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## EU-South Asia trade perspectives: State of play

### Abstract

The European Union is South Asia's number one trading partner and has thus far engaged with the region mainly on commercial grounds. This paper provides a thorough analysis of the trade relations between the two blocs, devoting special attention to existing preferential trade agreements and specifically analysing the implications of EU policy on three national contexts. While highlighting the positive economic and developmental aspects of such agreements, the paper will also express some reservations as to the current implementation of the EU's system of preferences, especially with regard to the human and labour rights conditionalities included. Due to South Asia's increasing importance on the global playfield and its impressive economic growth, a case for increased engagement and strategic partnership between the EU and South Asia will be made, in the spirit of countering common concerns such as Chinese influence, maritime disputes, climate change and the fight against terrorism.



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## Table of contents

List of Abbreviations.....	3
List of Figures and Tables .....	5
Introduction: The EU and South Asia .....	6
1. The current state of trade relations.....	9
2. Understanding the Generalised Scheme of Preferences.....	13
2.1 The EU’s Generalised Scheme of Preferences .....	13
2.2 Eligibility criteria.....	16
3. Case studies .....	20
3.1 Bangladesh: Demonstrating the validity of trade preferences .....	20
3.2 Sri Lanka: Exemplifying the effects of temporary withdrawal .....	26
3.3 Pakistan: Missed opportunities for a stance against terrorism.....	31
4. Conclusions and recommendations.....	42
References.....	46

## List of Abbreviations

ASEAN	Association of Southeast Asian Nations
BLA	Bangladesh Labour Act
BRI	Belt and Road Initiative
BRICS	Brazil, Russia, India, China, South Africa
CAPD	Cooperation Agreement on Partnership and Development
CAREC	Central Asia Regional Economic Cooperation
CARIFORUM	Caribbean Forum
CAT	Convention Against Torture
CPC	Country of Particular Concern
CPEC	China Pakistan Economic Corridor
CRC	Convention on the Rights of the Child
EAGLEs	Emerging and Growth-Leading Economies
EBA	Everything But Arms
EC	European Council
EEAS	European External Action Service
EIB	European Investment Bank
EPZ	Export Processing Zone
EU	European Union
FATF	Financial Action Task Force
FORB	Freedom of Religion and Belief
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GNI	Gross National Income
GSP	Generalised Scheme of Preferences
GSP+	Special Incentive Arrangement for Sustainable Development and Good Governance
ICCPR	International Covenant on Civil and Political Rights
IHL	International Humanitarian Law
ILO	International Labour Organisation
ISI	Inter-Services Intelligence

JAES	Joint Africa-EU Strategy
LDC	Least Developed Country
LTTE	Liberation Tigers of Tamil Eelam
MERCOSUR	'Mercado Común del Sur' (Common Market of the South)
MFN	Most Favoured Nation
NAFTA	North American Free Trade Agreement
NCHR	National Commission on Human Rights
PTA	Preferential Trade Agreement
PTA	Prevention of Terrorism Act
RMG	Ready-Made Garments
RoO	Rules of Origin
SAARC	South Asian Association for Regional Cooperation
SAFTA	South Asia Free Trade Agreement
TIC	Treaty Implementation Cells
UNCTAD	United Nations Conference on Trade and Development
UNDESA	United Nations Department for Economic and Social Affairs
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNHRC	United Nations Human Rights Council
WTO	World Trade Organisation

## List of Figures and Tables

Figure 1. Summary of the changes made to GSP regulation 978/2012.....	14
Figure 2. Annual average growth of Sri Lankan exports to the EU .....	28
Figure 3. Pakistan- EU trade in goods .....	33
Figure 4. GSP+ preferential EU imports, 2016 (thousand EUR) .....	34
Table 1. EU trade in goods with South Asian countries (2018).....	10

## Introduction: The EU and South Asia

Home to many emerging economies expanding at high speed and located in a strategic position within the Indian Ocean, South Asia today has the potential to become a ‘pivotal region of the world’ (Mohan, 2016). Its eight countries together constitute roughly 25% of the world’s population<sup>1</sup>; the total volume of their GDP amounts to USD 3,453 trillion<sup>2</sup>, with an average growth rate of about 5%<sup>3</sup>. On the other hand, while poverty has been steadily declining since its peak in 2002<sup>4</sup>, South Asia still ranks as the second poorest region in the world<sup>5</sup>, as overpopulation continues to represent a big challenge for a region which is among the most densely populated areas on the globe<sup>6</sup>. Its countries stand at different stages of democratic transition, development and security: According to international development criteria, South Asia comprises three developing countries (India, Pakistan and Sri Lanka) and five least-developed countries (Bangladesh, Bhutan, Nepal, the Maldives and Afghanistan).

In an attempt to improve regional integration and connectivity, in 1985 the countries united themselves under the South Asian Association for Regional Cooperation (SAARC); later a South Asia Free Trade Agreement (SAFTA) was established. However, its success in improving trade relations and prosperity in the region has been limited - mainly due to ongoing conflicts and historical disputes- and the association has failed to create the momentum for a unification of the bloc and for its establishment as strategic actor on the global scene. Convinced of the importance of international trade as a key factor for economic development, the countries of South Asia have therefore progressively resorted to individual agreements with other countries instead of pursuing the notion of a federalist, economic union.

The European Union (EU) is South Asia’s largest trading partner and a major development and aid donor. A recurring feature of EU trade policy with South Asia is the inclusion of unilateral human and labour rights clauses as conditions for trade concessions, which will be further analysed in the course of the paper. This tendency stems from the EU’s overarching objective of mainstreaming the protection and promotion of human rights in its external action, according to the principles set out in the ‘Treaty

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<sup>1</sup> In 2018, the world population amounted to 7,594 billion and South Asia alone to 1,814 billion inhabitants.

<sup>2</sup> Roughly 4% of the world’s total GDP, which amounted to USD 85.91 trillion in 2018.

<sup>3</sup> Own calculation, based on data from Table 1.

<sup>4</sup> In 2002, South Asia accounted for the highest share of people living below the poverty line (below USD 1.9/day). (World Bank Group, 2018, p.24)

<sup>5</sup> In 2015 over 85% of the poorest citizens resided either in Sub-Saharan Africa or South Asia; however, by 2018 the concentration of poverty had shifted from South Asia to South Africa. (World Bank Group, 2018, p.24)

<sup>6</sup> Five out of eight states were included in the Top 50 list of most densely populated countries of 2019: Maldives in 8th rank, Bangladesh on 10th rank, India on 27th rank, Sri Lanka on 40th rank, Pakistan on 50th rank.

on European Union' (2007) and in line with the Commission's 'Trade for All' strategy. However, despite longstanding partnerships with various South Asian countries and its role as major aid and development donor, the EU has until now failed to properly translate the region's strategic importance into its policies. While it has elaborated strategic documents to govern its relations with individual South Asian countries such as India and Afghanistan, its engagement with the region as a whole remains limited to the trade dimension<sup>7</sup>. Indeed, a simple Google search containing the words 'EU' and 'South Asia' more often than not produces search results related to South-East-Asia which, albeit being by far less populous and economically prosperous, evidently enjoys more attention from and tighter relations with the EU.

SADF has dedicated various publications to trade in South Asia, concerning both its regional and external dimensions. With regard to EU trade with South Asia, the main point of reference is Policy Brief 6 titled 'GSP, the mid-term review and Pakistan: The need to recalibrate'. The present paper will draw from the findings of said policy brief and at the same time focus on providing a larger, albeit non exhaustive, overview on the EU approach towards trade with South Asia as a whole. It will thereby analyse its strengths and weaknesses and provide recommendations for future improvement and alternative solutions, taking into account both the regional dimension and that of individual countries. While supporting the European Union's ambition to share and promote the values of democracy and human rights through its trade policy, the paper will question the consistency and effectiveness of this approach in its current implementation and suggest alternative avenues for cooperation. Finally, due to South Asia's increased importance not only for economic reasons<sup>8</sup> but also for the security of the European continent- with potential threats deriving from local conflicts in Afghanistan and Kashmir, and from related terrorism concerns- the necessity for the EU to clearly formulate a comprehensive South Asia strategy and to expand its relations with relevant players in the region on topics of common interest will be emphasised.

The first section of the paper will outline the EU's trade policy for South Asia by illustrating the few strategic documents encompassing it and by describing the main features of the different trade mechanisms currently in place between the two blocs. In section two, particular attention will be devoted to the history and functioning of the Generalised Scheme of Preferences (henceforth GSP), which will be explained in detail so as to introduce the third section. The latter will consist in a 'case by

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<sup>7</sup> The same cannot be said for China, which has long started to invest in South Asian infrastructure and electricity for the benefit of its Belt and Road Initiative, or for the United States, which has intensified its relations with South Asia under the Trump administration due to its new Afghanistan policy.

<sup>8</sup> 'The EU relies heavily on the Indian Ocean to secure its position as a major actor in world trade.' (Mohan, 2016)

case' assessment of EU relations with a few of selected countries - Bangladesh, Sri Lanka, and Pakistan<sup>9</sup>- and of their individual needs and challenges. This will serve to exemplify the impact of the different arrangements mentioned in section one, but also to shed light on their varying standards of application. Finally, drawing from the findings and outcomes of previous sections, the conclusion will serve to formulate a number of considerations regarding the pertinence of the current approach as well as to provide some recommendations for future engagement.

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<sup>9</sup> This is the order in which the author has chosen to present the case studies, as outlined section 3 of the table of contents.



## 1. The current state of trade relations

The EU has a number of strategic documents in place which regulate its relations with countries or regions of particular interest and with whom the Union shares common interests or goals. In South Asia, this is the case for Afghanistan and India. The EU Strategy for Afghanistan was adopted in 2017 and focuses on the following four priority areas: ‘promoting peace, stability and regional security, reinforcing democracy, the rule of law and human rights and promoting good governance and women’s empowerment, supporting economic and human development, addressing challenges related to migration’ (EEAS, 2017). On the other hand, the EU Strategy for India, adopted in November 2018, reaffirms the two countries’ long shared values and aims to strengthen their partnership through a focus on sustainable modernisation and on common responses to both global and regional issues.

As a region, South Asia is included in the broader framework of ‘Connecting Europe and Asia- The EU Strategy’, which promises to improve connectivity between the two areas through interoperable transport, energy and digital networks<sup>10</sup>. It is also integrated in the EU Global Strategy, which mentions South Asia within the larger prospect of improving EU engagement with Asia given the ‘direct connection between European prosperity and Asian security’ (EEAS, 2016c, p.37). Building upon this correlation between a stable and peaceful Asia and a prosperous, connected Europe, the document promises to ‘deepen cooperation on counter-terrorism, anti-trafficking and migration, as well as enhance transport, trade and energy connectivity’ (EEAS, 2016c, p.38) in Central and South Asia. These ambitious goals have, however, yet to be translated into action.

Indeed, as noted in the introduction, a comprehensive strategy defining the EU’s engagement with South Asia as a whole and on various levels - as it exists for other regions such as Central Asia (the New EU Strategy on Central Asia), the Association of South East Asian Nations (Joint Communication ‘The EU and ASEAN: a partnership with a strategic purpose’) or for Africa (Joint Africa-EU Strategy, JAES) - is yet to be formulated. This lack of an overarching policy has led to the affirmation of bilateral agreements as the ‘status quo’ for relations with the region, at the expense of a common, more balanced vision for South Asia. Moreover, it has created a number of biases in the treatment of individual countries, as will be demonstrated through the example of the GSP trade preference scheme.

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<sup>10</sup> For instance by supporting projects such as ‘CASA 1000’ to which the European Investment Bank (EIB) ‘is contributing EUR 70 million to enable Central Asian countries to sell their electricity surplus during summer months to deficient countries in South Asia, improving the electricity access and expand markets in a sustainable way’ (EEAS, 2019, p.2).

