of the core interests it aims to safeguard throughout its policies and actions with third countries.<sup>2</sup> Interestingly, the values enumerated in Arts. 3 and 21, largely replicated from Art. 2 TEU itself,<sup>3</sup> are not referred to in Art. 21(1) as values, but as “principles which have inspired its own creation, development and enlargement”. In terms of legal significance however, it is argued this discrepancy is of no substance, as it merely recognizes that in international sphere, the EU does not adopt values of its own, but is merely guided by the very same values that originally formed its own constitutional order and jurisprudence of the Court of Justice of the European Union (hereinafter “CJEU”). While notable differences in the scope of Art. 21 TEU exist,<sup>4</sup> the wording maintains “deliberate congruence” of values in their internal and external direction, with the “intent to harmonise the catalogues of fundamental values and principles” in both settings (Oeter, 2013, pp. 842–843).

It has to be pointed out that the tariff preferences are just one of many measures where the EU in fact implements its values. In fact, it is bound to implement them throughout all of its external action, and even in policies that merely have an external aspect.<sup>5</sup> Like in many other areas, the political objectives of the EU in this context may not necessarily be aligned with its economic interests on the other hand, and the resulting tensions may prove difficult to resolve to the benefit of all (Blažo, Kováčiková, and Mokrá, 2019, p. 262).

Taking into account the breadth of contemporary international relations and the resulting extent of EU external action, it would not be feasible within the limits of this paper to fully explore all interests (especially when they are often conflicting ones), which the EU projects into its conduct within the wider world. Even within the EU, the shared values of Art. 2 TEU have occasionally resulted in conflicting approaches, like in certain approaches to human rights protection (cf. Bobek, 2017). It is therefore natural when the same values, shared in their broad sense with many third countries, have necessarily same issues of different approaches between the EU and its partners (Leino and Petrov, 2009).

Rather than discussing these competing interests, this research is fully aimed at exploring one specific measure, tariff preferences, and the question whether it succeeded in one objective the EU followed, namely human rights protection. The GSP was created under the common commercial policy of the EU, which has to respect general rules of Art. 21 TEU on external action by virtue of the Treaty on the Functioning of the European Union (hereinafter “TFEU”).<sup>6</sup> Accordingly, respect for human rights is one of the objectives the EU must consider when considering support of developing countries through the GSP. The EU was itself the first to adopt the scheme of tariff preferences in 1971, pursuant to recommendations of the United Nations Conference on Trade and Development (hereinafter “UNCTD”) (European Commission, 2015). In developing the GSP, two primary

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<sup>2</sup> Arts. 3(5) and 21(2) TEU.

<sup>3</sup> Cf. the references to human rights, democracy, the rule of law, human dignity, equality and solidarity, all present in Art. 2 TEU.

<sup>4</sup> In comparison to Art. 2, Arts. 3(5) and 21(1) are expanded by e.g. peace, security, and international law with principles of the Charter of the United Nations.

<sup>5</sup> Art. 21(3) TEU.

<sup>6</sup> Art. 205, 207 TFEU.

manifestations of desire to secure human rights protection in developing countries are present, first of them being the possibility for beneficiary countries to lose tariff preferences (the so-called negative form of conditionality) and hamper their access to the internal market of the EU, as a response to violations of various obligations related to values of the EU.<sup>7</sup>

Considering the widespread challenges human rights face all over the globe, it is notable that in the entire history of GSP in the EU, only four countries altogether have actually lost tariff preferences, and only single one, Cambodia, is currently deprived of the preferences.<sup>8</sup> The risk in withdrawing preferential treatment as a measure of EU value promotion resembles the one in its internal discourse – can and should the EU start negatively impact countries it deems failing in fulfilling the same standards MSS themselves are implementing inconsistently, or outright deny their position as a shared value (Lysina, 2020 regarding internal discourse on the rule of law as a shared value; Sjørnsen, 2017, pp. 450–451 regarding international views on the EU and implications for its reputation).

Much like in the field of other sanctions, it is therefore apparent that in withdrawing the benefits of tariff preferences, the EU prefers the approach tackling only the most egregious breaches of fundamental rights and United Nations (hereinafter “UN”) core human rights treaties.

