briefing

TUC submission to the public consultation on the EU Generalised System of Preferences (GSP)

May 2010

Improving the EU's Generalised System of Preference (GSP) for workers

The Trades Union Congress (TUC) represents 58 trade unions in the UK, covering 6.3 million workers. The TUC welcomes the opportunity to respond to areas of specific interest to us in the public consultation on the proposed revision of the European Union Regulation on the Generalised System of Preferences (GSP). The following responses are to select questions taken from the European Commission's online public consultation page available at:
http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=NEXTGSPSCHEME&lang=en

These answers have been prepared jointly with the European Trade Union Confederation (ETUC) and the International Trade Union Confederation (ITUC). The TUC is a member of both organisations.

Question 1: **Do you consider that the GSP is a valid trade instrument for development and should be continued?**

The EU's GSP system is an important instrument of EU trade policy in assisting developing countries to gain more revenue and growth from trade, and through its incentive structures, to link this with the promotion of sustainable development and good governance. Trade unions have long argued that the GSP system should award trade preferences to those developing countries that are genuinely interested in the well-being of their workforce. And relatedly, countries should not be able to build an artificial competitive advantage by abusing workers' rights. Secondly, well-functioning labour market institutions, built on respect for core labour standards, can enable developing countries to capture fair gains from international trade, and critically, ensure that those gains are equitably shared. As the G20 nations recognise, respect for core labour standards, along with the other pillars of the ILO's Decent Work Agenda, are central to promoting global sustainable and equitable economic recovery.

The GSP regulations evolved in 2005 to provide a clear linkage between respect for the ILO's Core Labour Standards and trade preferences, resulting in some success. Several countries have ratified ILO core conventions in order to be eligible for

additional trade preferences. Further, since Belarus was suspended from the GSP in 2007 for violating labour standards it has taken some steps to improve its implementation in the hope of rejoining the system. However, in general the impact of the system on actual improvement of labour standards is much less clear, especially given the scheme's lack of transparency and benchmarks to measure progress by. Further, the general trend of preference erosion and the low take-up of the GSP+ component threaten the scheme's long term effectiveness.

To improve the effectiveness of the scheme to deliver on its objectives, and ensure the confidence of working people globally, the revised GSP regulation should have (consultation questions in brackets):

- clearer definitions and benchmarks of effective implementation and for the temporary withdrawal provisions (see questions 20, 27, 28, 32);
- stronger and more transparent processes for monitoring compliance, conducting investigations and assessing applications (questions 20, 26);
- better incentives and more targeted technical assistance to help developing countries drive improvements in implementation (Question 20);
- clearer and more consultative procedures for filing a complaint, commencing an investigation, approving applications, and readmitting countries to the scheme (including a role for the European Parliament) (see questions 33); and
- clearer and improved role for social partners in monitoring compliance and triggering investigations (questions 26, 33).

Question 2: Do you consider that the stated current objectives of the EU GSP to contribute to the reduction of poverty in developing countries by generating revenue through international trade and giving support to sustainable development and good governance - as set out in the Commission Communication of 2004 and reflected in the current GSP Regulation 732/2008 - remain valid? If not, how should they be modified?

Given the depth of the global financial crisis and the terrible impact it has had on some of world's poorest workers, the sustainable development objectives of the GSP scheme are more valid than ever. Firstly, the crisis has caused a large contraction in world trade that has hurt some of the poorest exporting countries. The market access provided by GSP to developing country exporters is making an important contribution to economic recovery in these countries. Secondly, as ILO research has recently concluded, countries maintaining strong systems of social protection, and respect for core labour standards have weathered the crisis best. The GSP system can play an even better role. Accordingly, the revised regulations should reflect the central importance of both Core Labour Standards, and the broader concept of the Decent Work Agenda in its preamble. In particular, it should

refer to the 2008 ILO Declaration on Social Justice for a Fair Globalization - the definitive statement of the Decent Work Agenda, endorsed at the highest levels of the international system. In addition, it should refer to the ILO's 2009 Global Jobs Pact.

Question 3: Apart from the objective to contribute to the reduction of poverty by generating revenue through international trade and giving support to sustainable development and enhanced good governance, are there any other specific development, financial and trade needs relevant for developing countries to which the GSP scheme could respond positively? How could these needs be addressed?

Through its structures and implementation, the GSP scheme should aim to improve the capacity of representative organizations such as democratic trade unions in developing countries to play a more active part in the good governance of the country by involving them more in the negotiation, monitoring and enforcement of such schemes.

Question 4: Should the objectives of the GSP be adjusted in the light of the newly adopted Lisbon Treaty?

Article 21 of the Lisbon Treaty states that the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. Trade policy must reflect these high ideals, including action in relation to the GSP.

Question 5: Do you consider that GSP could contribute to address the challenges of the 21st century such as climate change and food security? Do you see ways to take account of these challenges in the next GSP regulation?

The EU Commission should include criteria relating to these areas in the Regulation. This would go towards meeting the pressing need for improved coherence among Commission DGs, notably trade, external relations, development, energy and climate change, environment, and employment and social affairs.

Question 7: Should the current architecture of GSP - with three regimes

GSP, GSP+ and EBA - be changed? If so, how? Does the existence of three sub-arrangements under the scheme affect the effectiveness or transparency of the EU's GSP scheme?

While trade unions still support the three tiered regimes of GSP, GSP+ and EBA, the GSP+ component of GSP has not had a high take-up, with only 15 countries currently in the scheme, and many of them about to leave it. This represents only about 10% of trade flows by volume under whole GSP scheme. One reason for the low take up may be that the scope of preferences offered under GSP+ are being eroded by other trade instruments, and/or are not significantly better than those already granted under the GSP and EBA components to be real incentive. The Commission should consider introducing a better balance of trade preferences, technical assistance incentives, and definitions of "vulnerability" to attract more countries onto the GSP+ component of the scheme. Secondly the Commission should revise the requirements under GSP and EBA to drive better implementation of international conventions (See the answer to Question 20 for more detail on both of these areas).