Despite maintaining varying degrees of trade engagement with the single countries, as illustrated below, the EU is overall considered as South Asia’s main trading partner. Bangladesh, India, and Pakistan list the Union as their first trading partner, and Sri Lanka, Maldives and Nepal rank it among their top three export partners. Only Afghanistan<sup>11</sup> and Bhutan currently entertain little to no trade relations with the EU (although Afghanistan benefits from EU trade-related assistance<sup>12</sup> aimed at strengthening supply and export capacities as well as introducing priority trade reforms). Exports from South Asia are mainly made up of textiles and garments, on which the EU relies heavily, while imports from the EU to South Asia primarily consist of machinery.

	<b>Imports from EU (billions of Euros)</b>	<b>Exports to EU (billions of Euros)</b>	<b>Balance (billions of Euros)</b>	<b>GDP (billions of Euros)</b>	<b>Population (thousands)</b>	<b>GDP per capita (Euros)</b>	<b>Real GDP growth (%)</b>
<b>Afghanistan</b>	0.3	0.0	-0.3	17	36,000	479	2.3
<b>Bangladesh</b>	3.6	17.9	14.3	242	165,000	1,470	7.3
<b>Bhutan</b>	n.d.	n.d.	n.d.	2	754	2,916	2.3
<b>India</b>	45.7	45.8	0.1	2,278	1,334,000	1,707	7.3
<b>Maldives</b>	0.2	0.1	-0.1	4	359	11,136	4.7
<b>Nepal</b>	0.4	0.1	-0.3	24	30,000	822	6.3
<b>Pakistan</b>	5.7	6.9	1.2	260	201,000	1,293	5.8
<b>Sri Lanka</b>	1.6	2.8	1.3	78	22,000	3,612	3.7

Table 1- EU trade in goods with South Asian countries (2018), (Sources: [European Commission](#), [World Bank](#))

<sup>11</sup> Recognising the need to support Afghan trade, the EU had launched a three-year project in 2016 that aims to ‘increase Afghanistan’s ties to the global economy, following the country’s accession to the World Trade Organization (WTO)’ (European Commission, 2019a). The results are being evaluated.

<sup>12</sup> One such initiative, promoted by the EU together with the Asian Development Bank, is the [CAREC](#) (Central Asia Regional Economic Cooperation) trade and transport facilitation, which supports the Afghan Railway authority.

Ideally, trade relations between the EU and South Asia would be regulated by a Free Trade Agreement (FTA) with the SAARC, as is the case for other regional associations such as MERCOSUR, CARIFORUM, the Andean Community and the Gulf Cooperation Council (GCC) and envisaged for the ASEAN and the Mediterranean. However, given the lack of regional integration, EU relations with the bloc are governed by a country-specific approach and consequently by bilateral agreements. The types of bilateral trade acts currently existing between the EU and South Asia are:

- **Partnership and Cooperation Agreements**, which provide a general framework for bilateral economic relations but do not entail tariff removal or reduction (non-preferential trade agreements). Up to now, the EU has stipulated a comprehensive ‘Cooperation Agreement on Partnership and Development’ (CAPD) with Sri Lanka in 1995, a ‘Cooperation Agreement’ with Bangladesh in 2001 and one with Pakistan in 2004, as well as a ‘Cooperation Agreement on Partnership and Development’ with Afghanistan in 2016.
- **Bilateral Free Trade Agreements**, which ‘enable reciprocal market opening with developed countries and emerging economies by granting preferential access to markets’ (EU trade agreements, 2019) through the bilateral removal or reduction of customs tariffs. This format is not yet in place for any South Asian country, but negotiations for a European Free Trade Agreement with India have been ‘on and off’ since 2007.
- The **Standard GSP**, which targets low and lower-middle income countries and grants full or partial duty reductions for two thirds (around 66%) of all EU tariff lines for beneficiaries that do not enjoy other preferential trade agreements with the EU in order to facilitate the access of their exports to the European market. As of 1 January 2019, according to the list of GSP beneficiaries, India was the only South Asian country to benefit from this arrangement<sup>13</sup>.
- The **GSP+ scheme**<sup>14</sup>, which is reserved to vulnerable low and lower-middle income countries and ensures the full removal of tariffs on two thirds of all EU tariff lines conditioned upon the ratification and implementation of 27 core international conventions relating to human rights, labour rights, protection of the environment and good governance. Failure to comply with this

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<sup>13</sup> Other beneficiaries included Congo, Cook Islands, Indonesia, Kenya, Micronesia, Nauru, Nigeria, Niue, Samoa, Syria, Tajikistan, Tonga, Uzbekistan, and Vietnam.

<sup>14</sup> Formally referred to as ‘Special Incentive Arrangement for Sustainable Development and Good Governance’.

requirement may entail temporary or full withdrawal of the preferences. As of 1 January 2019, two South Asian countries, Sri Lanka and Pakistan, benefited from this special arrangement<sup>15</sup>.

- The **Everything But Arms (EBA) regime**, which is offered to least developed countries (LDCs)<sup>16</sup> and entails duty-free, quota-free access to the European market for all products except arms and ammunition. As of 1 January 2019, this arrangement included Afghanistan, Bhutan, Bangladesh, and Nepal.

Today, the GSP regime in its three variations (Standard GSP, GSP+, EBA) can be considered the main trading framework between the EU and South Asia, involving all its countries. Therefore, it will serve as the main focus for the analysis of the EU's approach to trade with South Asia.

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<sup>15</sup> The other six beneficiaries are Armenia, Bolivia, Cape Verde, Kyrgyzstan, Mongolia, and the Philippines.

<sup>16</sup> As per the definition by the United Nations, these are countries that present the lowest indicators of socioeconomic development. The criteria for identification of LDCs are based on three indicators: per capita gross national income (GNI), human assets and economic vulnerability to external shocks. The latter two are measured by two indices of structural impediments, namely the human assets index and the economic vulnerability index.

## **2. Understanding the Generalised Scheme of Preferences**

The idea behind such a system originated in the early 1960s, when the international community agreed to remove trade barriers and put in place ‘avenues of opportunity for developing and least developed countries for entry into trade with developed countries’ (Premadasa, 2016). The process was initiated by the G77 group, made up of the 77 signatories of ‘Joint Declaration of the Seventy-Seven Developing Countries’. Subsequent to their establishment in 1964, they presented their idea to include trade preferences to facilitate the insertion of developing and least developed countries into the international market in the framework of the first United Nations Conference on Trade and Development (UNCTAD). The proposal was officially adopted 4 years later, at UNCTAD II in New Delhi in 1968, under the name of ‘Generalised Scheme of Preferences’ (GSP) and formalised within the General Agreement on Tariffs and Trade (GATT) of 1947.

### **2.1 The EU’s Generalised Scheme of Preferences**

Implemented in rapid succession by many industrialised countries, the European Community adopted such a scheme in 1971 and the G77 member countries - which included many of the Member State’s former colonies- were the first beneficiaries of its GSP scheme, also referred to as ‘first scheme’ (see SADF, 2017, p.11). The latter comprised an initial phase of 10 years (1971-1981) and was subsequently renewed for a second decade (1981–1991) during which the scheme was reviewed each year (see UNCTAD, 2015, p.2).

A major review was due to take place in 1991 yet, ‘pending the outcome of the Uruguay Round under the GATT, the 1991 scheme was extended with various amendments until 1994’ (UNCTAD, 2015, p.2). At that point, a third 10-year cycle of the scheme (1994-2005) was inaugurated with the adoption two of legislative acts concerning industrial and agricultural products<sup>17</sup>. Various reviews followed, the most important of which took place in 2001 with the adoption of Council Regulation (EC) No 2501/2001 of 10 December 2001 applying a scheme of generalized tariff preferences for the period from 1 January 2002 to 31 December 2004. This regulation significantly altered the structure of the European GSP scheme by dividing it into five different regimes: ‘(a) General arrangements; (b) Special incentive arrangements for the protection of labour rights; (c) Special incentive arrangements for the protection of the environment; (d) Special arrangements to combat drug production and trafficking; (e)

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<sup>17</sup> Council Regulation (EC) No. 3281/94, concerning industrial products, and Council Regulation (EC) No.1256/96, concerning agricultural products. (UNCTAD, 2015, p.2)

Special arrangements for the least developed countries (LDCs): Everything but Arms (EBA) initiative' (UNCTAD, 2015, p.2).

#### Box 1 – Summary of the changes made to GSP Regulation 978/2012

1. **Period of validity**– Extended from 3 to 10 years for the GSP and GSP+ schemes, while the EBA scheme has no period of validity.
2. **Number of beneficiary countries** – Reduced from 177 to 88 countries, in accordance with the country graduation criteria.
3. **Tariff rates** – The current scheme differentiates between sensitive and non-sensitive products and builds this distinction into the method for calculating tariff rates.
4. **Graduation mechanisms** – The reformed GSP scheme expands the set of criteria for the removal of beneficiary countries from the list, and for the removal of certain product sections for a given beneficiary country. Likewise, the thresholds for these criteria have been increased.
5. **Product coverage** – Slightly expanded from 21 to 32, increasing preference margins for the products included, mainly raw materials.
6. **GSP+ scheme** – Further incentives were introduced in the reformed scheme for countries to join the GSP+. Monitoring measures to ensure compliance with international conventions are enhanced in the current scheme.
7. The **procedural requirements** for temporary withdrawal and safeguard mechanism have been amended, empowering the Commission to act rapidly in urgent cases.

Figure 1- (Facsimile: EPRS, 2018, p.7)

The number of arrangements was subsequently reduced to three (Standard GSP, GSP+ and EBA) through the 27 June 2005 Council Regulation (EC) No. 980/2005 covering the period from 1 January 2006 to 31 December 2008. From 2009 onwards, the general architecture of the scheme would remain the same and its renewal would take place on a three-year basis. However, one last major reform took place in 2012 with the adoption of Regulation (EU) No. 978/2012, which has been in force since January 2014 and applies until December 2023. It introduced a number of changes concerning the period of validity of the scheme, the number of its beneficiaries, its tariff rates, graduation mechanisms and incentives for GSP+ candidates (see Figure 1). Most importantly, in order to ‘further address the scheme’s insufficient support to sustainable development and good governance, the Commission reformed the procedures for temporary withdrawal from the scheme’ (Development Solutions, 2017, p.23), defining the specific criteria for temporary suspension of the scheme and reducing the span of the procedure to 6 months<sup>18</sup>.

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<sup>18</sup> For further detail, refer to section 2.2 on eligibility criteria.

In this respect, the new Regulation also seemingly adopted a more decisive stance with regard to terrorism, by introducing a clause that ‘enables the Commission to initiate the temporary withdrawal of the GSP scheme from beneficiary countries for failure to comply with international conventions on terrorism’<sup>19</sup> (SADF 2017, p.2) and by setting out clear provisions for the mid-term evaluation of the regulation (scheduled to take place five years after its entry into force) in order to ‘assess the need to review the scheme [...] taking into consideration the fight against terrorism’<sup>20</sup>.

The mid-term evaluation was finalised by the European Commission in October 2018 as formally required by the regulation text<sup>21</sup> and resulted in a minor amendment of the Regulation in January 2019 concerning the vulnerability threshold. This process was informed by an externally contracted evaluation, carried out by the UK-based consultancy ‘Development Solutions’<sup>22</sup>. Moreover, in line with Regulation No. 978/2012<sup>23</sup>, regular bi-annual reports have been produced by the Commission to monitor the instrument’s correct enforcement, as well as a number of accompanying Working Documents that have assessed the progress of GSP+ beneficiary countries at two-year intervals. The third bi-annual report of the Commission will be published in January 2020 and refers to the implementation of the GSP in the period 2018-2019. A new regulation is due to be discussed with a view to its adoption by 2023.

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<sup>19</sup> Regulation (EU) 978/2012, Article 19(c), Chapter V reads as follows ‘The preferential arrangements referred to in Article 1(2) may be withdrawn temporarily, in respect of all or of certain products originating in a beneficiary country, for any of the following reasons: (c) serious shortcomings in customs controls on the export or transit of drugs (illicit substances or precursors), or failure to comply with international conventions on anti-terrorism and money laundering’.

<sup>20</sup> Recital (34) of the Regulation (EU) No 978/2012 of the European Parliament and the Council applying a scheme of generalised tariff preferences

<sup>21</sup> Regulation (EU) 978/2012, Article 40: ‘The Commission shall submit, to the European Parliament and to the Council, a report on the application of this Regulation. Such a report may, where appropriate, be accompanied by a legislative proposal.’