Unlike withdrawal, which is in principle usable as an element of negative conditionality to deprive of tariff preference beneficiaries from any category of preferential treatment, there are also positive measures that specifically promote respect for EU values among third countries already benefiting from the GSP. The GSP+ regime seeks to influence countries already enjoying the fruits of tariff preferences the other way around, by promising even better preferential treatment, should the beneficiaries tilt their policies to align with the goals desired by the EU. It is therefore necessary to examine this measure, a form of so-called positive conditionality (de Schutter, 2015), and its impact on promoting values in the GSP regimes, to ascertain whether this incentive had more profound impact on cases than four isolated instances of tariff preference withdrawals.

Instead of monitoring implementation of human rights (and other) obligations and dealing with the potentially contentious withdrawal of preferences, the initial method of operation for the GSP+ works the other way around. It instead sets as a precondition the bare minimum of ratification of specific conventions by the prospective beneficiaries of improved preferential treatment. That way, even without the subsequent monitoring or

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<sup>7</sup> In the current iteration of the GSP regulation, Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303/1, the relevant provision of Art. 19 clearly manifests its interest to protect values of the EU in considering the possibility of losing tariff preferences due to conduct stipulated in Art. 19(1), relevant part of which stipulates “serious and systematic violation of principles [of core UN human rights treaties or International Labour Organization conventions]” as a ground for withdrawing the tariff preferences.

<sup>8</sup> Other three countries deprived of tariff preferences in the past include Myanmar, Belarus, and Sri Lanka. Cf. Council Regulation (EC) No 1933/2006 of 21 December 2006 temporarily withdrawing access to the generalised tariff preferences from the Republic of Belarus, OJ L 405/35; Implementing Regulation (EU) No 143/2010 of the Council of 15 February 2010 temporarily withdrawing the special incentive arrangement for sustainable development and good governance provided for under Regulation (EC) No 732/2008 with respect to the Democratic Socialist Republic of Sri Lanka, OJ L 45/1; Regulation (EU) No 607/2013 of the European Parliament and of the Council of 12 June 2013 repealing Council Regulation (EC) No 552/97 temporarily withdrawing access to generalised tariff preferences from Myanmar/Burma, OJ L 181/13; Commission Delegated Regulation (EU) 2020/550 of 12 February 2020 amending Annexes II and IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council as regards the temporary withdrawal of the arrangements referred to in Article 1(2) of Regulation (EU) No 978/2012 in respect of certain products originating in the Kingdom of Cambodia, OJ L 127/1.

the threat of losing preferences, at least the minimalistic goal of convincing developing countries to assume obligations stemming from human rights conventions under international law would be achieved.<sup>9</sup>

In its current regime, the positive conditionality in the tariff preference regimes is the “special incentive arrangement for sustainable development and good governance”,<sup>10</sup> in short the current iteration of the GSP+. Historically, the positive conditionality was directed towards improvements in a variety of areas, from International Labour Organization (hereinafter “ILO”) conventions, environmental protection, through fight against international and transnational organized crime, to protection of human rights (Słok–Wódkowska, 2013).<sup>11</sup>

Much like the general regime of the GSP, or the Everything-but-Arms (hereinafter “EBA”) regime, more favourable, but not linked to any obligations in the sphere of EU values, even the GSP+ regime is naturally subject to the possibility of withdrawal.<sup>12</sup> Subsequently, such possibility is also subject to the same criticism outlined above, regarding lack of transparency and reluctance to resort to withdrawal of preferences granted in the first place. Above all, it must be recalled that so far, even out of four withdrawals of tariff preferences, Sri Lanka is the single country that lost the benefits of GSP+.<sup>13</sup> Therefore, even though this possibility of monitoring (and sanctioning) countries that do not properly implement obligations required by the EU exists, it has been used sparingly so far. The real consequences accordingly remain similarly rare, much like the application of negative conditionality in respect of the general GSP scheme, as described above.

### 3. THE GSP+ AND RATIFICATION OF UNITED NATIONS INTERNATIONAL HUMAN RIGHTS TREATIES – INTRODUCING EU VALUES OUTSIDE THE EU?

The focal point of this paper therefore does not focus on the effectiveness or pitfalls of securing compliance with the obligations taken by the states that choose to

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<sup>9</sup> It obviously cannot be said that monitoring would not play a role subsequently, and the EU would remain content with token ratifications without any real implementation. On the contrary, countries that seek the additional benefits of GSP+ undertake to respect and cooperate with the monitoring by the European Commission. Cf. Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303/1, Art. 13.

<sup>10</sup> Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303/1, Art. 9.

<sup>11</sup> For historical regimes of positive conditionality, see also Council Regulation (EC) No 3281/94 of 19 December 1994 applying a four-year scheme of generalised tariff preferences (1995 to 1998) in respect of certain industrial products originating in developing countries; Council Regulation (EC) No 2820/98 of 21 December 1998 applying a multiannual scheme of generalised tariff preferences for the period 1 July 1999 to 31 December 2001; Council Regulation (EC) No 2501/2001 of 10 December 2001 applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004 - Statements on a Council Regulation applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004; Council Regulation (EC) No 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences; Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007.

<sup>12</sup> Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303/1, Art. 19 *et seq.*

<sup>13</sup> Implementing Regulation (EU) No 143/2010 of the Council of 15 February 2010 temporarily withdrawing the special incentive arrangement for sustainable development and good governance provided for under Regulation (EC) No 732/2008 with respect to the Democratic Socialist Republic of Sri Lanka, OJ L 45/1.

enter the GSP+. Rather, the aim is to assess what impact the GSP+ had on countries that gained the benefits and their ratification of the required UN conventions in the area of human rights.

The current Regulation (EU) No 978/2012 (hereinafter "GSP Regulation") lists conventions whose ratification is mandatory to join the GSP+ in Annex VIII. Art. 9 of the GSP Regulation now requires ratification of all the conventions listed, without any reservations prohibited by those conventions, or incompatible with their object and purpose.

The relevant conventions in Annex VIII required fall into two groups, although these list four categories together, namely core human rights<sup>14</sup> and labour rights<sup>15</sup> (Part A), along with environment<sup>16</sup> and "governance principles" conventions<sup>17</sup> (Part B) – although these deal with combating crime only, not including broader governance issues.

The human rights treaties of UN, ratification of which is required and whose ratifications are accordingly the scope of this paper, are:

- Convention on the Prevention and Punishment of the Crime of Genocide (1948) (hereinafter "Genocide Convention");
- International Convention on the Elimination of All Forms of Racial Discrimination (1965) (hereinafter "UN CERD");
- International Covenant on Civil and Political Rights (1966) (hereinafter "ICCPR");
- International Covenant on Economic Social and Cultural Rights (1966) (hereinafter "ICESCR");
- Convention on the Elimination of All Forms of Discrimination Against Women (1979) (hereinafter "UN CEDAW");
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (hereinafter "UN CAT");
- Convention on the Rights of the Child (1989) (hereinafter "UN CRC").

For the sake of comprehensive assessment in the area of international human rights conventions, the ratification assessment of International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) (hereinafter "Apartheid Convention") is included as well, which was required by the third countries up until the adoption of the most recent GSP regulation in 2012, when this convention was dropped from the requirements.

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<sup>14</sup> See below.

<sup>15</sup> Convention concerning Forced or Compulsory Labour, No 29 (1930); Convention concerning Freedom of Association and Protection of the Right to Organise, No 87 (1948); Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No 98 (1949); Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No 100 (1951); Convention concerning the Abolition of Forced Labour, No 105 (1957); Convention concerning Discrimination in Respect of Employment and Occupation, No 111 (1958); Convention concerning Minimum Age for Admission to Employment, No 138 (1973); Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No 182 (1999).

<sup>16</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973); Montreal Protocol on Substances that Deplete the Ozone Layer (1987); Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989); Convention on Biological Diversity (1992); The United Nations Framework Convention on Climate Change (1992); Cartagena Protocol on Biosafety (2000); Stockholm Convention on persistent Organic Pollutants (2001); Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998).

<sup>17</sup> United Nations Single Convention on Narcotic Drugs (1961); United Nations Convention on Psychotropic Substances (1971); United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); United Nations Convention against Corruption (2004).

The assessment works with the analysis of ratification year of the relevant conventions by the 8 current GSP+ beneficiaries,<sup>18</sup> as well as by 15 more countries that have benefitted from the GSP+ tariff preferences in the past.<sup>19</sup> It is worth noting that the greater tariff preferences apparently do not attract broad attention among third countries, in spite of the fact that the GSP as such has been considerably expanded over time. Most countries that do not benefit from the GSP+ are either not eligible (due to their development, or failure to fulfil the vulnerability criteria), or do not need the preferences negligible in comparison to the EBA regime on the other hand. The allegation this paper will consider is then whether indeed, even the countries benefiting from the GSP+ were not motivated to ratify conventions they had not, but rather were mostly rewarded for the state of their prior convention ratifications in the sphere of human rights (cf. de Schutter, 2015; Hamulák and Gunasekara, 2019; Słok-Wódkowska, 2013).