<sup>22</sup> A simple research on the company’s website reveals well-established ties to China. Apart from an office in London and one in Brussels, the consultancy is also based in Beijing. The Executive Director holds an MBA qualification from the China European International Business School in Shanghai and many staff members have gathered experience in China, particularly Senior Researcher Mary Guo, who maintains ‘extensive contacts in Chinese ministries and major Chinese local firms’. Out of the ten projects advertised on the company’s website, four have China among its beneficiaries. The consultancy’s only ‘strategic partner’ is a company called Carno, which also has an office in China. Given the country’s conduct in terms of respect for labour rights, human rights and environment, the choice to entrust the Mid-Term review to a company working in such close contact with China is questionable at best and sheds doubt on the objectivity of the evaluation itself. This is especially true given the strategic trade relations China entertains with some of the beneficiary countries under review, for instance Pakistan.

<sup>23</sup> Regulation (EU) 978/2012, Article 40: ‘By 1 January 2016 and every two years thereafter, the Commission shall submit to the European Parliament and to the Council a report on the effects of the scheme covering the most recent two-year period and all of the preferential arrangements referred to in Article 1(2).’

## 2.2 Eligibility criteria

The criteria for countries to qualify as GSP beneficiaries have undergone significant transformations since the inception of the scheme, the latest of which were introduced by Regulation (EC) 978/2012 with the declared aim of ‘better focus[ing] the preferences on the countries most in need’ (European Commission, 2018a, p.1). Indeed, the regulation drastically reduced the number of beneficiaries from 177 to 88, excluding some of the major beneficiaries of the GSP that, according to an Impact Assessment Study carried out by the Commission on the previous scheme, had become ‘globally competitive’ and for which GSP benefits were ‘less important [...] while other lower-income countries and LDCs continued to rely on the benefits in exporting competitively to European Union market’ (UNCTAD, 2015, p.6).

Based on this finding, Regulation (EU) No 978/2012 proceeded to limiting the scope of the GSP to developing countries<sup>24</sup>:

*The general arrangement should be granted to all those developing countries which share a common developing need and are in a similar stage of economic development. Countries which are classified by the World Bank as high-income or upper-middle income countries has per capita income levels allowing them to attain higher levels of diversification without the scheme’s tariff preferences. Those countries include economies which have successfully completed their transition from centralised to market economies. They do not share the same development, trade and financial needs as the remaining developing countries; they are at a different stage of economic development, i.e. they are not similarly-situated as the more vulnerable developing countries; and, in order to prevent unjustified discrimination, they need to be treated differently.*

The following three categories of countries were immediately excluded from unilateral preferential treatment following the entry into force of the new regulation:

*(a) Overseas countries or territories that are under the administration of the European Union or other developed countries;*

*(b) Countries with other preferential market access arrangements of the European Union, such as economic partnership agreements and autonomous preferential arrangements for some Balkan countries (LDCs are not subject to this exclusion);*

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<sup>24</sup> Regulation (EU) No 978/2012, Recital (9).



*(c) Countries that are classified by the World Bank as high-income or upper-middle-income countries for three consecutive years based on gross national income per capita. (UNCTAD, 2015, p.6)*

Not only did the new provisions rule out at once a large number of former GSP beneficiaries, but they also put in place a ‘graduation mechanism’ whereby GSP status would henceforth be suspended once a country was ‘deemed competitive and no longer in need of the concessionary tariff’ (Kelegama, 2010, p.6), in other words, once it lost its status as a low-income country.

While the GSP is applied automatically and ‘unilaterally’ to all countries that fit the description, meaning that it does not require application or ratification by the beneficiaries, the GSP+ has various access conditions and requires a formal application, which is reviewed under severe scrutiny. Thereby, while the ‘onus of decision-making’ is in the sole hands of the Commission, it may draw on ‘information provided by the relevant UN/ILO<sup>25</sup> monitoring bodies as well as third parties “including civil society, social partners, the European Parliament or the Council”’ (SADF, 2017, p.5). Regulation (EU) 978/2012 sets out the following criteria<sup>26</sup>:

*[...] the additional tariff preferences provided under the special incentive arrangement for sustainable development and good governance should be granted to those developing countries which, due to a lack of diversification and insufficient integration within the international trading system, are vulnerable, in order to help them 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.*

This can be condensed into two main conditions: vulnerability and sustainable development. Vulnerability is hereby calculated based on two numerical criteria: Firstly, the diversification criterion, which rules that the seven largest sections of a country’s GSP imports into the EU must represent more than 75% of the value of all sections of a country’s GSP imports. Secondly, the import share criterion, according to which the country’s GSP imports into the EU must represent less than 6.5% of the value<sup>27</sup> of the EU’s total GSP imports from all GSP beneficiaries. In order to be eligible for GSP+ status, the vulnerability indicator should not exceed 2%<sup>28</sup>. The increase of the threshold from 1% to 2%

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<sup>25</sup> International Labour Organisation

<sup>26</sup> Recital (11) of Regulation (EU) No 978/2012 of the European Parliament and the Council applying a scheme of generalised tariff preferences

<sup>27</sup> This has been amended in January 2019 following the GSP mid-term review. The threshold has been raised to 7.4%.

<sup>28</sup> This criterion has been ‘relaxed’ in comparison with the previous version of the Regulation in order to enable more countries to apply. Pakistan, the Philippines and Ukraine have thus become eligible for GSP+ Status (See EPRS, 2018, p.9). Ukraine has subsequently been removed from the list of GSP+ beneficiaries, therefore the amendment has impacted only the Philippines and Pakistan, which has drawn the biggest benefits from it. Its implications will be further discussed in section 3.3.

was one of the major changes introduced by Regulation (EU) 978/2012. In addition to the abovementioned criteria, in order to benefit from the GSP+ the potential beneficiary should not have been qualified by the World Bank as a high-income or upper-middle income country for three consecutive years (in other words, it already enjoys standard GSP status).

On the other hand, the second condition called ‘sustainable development’ is related to the capacity of the potential beneficiary state to comply with international development standards through the ratification and effective implementation of 27 international conventions on human and labour rights, environmental protection, and good governance ‘without any reservations that are prohibited by those conventions, or which are incompatible with the object and purpose of the conventions’ (DRI, 2016a, p.2)<sup>29</sup>. This entails complete compliance and cooperation with the monitoring procedures imposed by those conventions, in addition to the EU’s own GSP+ monitoring procedures. These consist of: (1) a scorecard, which is used to monitor major issues in the countries’ compliance with the scheme’s requirements as well as to highlight potential shortcomings; and (2) ongoing dialogues with the beneficiaries, which are held at least once a year to discuss the states’ individual progress and challenges.

According to the new provisions laid out in Article 15 of the GSP Regulation (EU) 978/2012, a temporary withdrawal procedure of the GSP+ status can be initiated by the European Commission ‘where a country does not respect its binding undertakings to reporting and monitoring or where they have adopted or formulated a reservation which is prohibited or incompatible with the relevant conventions’ (Development Solutions, 2017, p.23)<sup>30</sup>. Thereby, the Commission may decide to do so independently, by adopting an implementing act and informing the European Parliament and the Council thereof<sup>31</sup>. The process may be initiated upon advice by ILO and UN monitoring bodies and informed by contributions issued by third parties, including civil society organisations, delegations of the EU in the beneficiary countries, the European Parliament or single EU Member States. After an official notice, published in the Official Journal of the European Union, the Commission should submit a report on its findings to the concerned GSP+ beneficiary, who is entitled to a maximum of 30

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<sup>29</sup> The fifteen conventions relating to core human and labour rights are listed in annex VIII, part A of Regulation (EU) 978/2012. The twelve conventions relating to the environment, good governance and the fight against drug production and trafficking, as listed in part B of annex VIII.

<sup>30</sup> Regulation (EU) 978/2012, Article 15(1): The special incentive arrangement for sustainable development and good governance shall be withdrawn temporarily, in respect of all or of certain products originating in a GSP+ beneficiary country, where in practice that country does not respect its binding undertakings as referred to in points (d), (e) and (f) of Article 9(1), or the GSP+ beneficiary country has formulated a reservation which is prohibited by any of the relevant conventions or which is incompatible with the object and purpose of that convention as established in point (c) of Article 9(1).

<sup>31</sup> Regulation (EU) 978/2012, Article 19(3) & (4), Chapter V.

days to formulate its comments<sup>32</sup>. Thereafter, the Commission has three months to either terminate the withdrawal procedure or downgrade the country to standard GSP status.

However, there are five potential withdrawal conditions that apply to all three GSP regimes. They are outlined in, Article 19(1):

*(a) serious and systematic violation of principles laid down in the conventions listed in Part A of Annex VIII [i.e. the 27 above-mentioned conventions];*

*(b) export of goods made by prison labour;*

*(c) serious shortcomings in customs controls on the export or transit of drugs (illicit substances or precursors), or failure to comply with international conventions on anti-terrorism and money laundering;*

*(d) serious and systematic unfair trading practices including those affecting the supply of raw materials, which have an adverse effect on the Union industry and which have not been addressed by the beneficiary country. For those unfair trading practices, which are prohibited or actionable under the WTO Agreements, the application of this Article shall be based on a previous determination to that effect by the competent WTO body;*

*(e) serious and systematic infringement of the objectives adopted by Regional Fishery Organisations or any international arrangements to which the Union is a party concerning the conservation and management of fishery resources*

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<sup>32</sup> Regulation (EU) 978/2012, Article 19(7), Chapter V.

### 3. Case studies

This section will apply the above-mentioned terms of reference to the context of EU relations with a number of selected countries. On one hand this will serve to describe the practical impacts of the different trade agreements on a number of selected countries, both from an economic and a social development perspective; on the other hand, it will highlight the differences in ‘EU preferential treatment’ among the compared countries. The overall aim will be to provide a more detailed assessment of the region’s needs and challenges, and a critique to the current application of preferences by the EU.

#### 3.1 Bangladesh: Demonstrating the validity of trade preferences

EU relations with Bangladesh date back to 1973, right after the country’s partition from Pakistan and its independence in 1972. They are mainly regulated by the 2001 Cooperation Agreement, which covers trade, economic development, human rights, good governance and the environment. Aside from being Bangladesh’s first trading partner, the EU is also a big development aid donor. For this purpose, it has dedicated EUR 690 million under the 2014-2020 Multiannual Indicative Programme, which focuses on strengthening democratic governance, improving food and nutrition security, and fostering education and skills development.

Today Bangladesh is the third most populous country in South Asia - second only to the Maldives in terms of population density. Ranked among the emerging and growth-leading economies of the world (EAGLEs)<sup>33</sup>, the country sports one of the fastest real GDP growth rates globally<sup>34</sup> and is included in the ‘Next Eleven’<sup>35</sup>: a list of countries identified by British economist Jim O’Neill as having the potential to become the largest economies of the 21<sup>st</sup> century, alongside the BRICs<sup>36</sup>. This rapid economic growth, however, is a recent phenomenon: only thirty years ago, in 1990, the country’s GDP was at USD 31,5 billion as opposed to USD 274 billion in 2018.

A report commissioned by the United Nations Department of Economic and Social Affairs (UNDESA), which analyses trade preferences for LDCs at the example of Bangladesh, acknowledges

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<sup>33</sup> This term was coined by BBVA Research in 2010 to define economies whose contribution to world economic growth in the following ten years was expected to be larger than the average of the ‘G6’ economies (meaning Canada, France, Germany, Italy, Japan and UK, not counting the US).

<sup>34</sup> Maintaining an average of 6.5% growth over the last decade according to the World Bank.

<sup>35</sup> Together with Egypt, Indonesia, Iran, Mexico, Nigeria, Pakistan, Philippines, Turkey, South Korea and Vietnam.

<sup>36</sup> Acronym introduced by O’Neill in 2001 in his paper ‘Building Better Global Economic BRICs’ (written for Goldman Sachs) to refer to the emerging economies Brazil, Russia, India and China.