Taking into account the 8 conventions and 23 countries assessed overall, the GSP+ regime would require 184 convention ratifications altogether. Due to dropping the requirement of ratifying Apartheid Convention in 2012, ratifications of this convention by Pakistan, Philippines, Kyrgyz Republic, and Uzbekistan are not to be taken into account, as these countries have entered the GSP+ after 2012. Out of the remaining 180 mandatory ratifications, there is overwhelming prevalence of conventions that have been ratified generally decades before the ratification was required by the GSP+ regime. Out of all the conventions, only UN CAT (1 ratification),<sup>20</sup> Genocide Convention (2 ratifications)<sup>21</sup> and Apartheid Convention (5 ratifications)<sup>22</sup> were ratified by states in the year prior to their inclusion in the GSP+. In addition, Mongolia ratified the UN CAT in 2002, three years prior to joining the GSP+ in 2005, when ratification of the UN CAT became mandatory. The reasons for this ratification are therefore inconclusive and it cannot be ascertained, whether these were similarly influenced by the prospects of receiving GSP+ preferences.

The single country that ratified multiple required conventions prior to its inclusion into the GSP+ was Pakistan, which ratified the ICCPR in 2010, the ICESCR in 2008, and UN CAT in 2010. Even though Pakistan was included in the GSP+ only in 2014, years after ratifications, its ratifications were attributed to the government's plans to secure the benefits of the GSP+ (Rafique, Kiani, and Karmel, 2016, p. 13).

Overall, the impact of the GSP+ requirements on the ratification status of core international human rights treaties can nevertheless be considered minimal. The case of Pakistan is an outlier, the only country with three ratifications preceding inclusion into the GSP+. All other countries needed to ratify at most one of the required conventions prior to inclusion, and have been state parties to all other human rights conventions, and even these ratifications were required by merely 7 other countries beyond Pakistan, out of 23 beneficiaries overall. Nearly two thirds of the beneficiaries (15 countries) have therefore satisfied all the ratification requirements at least a decade, if not decades, before receiving the tariff preferences.

Apart from Pakistan, all the ratifications were also made with respect either of the Genocide Convention, or the Apartheid Convention. The GSP+ had no real influence on ratification numbers of any other UN human rights treaty and failed to persuade countries to become state parties.

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<sup>18</sup> Bolivia, Cabo Verde, Kyrgyz Republic, Mongolia, Pakistan, Philippines, Sri Lanka, and Uzbekistan.

<sup>19</sup> Armenia, Azerbaijan, Colombia, Costa Rica, Ecuador, El Salvador, Georgia, Guatemala, Honduras, Moldova, Nicaragua, Panama, Paraguay, Peru, and Venezuela.

<sup>20</sup> By Nicaragua in 2005.

<sup>21</sup> By Bolivia in 2005 and Cabo Verde in 2011.

<sup>22</sup> By Georgia, Guatemala, Honduras, Moldova, and Paraguay in 2005.

#### 4. CONCLUSION – WHAT PRACTICAL IMPACTS HAS THE GSP+ BROUGHT?

Considering the abovementioned possibilities of the EBA regime and difficult access to the GSP+ as regards trade vulnerability,<sup>23</sup> it is perhaps little surprise that third countries were not particularly eager to join the regime. Expectedly, very little progress has been in addition made in terms of increasing the ratification numbers of human rights treaties, which has only rarely resulted from the prospective benefits of the GSP+ for third countries.

These rare occurrences of GSP+-induced ratifications were exclusively concerning a single country in terms of broader ratification efforts of multiple required conventions. In terms of the remaining GSP+-induced ratifications, those were essentially cases of several prospective participants ratifying single convention that they have not ratified long prior. None of these countries was persuaded towards ratification of any convention creating broader list of obligations or establishing broad catalogue of human rights. All of these ratifications concerned either the Genocide Convention, or the Apartheid Convention, as instruments establishing prohibited acts and crimes under international law. It has been argued that GSP+ benefits did not serve as an incentive for prospective participants to proactively ratify conventions and assume new obligations, and rather were provided improved tariff preferences to countries that mostly satisfied the required goals anyway (Słok-Wódkowska, 2013). The limited scope of new ratifications of only the two abovementioned conventions supports this finding, especially considering the fact that neither of these two conventions establish a monitoring body, meaning new ratifications did not come with the burden of regular periodic monitoring of expert bodies, merely review by the European Commission itself.<sup>24</sup>

The overall results of the GSP+ in the field of human rights convention ratifications are therefore minimal. Yet that does not mean that the regime as such can be dismissed as irrelevant. The impacts of the GSP+ offer areas with possibility of further analysis. First of all, there are other three categories of conventions listed in Annex VIII to the GSP regulation (labour rights, environmental protection, and good governance/transnational crimes), ratification of which is mandatory. It is necessary to assess the impact GSP+ had on ratification status of these treaties as well, creating often more specific obligations in comparison to core human rights treaties.

Secondly, on top of the ratifications, it is imperative to assess also the actual impact participation in the GSP+ and subsequent monitoring accompanied by the Commission reviews had on performance and fulfilment of the ratified conventions. It can well be the situation that country ratified all the required convention years (even decades) before the GSP+ even became a thing (or at least before the countries started considering joining the GSP+) for entirely different reasons. Yet the question is how much were the countries actually successful in implementation of the conventions, before the prospect of EU rewarding them for proper implementation, and depriving them of the rewards in cases of lackluster approach. There is a criticism of GSP+ having little effect not only on the ratification, but also little improvement in implementing the conventions,

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<sup>23</sup> Annex VII to the GSP Regulation defines trade vulnerability through a set of two cumulative criteria, using firstly the criterion where country's seven largest sections of GSP+-eligible imports comprise more than 75% of its overall imports into the EU over three consecutive years, where at the same time, the GSP+-eligible imports from the vulnerable country must represent less than 7,4 % of overall GSP+-eligible imports imported from all the general GSP beneficiary states (also over three consecutive years). This second criterion, often barring countries from the GSP+ benefits, is proposed to be removed in the newest version of the GSP Regulation by the Commission (see below).

<sup>24</sup> Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303/1, Art. 13.



particularly as regards the ILO conventions (de Schutter, 2015, pp. 18–19). Analysis of performance in human rights (and other) international standards in the GSP+ participant countries before and after they joined the scheme (and, in some cases, performance of countries that no longer benefit from the regime), can bring useful insight into broader impact of the GSP+. <sup>25</sup>

Finally, the assessment in the future will need to include changes made with the reformed GSP regulation, to enter into force in 2024, and impacts new regulation will have on the countries included in the GSP+. The proposal was adopted by the Commission in September 2021<sup>26</sup> and added e.g. UN Convention on the Rights of Persons with Disabilities (hereinafter “UN CRPD”) among the conventions that must be ratified by the GSP+ beneficiaries. While the UN CRPD has again already been ratified by all the current GSP+ beneficiaries and is broadly recognized over the world, the European Parliament (hereinafter “EP”) has provided additional input into the legislative process aimed at convention ratifications as well, demanding inclusion of other conventions, including the Rome Statute of the International Criminal Court (hereinafter “Rome Statute”) into the GSP+ requirements.<sup>27</sup> Should the EP proposals make their way into the regulation, it could provide an interesting insight into the real strength of GSP+ and its impact on conduct of third countries, as 5 out of 8 current GSP+ beneficiaries are not state parties to the Rome Statute.<sup>28</sup> At the same time, expanding the conventions to be ratified could further shape the position of the EU as a value-oriented global player as well, one that requires not only token ratifications of conventions that are universally recognized nevertheless. On the other hand, the EU could send a clear signal that it is actually seeking to broaden the applicability of international law and normative system on new actors, before granting them the economic benefits. However, whether such signal will be the priority of other institutions, remains to be seen.

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<sup>25</sup> Literature has already suggested similar methods for assessment of the GSP+ performance, e.g. the GSP+ Compliance Index (cf. Marx and Lebzelter, 2020).

<sup>26</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council on applying a generalised scheme of tariff preferences and repealing Regulation (EU) No 978/2012 of the European Parliament and of the Council, COM(2021) 579 final, 22.9.2021.