‘domestic policy changes (in the forms of trade liberalisation, market-oriented reforms, removal of an anti-export bias and the pursuance of an export-oriented growth strategy in general)’ (Rahman, 2014, p.1) as a determining factor for Bangladesh’s swift development<sup>37</sup>. However, based on global evidence pointing to the increased importance of trade-related performance for the socio-economic development of a country, the report identifies in the ‘trade preferences accorded to Bangladesh as an LDC’ a second and perhaps more crucial element for the country’s recent economic, commercial and social achievements (see Rahman, 2014, p.1). According to these assumptions, Bangladesh’s preferential treatment as a beneficiary of the EU’s EBA regime since 2001 may have considerably contributed to the country’s successful integration into the global economy.

It is important to note, however, that the EU’s preferential regime has not always had such a positive impact on LDCs’ economies. Indeed, despite its declared aim of facilitating the insertion of least developed countries into the global market and its seemingly ‘unilateral’ concessions<sup>38</sup>, the EBA scheme has been known to contain certain clauses that de facto prevent LDCs from enjoying its trade preferences. This is due to its rules of origin (RoO)<sup>39</sup> - a feature common to all preferential trade agreements which is applied ‘to prevent trade deflection, whereby outsiders tranship [*sic*] goods through one beneficiary country to another to take advantage of tariff preferences’ (Elliott, 2016, p.1). Especially in sensitive sectors with high tariffs such as agriculture, textiles, and apparel, these rules determining origin are in fact stricter in order to prevent certain imported products with competitive prices from threatening local markets. However, such are exactly the sectors wherein developing countries are usually more advanced and would therefore have a comparative advantage.

For instance, upon its inclusion into the EBA scheme, Bangladesh’s most promising sector was that of ready-made garments<sup>40</sup> and apparels, which constituted an important asset in the country’s export basket. However, the stringent rules significantly limited such exports to the EU. Garments were subject to the ‘double transformation’ requirement, which demanded the process of conversion from

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<sup>37</sup> The GSP mid-term evaluation of 2017 confirms that ‘Significant shifts in trade, fiscal, industrial, agricultural and financial policies have taken place in Bangladesh since the beginning of the 1990s.’ (Development Solutions, 2017, p.150)

<sup>38</sup> In the sense that the granting of preferential tariffs is in principle not conditioned upon the fulfilment of certain obligations, as is the case for the GSP+, but automatic for all eligible countries.

<sup>39</sup> ‘Typically, these rules require that goods exported from one PTA [Preferential Trade Agreement] party to another must either be “wholly obtained,” in the case of a primary commodity, or “substantially transformed” to be deemed as “originating.”’ (Elliott, 2016, p.1)

<sup>40</sup> ‘Prior to the 1990s, Bangladesh’s exports were dominated by jute and jute goods. However, gradually their place started to be taken over by exports of apparels, with a consequent shift from a resource-based to a manufacturing-based export structure. In the 1970s and 1980s, the ratio between manufactured and primary exports was 10:90; by the end of FY2010, this ratio had reversed to 90:10. This transition was driven, almost single-handedly, by the export-oriented RMG [ready-made garments] sector’ (Rahman, 2014, p.5).

yarn to fabrics to apparels to be fully performed within the beneficiary country. With Bangladesh lacking the support of ‘textiles industries operating in parallel to their clothing industries’ (Ghori, 2012), it was largely dependent on imported fabrics and could therefore not take full advantage of the duty-free access under the EBA. Figures from 2005 indicate that ‘only 30% of Bangladeshi exports in woven-fabric clothing, which require[d] higher skills and technological investment, entered the EU market on duty-free terms [...] as opposed knitted and crocheted fabrics for which the rate was 80%’ (Ghori, 2012). While some argue that these restrictions were conceived as an incentive that would lead to the investment in ‘backward linkages’ and thereby ‘contribute to the growth of the manufacturing sector and the creation of industrial employment in LDCs’ (Rahman, 2014, p. 14), others saw them as a clear expression of European protectionist interests. Whatever the case, the situation only changed in 2011, when the rules were eased in favour of a ‘one-stage transformation’ requirement. From then on, Bangladesh experienced a rapid growth progress. Between 2011 and 2015, Bangladeshi exports to the EU increased from EUR 10.8 billion to EUR 17.6 billion (EEAS, 2016a) and by 2016 the EU had become the recipient of more than half<sup>41</sup> of Bangladesh’s exports (EEAS, 2016a)<sup>42</sup>, accounting for more than 24% of the country’s total trade (European Commission, 2019b).

In its 2018 Mid-term review, the Commission acknowledged the EBA regime as an ‘important motor of job creation and exports and [which] has also positively impacted infrastructure development and other benefits’ (Secretariat of the CDP, 2019). It confirmed the generally high utilisation rates of the EBA by Bangladesh, which in 2016 maintained an average of 96.6%, and stated that the country accounted for 69.1% of all EBA exports to the EU in 2014 (Development Solutions, 2017, p.150). Moreover, the externally commissioned Mid-Term report recognised Bangladesh’s efforts in reducing poverty, which decreased from 44.2 percent in 1991 to 14.8 percent<sup>43</sup> in 2016/17 (World Bank Group, 2019d), and its general improvement of female employment rates. Nonetheless, 24 million of its inhabitants still live below the poverty line and the rapid growth has increased the demand for infrastructure, energy, transport and urbanization. Furthermore, the country is one of the most vulnerable to the adverse impacts of climate change, suffering from yearly flash floods and drought which put the country’s disaster-coping mechanisms to a constant test and slow down poverty reduction efforts (see World Bank Group, 2019d). Adding to this climate of emergency, the country

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<sup>41</sup> 55.5% in the first quarter of 2016, according to Bangladesh Bank.

<sup>42</sup> These are made up to 90% by ready-made garments, but in recent years also products such as frozen food, agricultural products, footwear, leather products and bicycles have grown in importance.

<sup>43</sup> Referring to the percentage of the population living below the international poverty line of USD 1.9 per day.

has been the most affected by the consequences of ethnic cleansing of the Rohingya in Myanmar. The area between Cox's Bazaar and the river Naf alone hosted an estimated 1,100,000 refugees in 2018.

In order to uphold its achievements, the Bangladeshi government will have to work to 'ensure continuity of sound macroeconomic management, implement structural reforms, expand investments in human capital, increase female labour force participation, and raise productivity through increased global integration' (World Bank Group, 2019d). However, these are only a few of the challenges the country will face upon its incumbent graduation from the category of 'least developed country'. In fact, in the same year of the GSP mid-term review Bangladesh also fulfilled for the first time all three criteria for graduation from the list of UN LDCs<sup>44</sup>, which is expected to become effective in 2024 (upon confirmation through a second triennial review in 2021). While it is true that Regulation (EU) 978/2012 grants EBA preferences to least developed countries without the need for periodical renewal and thus without expiry, the loss of Bangladesh's LDC status will entail the automatic termination of its preferential treatment. Considering a 'smooth transition period' of a couple of years in order for the country to be able to adjust to the changes, termination of the EBA status is expected to become effective in 2027. Possible options for Bangladesh for its post-2027 market access to the EU will comprise: (1) application for GSP+ status; (2) negotiation of an EU-Bangladesh Free Trade Agreement; or (3) acceptance of standard GSP or most favoured nation (MFN) terms<sup>45</sup>.

In principle, graduating LDCs can apply to the EU's GSP+ Special Arrangement; however, Bangladesh currently does not meet at least two of the eligibility criteria: 'its share in GSP covered imports into the EU is above the maximum threshold and it has not ratified the Convention concerning Minimum Age for Admission to Employment' (CDP, 2019, p.ii), which is part of the 27 conventions that make up the sustainable development criterion. Should the situation not change by 2024, and unless alternative solutions such as a bilateral Free Trade Agreement are explored, the country's exports would be subject to tariffs according to the standard GSP or the MFN terms.

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<sup>44</sup> It should be noted that graduation from the LDC category does not automatically entail inclusion in the list of middle-income countries. Status as LDC country 'is based on per capita income but also on indicators of human development and of economic and environmental vulnerability, which means that a middle-income country can continue to be an LDC while certain low-income countries are not' (Secretariat of the CPD, 2019, p.1). In fact, Bangladesh has 'has been classified as a lower middle income country since 2014' and that 'its strong economic growth over the past decades is widely expected to lead to classification as an upper-middle-income country by 2021' (Development Solutions, 2017, p.150).

<sup>45</sup> The MFN clause is an essential part of the World Trade Organisation's first trading principle, 'trade without discrimination' (which also applies to the EU as WTO member). The clause was designed to prevent favouritism amongst WTO members, and requires each country to extend to all other WTO members any preferential treatment granted to another party.

A factor that could jeopardise Bangladesh's future trade relations with the EU, regardless of its graduation, is the gravity of alleged shortcomings in respecting core human rights and labour rights standards (as testified by reports from the United Nations, the ILO, and civil society). The EU has already repeatedly voiced its concerns and engaged with the government and relevant stakeholders to address worker safety and labour rights, especially in the aftermath of the Rana Plaza tragedy of July 2013<sup>46</sup>. Said tragedy led to the establishment of the 'Sustainability Compact' by the EU, the Government of Bangladesh, the USA and Canada (the main markets for Bangladeshi garment exports) with the aim of improving: (1) respect for labour rights; (2) structural integrity of buildings and occupational safety and health; and (3) responsible business conduct (European Commission, 2019b). Despite tangible progress in workplace safety, respect for worker's rights remained a pressing issue according to the EU's Fourth Technical Report on the Bangladesh Sustainability Compact, published in October 2017. Thereafter, the EU intensified the dialogue with Bangladesh through so-called 'enhanced engagement'; a 'last-resort option' adopted for some EBA countries<sup>47</sup> in order to 'press for concrete actions on and sustainable solutions to serious shortcomings in respecting fundamental human and labour rights' (European Commission, 2018b, p.5).

In its 'Report to the European Parliament and the Council on the Generalised Scheme of Preferences covering the period 2016-2017' (2018b, p.5) the Commission expressed particular concerns regarding freedom of association and the implementation of the Compact. It warned that failure to achieve significant improvement in this area could lead to temporary withdrawal of EBA preferences (as set out in Regulation (EU) 978/2012 Article 19), or even to the possibility of suspension of access to any arrangement under the GSP. The alignment of the Bangladesh Labour Act (BLA) and the Export Processing Zone (EPZ) Act with the ILO labour rights conventions have been identified among the most pressing priority actions. The future of EU-Bangladesh trade cooperation was one of the core topics of the 9th Session of the European Union (EU)-Bangladesh Joint Commission, which was held in Dhaka on 21 October 2019. The Joint Statement issued on this occasion confirmed that both sides were 'committed to further enhance the regular EU-Bangladesh Business Climate Dialogue to address impediments towards more trade and investment from the EU' and they 'agreed to develop a roadmap on some issues strengthening compliance with labour and human rights'. The parties further agreed that 'the good economic progress and the future graduation from Least Developed Country status should

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<sup>46</sup> The Rana Plaza tragedy refers to the collapse of an eight-floor factory building in Dhaka due to a structural failure on 24 April 2013. With more than 2,500 people injured and approximately 1,100 dead, the event is considered the deadliest garment-factory disaster in history.

<sup>47</sup> Currently Bangladesh, Cambodia and Myanmar.



give the opportunity to share the benefit of this progress with the poorer and the most vulnerable part of the population?.

While it is impossible at this point to make predictions on the future of Bangladesh's status, it is clear that in case no alternative agreement is found, the greatest impacts of higher tariffs and more stringent rules of origin will be on garment and textiles. As the assessment made by the Secretariat of the Committee for Development Policy of the United Nations Department for Economic and Social Affairs rightly points out:

*The extent to which producers will be able to adapt depends on multiple domestic and international factors. Larger firms with better access to capital and technology and greater capacity to move into higher value-added segments have better chances of remaining competitive, while for small firms already operating at very small margins, losing the tariff differential could pose an existential threat.*

Moreover, Bangladesh would no longer be able to profit from the LDC-specific rules of origin which, as outlined above, are subject to 'one-stage transformation' requirements. Under the standard GSP, Bangladeshi garments would have to fulfil a 'two-stage transformation', which in practice would exclude all garments produced from imported textiles, from preferential treatment. Accordingly, 'those products would face MFN tariffs [...], which are 12% for most garments' (CDP, 2019, p.7).

In any case, Bangladesh has long served as the 'poster child' for the effectiveness of the EU's GSP+ scheme. As such, during a recent event regarding the future of EU-Bangladesh apparel trade, EU officials have assured the country that they will seek a mutually beneficial solution for the future - one which will ideally enable further progress and not create new obstacles for development. However, in order to maximise its chances, the country may need to demonstrate renewed commitment to improving some standing issues of concern, such as better fire safety, more effective complaint mechanisms, the formalisation of subcontracted factories, and the elimination of anti-union discrimination.

### 3.2 Sri Lanka: Exemplifying the effects of temporary withdrawal

EU relations with Sri Lanka were first formalised in 1975 through a Cooperation Agreement, which was upgraded twenty years later to a third-generation ‘Cooperation Agreement on Partnership and Development’, which remains the main frame of reference until today. It offers guidance in the following areas: ‘(1) diversification of trade and investment; (2) networking between EU and Sri Lankan business communities; (3) strengthening technical, economic and cultural links, (4) providing technical assistance to Sri Lanka to interact more effectively with the EU; 5) supporting Sri Lanka's efforts to improve the living conditions of the poorer sections of the population; and 6) environmental protection and sustainable management of natural resources’ (Soutullo, 2019). EU dialogue with Sri Lanka takes place in the form of a Joint Commission, whose regular meetings aim to ensure the proper functioning and implementation of the agreement, as well as to explore new avenues for cooperation.

The EU is Sri Lanka’s second largest trading partner after India, but constitutes its first export partner, absorbing 31% of the country’s total exports. In 2018, the two-way trade in goods between the EU and Sri Lanka was worth around EUR 4.5 billion and recorded a EUR 1.3 billion trade balance in favour of Sri Lanka (see European Commission, 2019c). Much like Bangladesh, the main goods exported from Sri Lanka to the EU are textiles and clothing, which accounted for EUR 1,690 million in 2018. Moreover, the EU is a big development aid donor to Sri Lanka and has provided the country with a total of approximately EUR 760 million in assistance over the past decade (see Soutullo, 2019).

The country has been a beneficiary of the GSP since the scheme’s inception, acquiring GSP+ status on 15 July 2005. However, the EU decided to temporarily withdraw these benefits on 15 August 2010 on the basis of the findings of an investigation by the Commission that attested serious flaws in Sri Lanka’s implementation of the 27 international conventions conditional for preferential treatment. These breaches occurred specifically in the final year of the civil war disputed from 1983 to 2009<sup>48</sup> between the Sinhalese majority government and the Liberation Tigers of Tamil Eelam (LTTE). With a death toll of an estimated 100,000, added to other thousands disappeared and displaced persons, the war is considered one of the most violent of recent history and has been at the centre of a thorough UN investigation which shed light on the atrocities and crimes committed on both sides.

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<sup>48</sup> In this respect, the internal rules adopted by the Commission to decide over temporary withdrawal seem to differ from those set out in Regulation (EU) 978/2012. In a consultation meeting between the EEAS and a number of civil society organisations (amongst which the Unrepresented Nations and Peoples Organisation), officials from the EU Commission admitted that the reason for the suspension of Sri Lanka’s GSP+ status was due to breaches to the Geneva Conventions, which fall within the realm of International Humanitarian Law (IHL). This clearly differs from the original purpose declared in the GSP regulation, which is that of promoting the ratification and implementation of international human rights conventions, without making any reference to IHL.

After publishing its own report in October 2009, which identified serious ‘shortcomings in the implementation of three UN human rights conventions: the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), and the Convention on the Rights of the Child (CRC)’ (DRI, 2016a, p.5), the Commission issued a recommendation for the withdrawal of Sri Lanka’s GSP+ status on 15 December 2009. Its enquiry ‘relied primarily on reports by the United Nations and by non-governmental groups’ (Vogel, 2010). The decision to suspend Sri Lanka’s GSP+ status was later endorsed unanimously by the European Member States on 16 February 2010 - on the occasion of a meeting of EU Finance Ministers - and came into effect six months thereafter. Initially the withdrawal was meant to last only for six months; however, as the period did not prove to be sufficient, it was ‘further extended to enable to identify and address the issues faced’ (Premadasa, 2016). Fearing that the suspension would put excessive pressure on the country’s already fragile situation, the Ambassador of Sri Lanka to the EU, H.E. Ravinatha Aryasinha, noted at the time that ‘Sri Lanka’s performance [regarding human rights] had to be judged in the context of a “democracy fighting terrorism”’ (see Vogel, 2010).

Although its membership did not last long and was overshadowed by the context of war, Sri Lanka had been one of the main beneficiaries of the GSP scheme, and experienced considerable economic improvements. Within a year from its accession to the GSP+ scheme, ‘the EU [had] replaced the North American market region (NAFTA) as the country’s largest export market’, a factor that ‘proved crucial for Sri Lanka during the financial crisis and the consequent contraction of the US market’ (DRI, 2016a, p.6). Sri Lanka’s exports to the EU had increased from a value of ‘USD 1.8 billion in 2004 (the year before the introduction of GSP+) to USD 2.9 billion in 2009 (the year before GSP+ was suspended)’ (DRI, 2016a, p.7). Conversely, the average annual growth rate of Sri Lankan exports to the EU went from 11.5% in the pre-GSP+ period to 16.4% under the GSP+ scheme (see Figure 2). After withdrawal, exports to the EU still continued to grow, albeit at a significantly lower pace.

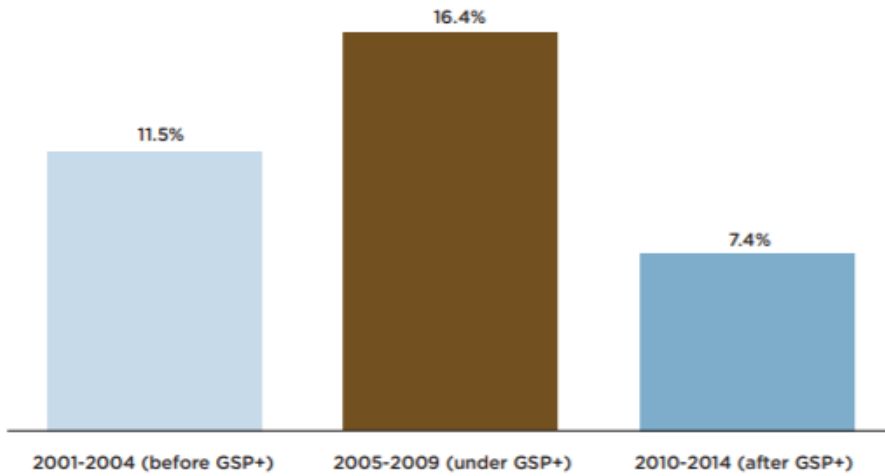


Figure 2- Annual average growth of Sri Lankan exports to the EU (Source: DRI, 2016a, p.7)

As had been predicted, the loss of GSP+ status had far-reaching consequences on Sri Lankan exports, especially with regard to the garments and textiles sector. In fact, thanks to the GSP+ scheme, the EU had become the largest market for Sri Lankan apparel exports, accounting for ‘approximately 60% of the country’s exports to EU markets and almost 40% of Sri Lanka’s total exports’ (DRI, 2016a, p.8). As most of the country’s leading export products (including the majority of garments and apparel categories, which is not the case for the US GSP scheme) were included in the list of 7,500 products eligible for GSP (see Premadasa, 2015), Sri Lanka had been able to take full advantage of the preferences accorded through the EU’s Special Arrangement<sup>49</sup>. As a consequence of the suspension, Sri Lankan exports were reverted to standard GSP tariffs, featuring reduced but not entirely duty-free rates. In light of the notable difference between the tariffs applied by the GSP and GSP+ schemes respectively<sup>50</sup>, especially with regard to the product categories of garments and apparels, it is not surprising that the retrogression from the Special Arrangement to the Standard one resulted in heavy losses for the Sri Lankan economy. The situation was further accentuated by the competition the country faced from neighbouring states that had maintained or acquired access to the GSP+ arrangement or preferential treatment by the EU. Interviews with relevant stakeholders in the Sri Lankan apparel industry confirmed that ‘the GSP+ concessions had been crucial for their ability to keep up with competitors who benefit from tariff concessions’ (DRI, 2016a, p.10). All in all, the Sri Lankan government reported that the GSP+ withdrawal contributed to the closing of 25 apparel factories, forced almost 10,000 people out of work, and caused an estimated loss of Rs. 782 million in exports.

<sup>49</sup> A study published by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) pinpoints the increase in Sri Lanka’s utilisation rates of GSP preferences to 42% in 2003 versus 72% in 2008.

<sup>50</sup> For example, the product category n°610910, which includes ‘T-shirts, singlets and other vests, of cotton, knitted’ is subject to 0% tariffs under the GSP+ scheme, but to a rate of 9.6% under the standard GSP.

Sri Lanka was readmitted to the GSP+ scheme in May 2017- not least thanks to the diplomatic efforts of H.E. Rodney M. Perera, Ambassador of Sri Lanka to the EU- as an incentive for the undertaken political reforms and for its improvements in complying with the three abovementioned international conventions. This came about after a change in government, whose new components promised to steer the country away from previous autocratic tendencies and to prioritise ‘good governance, national reconciliation and re-engagement with the international community’ (Soutullo, 2019). Indeed, the National Unity Government formed in 2016 by President Sirisena (Sri Lanka Freedom Party) and Prime Minister Wickremesinghe (United National Party) was able to recalibrate its foreign policy, reconnect with other international actors, initiate improvements in fundamental freedoms and draft a sustainable macroeconomic strategy. Moreover, as evidenced in the assessment report of the Commission on the implementation of GSP+ in Sri Lanka between 2016 and 2017 (2018c, p.1), the country ‘made a series of impressive commitments to national reconciliation, as articulated in its co-sponsorship of Human Rights Council Resolution 30/1 (2015) on promoting reconciliation, accountability and human rights in Sri Lanka’. The report particularly saluted the revival of EU-Sri Lankan relations within the framework of the 1995 Cooperation Agreement and the willingness of the Coalition Government to engage in human rights dialogue with the EU. Nonetheless, two years into its mandate, the government seemed to struggle to uphold the promises made in its ambitious agenda and had shown little commitment to tackling ‘the causes of the conflict and address[ing] grievances between communities’, for instance by failing to establish ‘truth about the fate of the missing and disappeared persons during the civil war and its aftermath’ (European Commission, 2018c, p.1). In its review report, the EU particularly lamented the slow progress in implementing UNHRC<sup>51</sup> Resolution 30/1 and in replacing the Prevention of Terrorism Act (PTA) with counter-terrorism legislation that is in line with international standards (see European Commission, 2018c, p.1)

Moreover, the EU strictly condemned the continued use of torture and the enforcement of the death penalty in Sri Lanka, as a *de facto* abolitionist state. Despite the country voting in favour of the 2016 UN Resolution on a universal moratorium and reiterating its commitment to the moratorium in December 2018 in front of the 73<sup>rd</sup> UN General Assembly (UNGA), in June 2019 President Sirisena arbitrarily decided to resume executions against convicted drug offenders. Ever since - and not least during the 22<sup>nd</sup> meeting of the EU-Sri Lanka Joint Commission - the EU has continuously expressed preoccupation regarding the implementation of the death penalty and mentioned possible implications on the country’s GSP+ status. It is interesting to note in this respect that the EU has demonstrated a

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<sup>51</sup> United Nations Human Rights Council

quite categorical stance against the death penalty with all its GSP+ beneficiaries except Pakistan, whose re-introduction<sup>52</sup> of the capital punishment right after the country's inclusion into the Special Arrangement did not attract particularly harsh comments or any warnings of a potential withdrawal.