<sup>27</sup> European Parliament Committee on International Trade, Report on the proposal for a regulation of the European Parliament and of the Council on applying a generalised scheme of tariff preferences and repealing Regulation (EU) No 978/2012 of the European Parliament and of the Council (COM(2021)0579 – C9-0364/2021 – 2021/0297(COD)), 17.5.2022.

<sup>28</sup> Kyrgyzstan, Pakistan, Uzbekistan, and Sri Lanka never ratified the Rome Statute, while Philippines withdrew its ratification.

## ANNEXES

Annex A – Ratifications of treaties by current and former GSP+ members<sup>29</sup>

	GSP+ membership since	UN ICCPR (1966)	UN ICESCR (1966)	UN CERD (1965)	UN CEDAW (1979)
GSP+ countries (12/2022)		Ratification year	Ratification year	Ratification year	Ratification year
<i>Bolivia</i>	2005	1982	1982	1970	1990
<i>Cabo Verde</i>	2012	1993	1993	1979	1980
<i>Kyrgyz Republic</i>	2016	1994	1994	1997	1997
<i>Mongolia</i>	2005	1974	1974	1969	1981
<i>Pakistan</i>	2014	<b>2010</b>	<b>2008</b>	1966	1996
<i>Philippines</i>	2014	1986	1974	1967	1981
<i>Sri Lanka</i>	2005-2010, 2017	1980	1980	1982	1981
<i>Uzbekistan</i>	2021	1995	1995	1995	1995
GSP+ former countries					
<i>Armenia</i>	2009	1993	1993	1993	1993
<i>Azerbaijan</i>	2009	1992	1992	1996	1995
<i>Colombia</i>	2005	1969	1969	1981	1982
<i>Costa Rica</i>	2005	1968	1968	1967	1986
<i>Ecuador</i>	2005	1969	1969	1966	1969
<i>El Salvador</i>	2005	1979	1979	1979	1981
<i>Georgia</i>	2005	1994	1994	1999	1994
<i>Guatemala</i>	2005	1992	1988	1983	1982
<i>Honduras</i>	2005	1997	1981	2002	1983
<i>Moldova</i>	2005	1993	1993	1993	1994
<i>Nicaragua</i>	2005	1980	1980	1978	1981
<i>Panama</i>	2005	1977	1977	1967	1981
<i>Paraguay</i>	2009	1992	1992	2003	1987
<i>Peru</i>	2005	1978	1978	1971	1982
<i>Venezuela</i>	2005	1978	1978	1967	1983

	GSP+ membership since	UN CAT (1984)	UN CRC (1989)	Genocide Convention (1948)	Apartheid Convention (1973)
GSP+ countries (12/2022)		Ratification year	Ratification year	Ratification year	Ratification year
<i>Bolivia</i>	2005	1999	1990	<b>2005</b>	1983
<i>Cabo Verde</i>	2012	1992	1992	<b>2011</b>	1979
<i>Kyrgyz Republic</i>	2016	1997	1994	1997	1997
<i>Mongolia</i>	2005	<b>2002</b>	1990	1967	1975
<i>Pakistan</i>	2014	<b>2010</b>	1990	1957	1986
<i>Philippines</i>	2014	1986	1990	1950	1978
<i>Sri Lanka</i>	2005-2010, 2017	1994	1991	1950	1982
<i>Uzbekistan</i>	2021	1995	1994	1999	N/A

<sup>29</sup> The ratifications of conventions by states directly influenced by the GSP+ requirements, as identified in the paper, are outlined in bold for the sake of clarity.

GSP+ former countries					
Armenia	2009	1993	1993	1993	1993
Azerbaijan	2009	1996	1992	1996	1996
Colombia	2005	1987	1991	1959	1988
Costa Rica	2005	1993	1990	1950	1986
Ecuador	2005	1988	1990	1949	1975
El Salvador	2005	1996	1990	1950	1979
Georgia	2005	1994	1994	1993	<b>2005</b>
Guatemala	2005	1990	1990	1950	<b>2005</b>
Honduras	2005	1996	1990	1952	<b>2005</b>
Moldova	2005	1995	1993	1993	<b>2005</b>
Nicaragua	2005	2005	1990	1952	1980
Panama	2005	1987	1990	1957	1977
Paraguay	2009	1990	1990	2001	<b>2005</b>
Peru	2005	1988	1990	1960	1978
Venezuela	2005	1991	1990	1960	1983

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