These and other issues were addressed during the last meeting (on 30 August 2019 in Colombo) of the EU-Sri Lanka Joint Commission Working Group on governance, rule of law and human rights, which is in charge of monitoring the country's compliance with GSP+ conditions. On this occasion, the EU welcomed the progress made by the country, but 'called for continuation and consolidation of these achievements in the future'. Furthermore, the need for enhanced counter-terrorism cooperation in the light of the horrific terrorist attacks of Easter 2019 was stressed<sup>53</sup>. While the country still has a long way to go to meet international standards, the temporary withdrawal of the GSP+ by the EU has proven instrumental to reviving government efforts in the realm of human, labour and environmental rights. It will be crucial for the country to consolidate its achievements ahead of 2023, when it is expected to attain upper-middle-income status and graduate from the EU's GSP+ scheme.

The case of Sri Lanka demonstrates that sanctions or withdrawal of preferences can be used as leverage to remind beneficiaries of their commitments to the signed conventions and to compel them to demonstrate improvement. However, the evidence mentioned also hints to a certain partiality by the EU on a series of specific issues where rules do not seem to apply equally to all GSP+ beneficiaries. This will emerge more clearly from the following chapter.

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<sup>52</sup> The country had adhered to the moratorium on the death penalty in 2008; however, it reinstated the practice within a year of its accession to the GSP+ Special Arrangement. This will be further discussed in section 3.3.

<sup>53</sup> In this spirit, in August 2019, the Commission 'allocated EUR 8.5 million to Sri Lanka as part of its instrument contributing to stability and peace, for the fight against violent extremism, the building of community resilience and the promotion of peace and tolerance' (Soutullo, 2019).

### 3.3 Pakistan: Missed opportunities for a stance against terrorism

The EU and Pakistan signed their first trade agreement in 1976, which was replaced by a Cooperation Agreement in 2004. The latter has been governing EU-Pakistan bilateral trade relations until today. In May 2007, a ‘Sub-Group on Trade’ was established under the auspices of the Pakistan-EU Joint Commission with the aim of promoting two-way trade and conducting dialogue intended to help tackle individual market access issues. The enhancement of trade relations also made part of the EU-Pakistan 5-year Engagement Plan adopted in 2012. Pakistan is a major beneficiary of the GSP+ scheme, which it obtained on 1 January 2014. The EU is Pakistan’s second largest trading partner, after China, but the first recipient of Pakistani exports (35% of the country’s total). In 2018, the trade volume between the EU and Pakistan amounted to EUR 12.6 billion, with a surplus of EUR 1.2 billion in favour of the latter (see Soutullo, 2019). The EU is also an active donor of development assistance and humanitarian aid in the country, to which it has dedicated a budget of EUR 653 million for the period 2014-2020 under the Development Cooperation Instrument.

It is important to note that the expedient for the introduction of trade preferences for Pakistan was a series of floods between July and August 2010 that had affected 20 million people and compromised 20% of Pakistani land. With the aim of facilitating the recovery of the country’s economy and supporting its progress towards future development, then Trade Commissioner Karel De Gucht tabled a proposal for an exceptional trade package, which was met by stark opposition from several EU Commissioners due to concerns over its potential impact to the EU’s textile industry. After two years of discussions, an alternative proposal in the form of a trade waiver was finally cleared by the WTO in February 2012 and adopted by the EU in October 2012<sup>54</sup>. Their expiry date was set for 31 December 2013, by which it was deemed that they would make a sustainable impact. However, by that time, the modifications to the vulnerability criterion (see p.12) introduced by GSP Regulation (EU) 978/2012 had already entered into effect and made Pakistan eligible for GSP+ status<sup>55</sup>. After an application process involving persistent lobbying by the United Kingdom in favour of its former colony<sup>56</sup>- and varying degrees of opposition by France and Germany-the country successfully acceded to the GSP+ scheme in 2014. The preferential regime has been awarded to Pakistan for a period of ten years but is subject to

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<sup>54</sup> Regulation (EU) N° 1029/2012 of October 25 2012 introducing emergency autonomous trade preferences for Pakistan

<sup>55</sup> Given the particular geo-political situation at the time, it is probable that the relaxation of the vulnerability criterion was undertaken with the specific aim of granting both Ukraine and Pakistan access to the GSP+ scheme. The declared purpose of the amendment was that of allowing more countries to apply, however, the new criteria opened up eligibility only to three countries: the Philippines, and - not by chance - Pakistan and Ukraine.

<sup>56</sup> ‘It was us, Britain, who ensured Pakistan got tariff-free access to the European Union’, former Prime Minister David Cameron said at a campaign event during the 2014 European election’ (Saeed, 2018).

a biannual review process in order to monitor compliance with the requirements and, in case of shortcomings, to decide about a potential temporary suspension.

Especially in the case of Pakistan, there is some utility in analysing the nature of the vulnerability criterion and its appropriateness as a guideline for GSP+ eligibility. According to Regulation (EU) 978/2012, a country 'is considered to be vulnerable due to a lack of diversification and insufficient integration within the international trading system' (Article 9(1), (a)). This is more strictly defined in Annex VII through the criteria of diversification and import share (see section 2.1) which, contrarily to the definition provided above, reveals a rather euro-centric interpretation of vulnerability. In other words, the fact that a country has a low and not very diversified import share vis-à-vis the EU is equated with economic vulnerability on the global level. Pakistan is a perfect example of this misconception: between 2010 and 2011- thus before gaining access to EU preferential treatment - trade with the EU was not very advanced and the country's main export destinations were the USA, the U.A.E, Afghanistan, China and the UK, followed by Germany, Hong Kong and Bangladesh. Based on the rationale of the vulnerability indicators, Pakistan should have resulted as being poorly integrated in the international market. However, quite the contrary was the case: in 2010 the country's external sector registered a 'historic performance', with exports increasing by 28 percent in the first 10 months of the year and exceeding the USD 20 billion mark for the first time (Pakistan Ministry of Finance, 2011, p.i). Moreover, despite being listed as a developing country, since 1998 Pakistan is also a 'regional power with nuclear capabilities' (Malosse, 2018), which sets it apart from all other beneficiaries of the GSP+, namely Armenia, Bolivia, Cape Verde, Kyrgyzstan, Mongolia, Philippines and Sri Lanka.

Another striking point that sheds doubt on the objectivity of GSP+ criteria is that the EU has been very strict in evaluating the potential beneficiaries' formal ratification of its 27 mandatory international conventions, but has shown less consideration for their actual implementation. This is highlighted by the example of Gabon and Nigeria, two evidently vulnerable countries which applied to the scheme - the first in 2008, the second in both 2007 and 2008 - but were rejected on grounds of shortcomings in the ratification of the relevant covenants. At the time of application, they had both ratified 26 out of 27 conventions. This formal shortcoming sounds negligible compared to the continued GSP+ treatment enjoyed at the time by Colombia, in spite of its serious violations of human and labour rights. A similar 'double standard' can be observed with regard to Pakistan: during its application for GSP+ status, the Pakistani government agreed to ratify both the ICCPR and the CAT but formulated consistent reservations concerning some of the core provisions of the covenants. After being informed that these reservations would impede accession to the trade scheme, Pakistan chose to withdraw seven out of its



nine previous reservations from ICCPR<sup>57</sup> and six of nine reservations from CAT<sup>58</sup>. This however, did not prevent the country from openly violating several core principles enshrined in the conventions, while still enjoying preferential treatment.

There is no doubt that it is in Pakistan’s best interest to retain its GSP+ status due to the many economic benefits it has thus far gained from it. Indeed, the country’s exports to the EU increased particularly fast since the award of GSP+ (EUR 5,515 million in 2014) and almost doubled from EUR 3,319 to EUR 6,273 million (European Commission, 2019d) between 2006 and 2016.

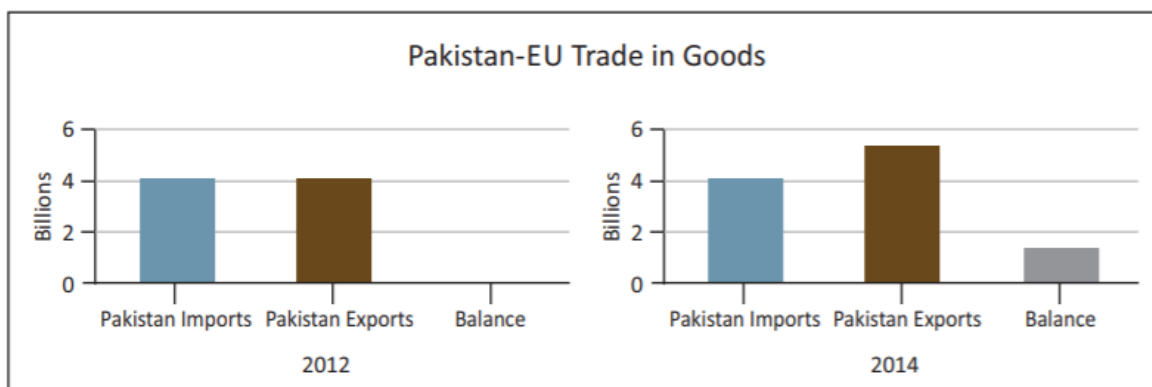


Figure 3- (Source: DRI, 2016b, p.9)

Like Bangladesh and Sri Lanka, textiles and clothing account for the majority of Pakistani exports to the EU (80%). As such, the country is now the ‘third largest textiles and garment-exporting country in Asia that possesses duty free access to EU markets’ and has the opportunity to ‘strengthen its textile industry and consolidate a large market share’ (DRI, 2016b, p.8). In the past, Pakistan had struggled to insert itself into the EU market due to competition from other South Asian garment exporting countries that benefited from EU trade preferences, but thanks to its accession to the GSP+ in 2014, its textile exports rose in both quantity and value, creating ‘a greater potential to attract investment and generate employment’ (DRI, 2016, p. 9). Just how much benefit Pakistan has drawn from the Special Arrangement is shown by its share of total GSP+ preferential imports into the EU, which in the period 2016- 2017 covered 74% of the total imports from GSP+ countries (see Figure 4).

<sup>57</sup> It maintains reservations to Article 3 (‘The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.’) and to Article 25 (‘Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.’)

<sup>58</sup> It maintains reservations to Article 8(2), Article 28(1) and 30(1).

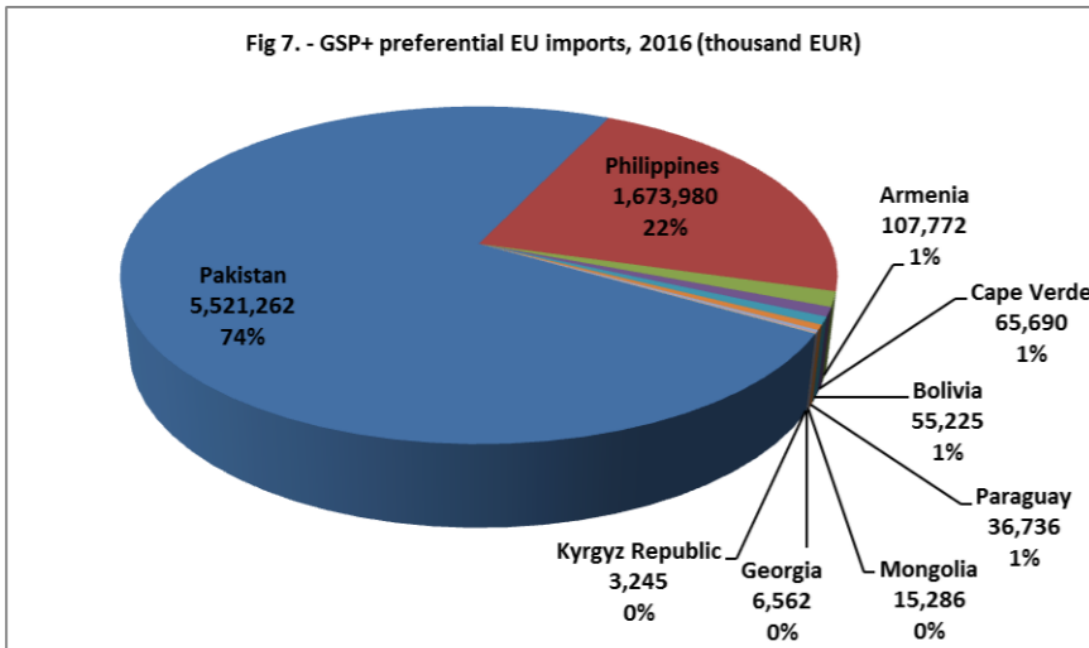


Figure 4- (Source: European Commission, 2018b, p.7)

However, the country's heavy concentration and reliance on a single product category remains a challenge for Pakistan in terms of multiplying gains from exports. In other countries such as Bangladesh or Mauritius, the GSP+ has proven instrumental in creating the prerequisites for greater trade diversification and sophistication<sup>59</sup>. Accordingly, with 78% of Pakistani goods eligible for duty free export under the EU's GSP+ scheme, it was expected that not only the big textile and garment industries, but also smaller sectors would have the chance of expanding. On the contrary, in 2020, sectors like leather, footwear and food items (except for rice), were found to be either stagnant or declining (see Malik, 2020). The European Commission itself stated that although 'Pakistan's economy holds considerable potential, high costs of doing business, complex regulation and infrastructure bottlenecks all have a detrimental effect on trade and growth' (European Commission, 2019d). It is evident that the country will have to tackle these restrictions within its own trade regime and regulatory environment, especially in the event of a future termination of its GSP+ status.

Aside from economic advantages, the GSP+ would also constitute an opportunity to 'make progress on working conditions, labour rights and gender equity' (DRI, 2016, p. 9), but this is an aspect that the country has thus far been slow to deliver on. According to the requirements outlined in Article 9 of the

<sup>59</sup> 'Research has indicated that GSP status has enabled developing and lower middle-income countries that possess few production facilities to diversify their trade industries as well as access and compete in markets in developed countries' (DRI, 2016b, p.8).

Regulation (EU) 978/2012, in addition to fulfilling the vulnerability criteria, a country may benefit from the GSP+ scheme only if:

*b) it has ratified all the conventions listed in Annex VIII (the ‘relevant conventions’) and the most recent available conclusions of the monitoring bodies under those conventions (the ‘relevant monitoring bodies’) do not identify a serious failure to effectively implement any of those conventions;*

*(c) in relation to any of the relevant conventions, it has not formulated a reservation which is prohibited by any of those conventions or which is for the purposes of this Article considered to be incompatible with the object and purpose of that convention;*

*(d) it gives a binding undertaking to maintain ratification of the relevant conventions and to ensure the effective implementation thereof;*

*(e) it accepts without reservation the reporting requirements imposed by each convention and gives a binding undertaking to accept regular monitoring and review of its implementation record in accordance with the provisions of the relevant conventions; and*

*(f) it gives a binding undertaking to participate in and cooperate with the monitoring procedure referred to in Article 13.*

Nevertheless, Pakistan has continuously lagged behind in complying ‘both with the content of the conventions and the associated reporting requirements of the UN treaty bodies’ (DRI, 2016, p.14). The European Commission’s biannual assessment of the GSP+ in Pakistan for the period 2016-2017 reports the following: ‘While constitutional and legal guarantees for the rights of Pakistani citizens are relatively comprehensive, and although the last two years have seen the adoption of a number of new laws, strategies and action plans, implementation remains an issue of concern’ (European Commission, 2018d, p.2). The report went on to highlight some positive developments on the institutional and formal level, such as Pakistan’s formal participation in the Universal Periodic Review, the adoption of a National Action Plan on Human Rights, the establishment of a system of Treaty Implementation Cells (TICs) on the provincial and federal level and creation of a National Commission on Human Rights (NCHR). Moreover, the assessment report acknowledged some progress in advancing Pakistani women’s rights thanks to the activities of the federal and provincial Commissions on the Status of Women and the women’s caucuses, established at federal and provincial parliaments, as well as through the adoption of legislation ‘on relevant topics, including Hindu marriage, domestic violence, acid crimes, and prevention of anti-women practices’ (ibid).

These positive aspects, however, were not accompanied by tangible improvements on the ground, and appear quite meaningless in light of the overwhelmingly negative tendencies Pakistan has displayed (and continues to display) with regard to the respect of fundamental rights and freedoms such as those of expression, association and belief, as well as the protection of minorities<sup>60</sup>. What is more, is that these discriminatory and repressive tendencies remain deeply rooted not only in the authorities' behaviour, but also in its legislation, and the government has thus far not shown willingness to amend the measures that systematically undermine the rights of many citizens. This is true for instance for the provisions targeting Ahmadiyya Muslims, a splinter group of Sunni Islam considered as heretic by the traditional-conservative majority and therefore officially declared as 'non-Muslim' in Pakistan - which leaves it vulnerable to persecution<sup>61</sup>. Adding to this is the existence of so-called blasphemy laws<sup>62</sup>, which were introduced to punish offenses against any form of 'recognised religion' but are being systematically abused to target minorities in the country<sup>63</sup>, up to the point that allegations of blasphemy can result in a death sentence<sup>64</sup>. Indeed, Pakistan is the country with the highest number of people on death row<sup>65</sup> and has shown no intention of reinstating the moratorium on the application of death penalty, which it suspended in March 2015, a year after being granted GSP+ status.

Finally, despite the formal ratification of all GSP+ conditioned labour rights conventions, no significant progress has been made with regard to their implementation. Working conditions remain poor especially in the garment and textile sector, occupational safety and health standards fail to be met, child labour is still practiced and abuses are widespread. Various organisations, national (Pakistan Workers Confederation) and international (Human Rights Watch, Amnesty International), have continuously expressed concern about labour practices in the country, which were confirmed *inter alia*

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<sup>60</sup> European Commission, 2018b, p.8: 'There have been positive developments in strengthening the human rights framework and legislative actions on the rights of women, children, minorities and labour rights, with legislation on, inter alia, torture, juvenile justice and transgender rights in the pipeline. However, these areas, as well as the use of torture, application of the death penalty, high prevalence of child labour and freedom of expression pose serious concerns. The overall human rights situation is therefore mixed and Pakistan must step-up its efforts to ensure enforcement and implementation of legislation.'

<sup>61</sup> SADF has dedicated much attention and various publications to this topic. The most comprehensive is a SADF Research Report by Dr. Siegfried O. Wolf titled 'Persecution against the Ahmadiyya Muslim Community in Pakistan: A multi-dimensional perspective', published in 2019.

<sup>62</sup> A heritage of British colonial rule, the laws were introduced by the military government of General Zia-ul Haq to 'Islamicise' the body of law and legally separate the Ahmadi community from the Sunni population (see BBC, 2019).

<sup>63</sup> 'Articles 298B and 298C of the Penal Code still provide that Ahmadis who call themselves Muslims or perform certain Islamic rites can be punished for blasphemy with up to three years prison' (European Commission, 2018d, p.6).

<sup>64</sup> In this context, it is interesting to note the drastic difference between European and US policy with regard to Pakistan. On account of the country's crackdown on freedom of religion and belief (FORB), in November 2018 the US added Pakistan to the list of ten 'countries of particular concern (CPC)', while simultaneously, the EU has continued to grant Pakistan the most favourable trade preferences conditioned upon 'sustainable development and good governance'.

<sup>65</sup> The reported figures vary considerably from source to source; however, according to a compliance report submitted in 2018 before the Supreme Court of Pakistan, the country's death row population stood at 4,668. At least 17 of these convicts appear to be charged with blasphemy.

by the externally contracted mid-term review of the GSP+ in 2017. The survey conducted by Development Solutions (2017, p.126) described freedom of association, the right to organise and collective bargaining as some of the main challenges faced by Pakistani workers. Moreover, it identified informal employment as another major issue, due to the large ‘numbers of people who fall outside the applicability of ILO conventions’ (Development Solutions, 2017, p.126).

Given the circumstances, the question of the appropriateness of granting trade preferences to a country that systematically violates labour laws without being held accountable seems inevitable, since its behaviour contributes to lowering international labour standards and violates the rules of fair competition. This point was raised for instance by Belgian and Italian stakeholders from the textile and clothing industry, which finds itself considerably impacted by the duty-free imports from the GSP+:

*While the former generally benefits from imports of textiles and relatively low production costs through the global value chain, the latter is negatively affected by the increasing import of textiles as it increases competitive pressure on the industry. The EU textile sector is research and machinery intensive, which makes delocalisation of the production less interesting for companies. The production chain in this sector is hence largely kept within the EU. The industry thus faces increased competition from outside markets, which has significantly impacted the production of textile in the EU. The home textile production in Belgium is an example of this development. EU producers of premium-fashion are also negatively impacted by the increasing textile and clothing imports. While these high-end producers benefit from cheap fabrics imported from abroad, they produce their garments in the EU, mainly in Romania and Bulgaria. Their high quality, and more expensive, products compete with the abundant import of cheap clothing (Development Solutions, 2017, pp. 59-60).*

It is exactly for cases like this, when GSP products are deemed to have become sufficiently competitive or where evidence suggests that they have caused serious economic difficulties for that industry, that Regulation (EU) 978/2012 includes safeguard mechanisms whereby GSP beneficiaries can lose their preferences for specific product categories<sup>66</sup>. This has happened, for instance with Myanmar and Cambodia, who saw traditional GSP tariffs reinstated on their rice exports to the EU in January 2018 for causing economic damage to European producers. Surprisingly, despite calls by European Trade Unions and textile companies, no such measures have thus far been considered for Pakistan. In fact, notwithstanding the vehement appeals by civil society, international organisations and stakeholders, the evidence provided by UN treaty bodies and even its own expressions of concern over Pakistan’s stagnant (and in part deteriorating) human and labour rights situation, in January 2018 the European

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<sup>66</sup> See Regulation (EU) 978/2012, Article 23.

Union decided against a temporary withdrawal procedure, and granted the country an extension on its GSP+ status.

At this point, everything suggests that Pakistan is not being held to the same standards as other GSP+ beneficiaries. Quite on the contrary, it seems to be continuously rewarded by the European Union despite its breaches. This does not only negatively affect the integrity of the GSP+ as an instrument for the promotion of human rights and sustainable development, but also the European Union's credibility towards other beneficiaries, and to some extent it has an impact on the European market. According to Henri Malosse (2018), former President of the European Economic and Social Committee, trade officials at the Commission have provided three arguable explanations for the retention of Pakistan's GSP+ status:

*Firstly, any suspension of GSP+ would leave Europe without leverage in Pakistan. Secondly, the EU is worried about the ever increasing influence China has in Pakistan [...] And thirdly, the EU believes there is a risk that Pakistani workers, who are currently notoriously abused, underpaid and unable to join trade unions, will join terrorist organisations if they lose their exploitive factory jobs.*

The first consideration stems from the country's proximity with Afghanistan and from the idea that remaining on 'good terms' with Pakistan will help containing terrorism<sup>67</sup>. However, given the poor results of the EU's counter-terrorism and security cooperation with Pakistan to this day, the Union's choice to value strategic interests over human rights accountability seems groundless. In this respect, it is interesting to note the completely opposite approach adopted by the USA, who decided in September 2018 to withhold USD 300 million worth of security aid from Pakistan in light of its failure to take action against terrorism.

Regarding the second point, Pakistan's agreement with China to establish an economic corridor (China Pakistan Economic Corridor- CPEC)<sup>68</sup> as part of the multi-billion 'Belt and Road Initiative' (BRI) should provide enough proof that Beijing's influence in the country, and the whole South Asian region, is already thriving. Therefore, the argument made by European officials regarding their concerns over

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<sup>67</sup> As outlined in SADF Policy Brief N°6 (p.15): 'It is important to point out that both in 2001 and 2012 geostrategic implications and the fight against terrorism were core arguments used to defend and enact "preferential treatment". They can however only apply within the logic of viewing Pakistan as an indispensable counter-terrorism ally or as the victim of terrorism. As briefly outlined in this chapter, Pakistan instrumentalises terrorist elements and destabilizes the region [...] Arguing that there is lack of awareness amongst policy makers regarding Pakistan's detrimental role in the fight against terrorism is inaccurate.'

<sup>68</sup> The project includes USD 62 billion worth of investments on energy, infrastructure, and other development projects in Pakistan.

Chinese influence in Pakistan is not only no longer credible, but by refusing to hold Pakistan accountable for its violations and granting the country zero-duty tariffs, the European Union's GSP+ is also indirectly benefiting China. Furthermore, the current terms of the CPEC are negatively impacting on Pakistan's compliance with GSP+ criteria, not only from the point of view of human rights<sup>69</sup>, but also regarding environmental and sustainability requirements. In this respect, the principal element of concern is the fact that three quarters of the energy generated as part of the planned CPEC projects will come from traditional coal-fired power plants, which due to their CO2 emissions are among the main contributors to global warming. This is problematic not only because it contravenes the environmental provisions included in the GSP regulation, but also with respect to the new European 'Green Deal', which promises a shift from high polluting industries and goes as far as suggesting a carbon border tax for non-EU countries.

Finally, the Pakistani nexus with terrorism, which has already been extensively analysed in other SADF publications<sup>70</sup>, should have been taken into due account and investigated in the course of the country's application process for GSP+. Instead the EU has always insisted on portraying the state as an 'important European ally and the key actor' (SADF, 2017, p.14) in countering terrorism in the South Asian region, as justification for its engagement with the country- and in spite of recurring proof of the Pakistani government's support for jihadist groups. This kind of attitude on the part of the EU emerges for instance from the formulation of Regulation (EU) N° 1029/2012 introducing emergency autonomous preferences for Pakistan (Recital 5):

*The severity of this natural disaster demands an immediate and substantial response, which would take into account the geostrategic importance of Pakistan's partnership with the Union, mainly through Pakistan's key role in the fight against terrorism, while contributing to the overall development, security and stability of the region.*

Much like the USA's decision of withdrawing security aid from Pakistan due to its support to terrorist groups, the GSP+ could have been used by the EU from the start as a valid leverage to push for change in the country's conduct. As outlined in section 2.2, Regulation (EU) 978/2012 in fact provides a clear basis for this, as it introduces the possibility of withdrawing GSP+ trade preferences in case of failure to comply with international conventions on anti-terrorism even if they are not listed in Annex VIII (Article 19(c)).

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<sup>69</sup> Especially in the regions of Balochistan and Gilgit- Baltistan.

<sup>70</sup> Please refer to SADF Policy Brief N°6 but also to SADF Focus 42 and SADF Comment 30 for further insights.

However, the EU has failed to use this to its advantage and, on the contrary, ‘despite GSP+ being granted, there seems to have been an upsurge of terrorist activities, especially the support of the Pakistani Secret Service (ISI)<sup>71</sup> to the Afghan Taliban, something on which the United States has been vocal’ (Malosse, 2018). Indeed, the country has received strict oversight by the international community for its secret backing of jihadi militant groups and was recently reconfirmed on the Financial Action Task Force’s (FATF) grey-list in June 2018, after a first designation<sup>72</sup> that had lasted from 2012 to 2015. The proposal was submitted by the US, traditionally one of the country’s patrons, and ‘backed by the UK, Germany and France, revealing and increasing EU critique’ (Wolf, 2019b). These were also the three countries that pushed the hardest for Pakistan’s ‘black-listing’<sup>73</sup>, which the country has so far been able to avoid by persuading China, Malaysia and Turkey to push back. While Pakistan’s first grey-listing did not raise any significant barriers to trade, a potential black-listing would not only bear significant economic consequences, but also further damage the country’s international reputation (see Wolf, 2019b).

There is enough evidence on various levels- vulnerability, human rights compliance, terrorism, *et al.*- to question the appropriateness of granting the GSP+ status to Pakistan. Not only has the EU continuously overlooked this evidence, producing shaky arguments to protect its political interests in Pakistan, but it has also, against its own provisions, decided to renew the special agreement. Thereby it has deliberately ignored the Pakistan’s violations, not only against the 27 conventions the GSP+ is conditioned upon, but also on issues of particular EU concern such as the death penalty, torture, and the financing of terrorism. This inaction severely threatens the EU’s credibility towards other GSP+ beneficiaries, casting doubt on its ability to pursue its own rules and suggesting that violations by some countries are more tolerated than others. Moreover, it highlights a dangerous tendency of ‘double standards’ that goes against the very purpose of the Generalised Scheme of Preferences, which is that of preventing discrimination amongst countries through the bias of preferential trade relations.

With individual EU countries becoming increasingly critical of Pakistan’s conduct, especially with regard to terrorism, and European producers expressing concern over the unfair competition represented by Pakistani garments that do not respect basic labour rights but enter the market on zero

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<sup>71</sup> Inter-Services Intelligence

<sup>72</sup> Grey-listed countries are those whose jurisdictions present ‘strategic deficiencies’ in their frameworks to combat money laundering and the financing of terrorism and proliferation, and are thus subject to close monitoring by the FATF. Instead of ‘grey-list’, the FATF officially refers to this category as ‘Other monitored jurisdictions’.

<sup>73</sup> ‘Black-listed’ countries are those for which the FATF has issued a ‘Call for Action’. The FATF urges those countries to comply with its standards and works with them to ‘address those deficiencies that pose a risk to the international financial system’.



tariffs, there is a chance that the 2020 review of the GSP+ status<sup>74</sup> for Pakistan might constitute a turning point in the EU's *laissez-faire* attitude towards the country. Moreover, due to Britain leaving the EU, Pakistan will lose its most valuable ally in the fight to preserve its GSP+ status and will be increasingly isolated against the 'EU heavyweights' which had proven hostile to the country's access to the preferential scheme already in 2014 (see Saeed, 2018).

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<sup>74</sup> The report has been finalised at the end of January and will now go to the European Parliament for review. The final review is expected to be issued in March 2020.

#### 4. Conclusions and recommendations

As has been confirmed by the above analysis, the EU maintains a very individualised approach towards South Asian countries and focuses primarily on commercial ties. While relations with Bhutan, Nepal and the Maldives remain limited, the EU's engagement with Bangladesh, Sri Lanka, and Pakistan, as well as India, has been consistent and, overall, has shown positive outcomes. The EU's GSP scheme has indeed proven successful from the point of view of economic development, demonstrating that trade preferences can serve as valid incentives for beneficiaries' growth, while also benefiting the EU through increased trade flows. The 'multiplier effect' of this approach has been demonstrated by the fact that 'all countries that graduated from the scheme, as well as those that transitioned to FTAs increased their exports in comparison to countries that did not participate in the GSP scheme or an FTA arrangement' (Development Solutions, 2017, p.8).

On the other hand, from the perspective of social development and fundamental labour and human rights, the results have been rather mixed. Although the system of trade preferences incentivises the adherence to international conventions and can serve as a 'facilitator' of development (as demonstrated by the case of Sri Lanka), the correlation between a beneficiary's economic growth and the improvement of the social, labour and human rights situation is neither causal nor immediate. Indeed, the positive impact depends firstly on the political will to invest the extra resources derived from the reduction of tariffs into social and distribution-improving policies, and secondly, on the effectiveness of their implementation. In this respect, while the drive for change needs to 'come from within', the EU's role should be that of applying the same standards and the same level of scrutiny *vis-à-vis* the beneficiaries, in order to ensure that every one of them, according to its capacity, may devote the same level of seriousness to fulfilling its obligations under the GSP+, in full consciousness of the consequences which failure might entail.

It is on this point that, according to the above analysis, the EU's scheme of preferences has not delivered as well as it could. Even though its desire to promote human rights and sustainable development through its trade policy is commendable, it seems that the EU's enforcement of democracy and human rights conditionalities has fallen hostage to commercial and strategic interests, resulting in differences in the level of monitoring and scrutiny received by beneficiaries. This has been evidenced by the case of Pakistan, which has so far retained its GSP+ status despite its lack of conformity with conditional conventions, while Sri Lanka experienced punitive measures for reasons outside the scope of the preferential regime. At the same time, the issue of conditionality becomes problematic when human and labour rights clauses are applied to unilateral agreements with vulnerable

countries (as is the case for GSP+), where ‘the political costs of compliance are[sometimes] greater than the possible economic benefits foregone’ (Kelegama, 2010, p.9), but neglected in other agreements such as the standard GSP scheme or trade deals with China.

The result is an incoherent system of preferences which positively discriminates some countries at the expense of others, both within the preferential regime and outside of it, in spite of similarities in their human rights records. This is not to say that the EU should abandon its policy of promoting sustainable development and fundamental rights through its trade policy, but rather to emphasise the importance of consistency, transparency and non-discrimination. The EU remains one of the most valuable trade partners for the South Asian region, and there is much to gain on both sides from enhanced engagement and partnerships, and not only on the commercial level.

In light of the above, SADF has formulated a number of recommendations for future EU action:

1) South Asia is an increasingly important region on a global scale, marked by impressive economic growth and emerging markets. At the same time, it lies at the core of multiple security concerns, from maritime affairs to the fight against terrorism (see Mohan, 2016). While the US and China have recognised the region’s potential and increased their engagement, it remains relatively neglected by the EU. With an eye on the objectives laid down in its Global Strategy, which links European prosperity to Asian security, the EU should strengthen the partnership with South Asia, both on the economic and political levels, in order to stabilise the region to its advantage.

2) The EU’s ties in South Asia are still based on an old development and technical assistance model that overlooks the region’s changing political reality. Moreover, they tend to assume a country-by-country approach which ignores the strategic significance of the region as a whole. Considering current developments such as the growing influence of China, the maritime and transatlantic disputes, the ever-present threat of terrorism, and the far reaching consequences of global warming, there is a need for the EU to adopt a more unified approach towards South Asia - as opposed to relations with individual countries- in order to improve external policy coherence and effectively counter negative trends.

3) With regard to trade relations and in light of the upcoming reformulation of the GSP regulation, which will expire on 31 December 2023, SADF suggests to reverse the changes introduced in 2012 to the vulnerability criterion, in order to avoid negative collateral effects of the GSP+ scheme both on the EU and other trade beneficiary countries.

- 4) The GSP regulation should comprise European positive action help beneficiary countries, such as Pakistan, to promote sustainable development and good governance, as for instance in the field of women rights promotion and access to a tolerant educational background.
- 5) SADF encourages the Commission to further improve the objectivity of its monitoring mechanisms for the 27 conventions. In this respect, it also strongly recommends refining the criteria for countries' eligibility to the GSP+ regime, by operating a more clear-cut distinction between the formal ratification and the effective implementation of the covenants in question, also taking into account political will and demonstrated commitment.
- 6) SADF recommends further definition and formalisation of the trigger mechanism for temporary withdrawal. Since for Sri Lanka the issue of violations to international humanitarian law (IHL) was invoked, it might be appropriate to integrate this element into future provisions or else to clarify the role of IHL within the scope of the GSP.
- 7) Keeping in mind the case of Bangladesh, SADF encourages the Commission to consider improving the post-graduation guidelines for countries losing their GSP status, possibly by defining the timeframe and laying out possible options for the maintenance of trade relations with the EU. This would increase guarantees for countries transitioning to a higher income status but which may still remain vulnerable in several aspects. With regard to this issue, SADF salutes the Commission's commitment towards dialogue on future trade relations with Bangladesh and recognises the country's enormous progress in terms of sustainable development and economic prosperity. In this spirit, SADF hopes that the two parties will succeed in reaching a mutually beneficial agreement ahead of Bangladesh's graduation from the EBA scheme that will not jeopardise the strong development progress registered by this country, in particular on education and the status of women.
- 8) Concerning Sri Lanka, SADF commends the country for taking the necessary steps to rectify its shortcomings and regain GSP+ status. SADF sincerely hopes that the recently elected government will be mindful of its obligations and will work towards remedying the country's remaining shortcomings in the implementation of GSP+ conventions.
- 9) In this respect, SADF further invites the Commission to support Sri Lanka by promoting administrative capacity to fulfil its obligations and commitments under the GSP+ conventions and to ensure a smooth transition from its preferential treatment beyond its graduation.

10) In line with its recommendations outlined in Policy Brief N°6, SADF calls on the Commission to incorporate terrorism and money laundering provisions in the list of GSP+ conditioned international conventions (Annex VII of the Regulation (EU) 978/2012) - as opposed to only generally referring to them in Article 19 - and to introduce measures within the scope of GSP that promote the international fight against terrorism.

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