Question 13: The current Regulation already establishes the principle that countries that have concluded contractual preferential trade agreements with the EU (eg FTAs) should be removed from the GSP (it can be expected that a reciprocal FTA will incorporate and go beyond the autonomous preferences provided under GSP). . Should this principle be reinforced and made more operational? If so, how?

The principle is already clear enough. However, many developing countries are now signing FTAs with the EU, thus leaving the GSP and its incentive arrangements. While the Commission strives to ensure that FTAs include sustainable development chapters, such chapters often do not have the same monitoring and enforcement mechanisms as the GSP scheme. To ensure that the sustainable development and good governance objectives of GSP are maintained, the Commission should ensure that all new FTAs have sustainable development and good governance commitments and enforcement mechanisms that are no less favourable than those under the GSP. The new GSP regulation could contain a clause stating that GSP monitoring and enforcement provisions will continue to apply where an FTA affords weaker protection.

Question 14: The current Regulation includes a wide range of beneficiaries, including countries that have become major global actors in international trade with very significant and wide-ranging exports to the EU and participation in global markets (eg the emerging economies such as Brazil, China and India). Should GSP continue to be available to such major traders

(albeit with their individual benefits under the scheme effectively modulated as a result of the graduation mechanism) or should they be excluded altogether on the grounds that they no longer need preferential access under GSP to support their effective participation in EU markets or their broader development? If the latter, then what general, horizontal indicators should be considered as relevant to determine continued participation in the scheme?

It is clear that emerging economies need to be considered on a case by case basis and at a sectoral level. If some of these countries are allowed to remain in the scheme then expectations of them in meeting the criteria must be strengthened considerably. A possible ratcheting up scale requiring them to go beyond basic effective implementation on the conventions might be worth considering. The current situation in China, for instance, in relation to effective implementation of the conventions on trade union rights and freedoms and the right to organise and bargain collectively clearly do not meet the existing criteria. The EU should expect major improvement in all areas of the conventions listed as these economies have grown in order to continue to qualify, no major global actor should continue to benefit from preferential schemes whilst refusing to move from first base on the listed conventions.

Question 20: Under the current Regulation benefits can be suspended in the event of "the serious and systematic violation of principles" laid down in 8 ILO core labour rights conventions and 8 UN core human rights conventions. Should any consideration be given to building on this as regards areas beyond labour and human rights such as protection of the environment and promotion of good governance? Should this provision be strengthened eg by introducing appropriate benchmarks in these areas that beneficiary countries of the standard GSP and/or EBA should also be expected to satisfy before GSP/EBA preferences are granted? What form might this take and what would be the added value in terms of promoting support for the implementation of sustainable development standards?

An estimated 161 developing countries and territories currently benefit from preferences under the ordinary GSP and Everything But Arms (EBA) regimes of the GSP system. To receive these preferences they must ensure that they do not commit a **"**serious and systematic violation of principles**"** laid down in the relevant conventions (Article 15(1)). Fifteen developing countries are currently on the GSP+ component, awarding them a higher level of trade preferences than the GSP/EBA beneficiaries in return for abiding by the stricter test of **"**effectively implementing**"** these and other conventions. Of the 161 GSP/EBA beneficiaries, it appears that only Burma and Belarus have ever fallen foul of the **"**serious and systematic violations**"** test, being suspended from the system respectively in 1997 and 2007, despite this

group also including serial and serious violators of trade union rights including e.g. Zimbabwe and Iran. Recognising that in many cases, the Commission might prefer to have informal dialogue with such countries rather than formally disciplining them under the GSP system, trade unions are concerned that the GSP system is not driving improvements in these countries. A system of simple benchmarks for GSP/EBA beneficiaries should be introduced to drive improvements in a transparent, consistent and credible manner. The first benchmark should be for GSP/EBA beneficiaries to actually ratify the relevant international conventions, over a transition period of, say, five years. Secondly, such countries should have to demonstrate, as verified by the appropriate monitoring bodies, that they do not have laws or practices that directly conflict with the core requirements of these conventions, as part of showing a basic level of compliance. Thirdly, such countries should have to show that there is not deterioration in their levels of implementation as a sign of genuine commitment.

Trade unions recognise that many developing countries face technical and resource barriers in implementing core conventions. Further, it is clear that as preferences under the GSP are eroded by other trade instruments, the incentives to overcome those technical barriers are further reduced. Improved and better coordinated technical assistance targeted at overcoming these barriers could be an important additional incentive under the GSP system. Such a commitment to harmonise assistance with the trading regime is already reflected in several Council and Commission declarations. The revision to the GSP regulations, along with the expanded external relations powers under the Lisbon Treaty presents an important opportunity to finally realise this.

Question 23: Should the list of 27 conventions relevant for GSP+ (those which GSP countries must ratify and effectively implement) be adjusted in any way? If so, for what purpose and how (eg additions, updates, deletions)?

There certainly should be no deletions. In addition the core labour standards, there are other important ILO conventions relevant to decent work that should be considered for inclusion. These include those identified as **"**priority conventions**"** by the ILO Governing Body in its 1993 decision (Convention 122 on Employment Policy, Conventions 81 and 129 on Labour Inspection and Convention 144 on Tripartite Consultation), other Conventions enjoying widespread support at the ILO (including Convention 155 on Occupational Safety and Health, Convention 102 on Social Security, Convention 103 on Maternity Protection, and Convention 135 on Workers**'** Representatives), and certain other essential ILO instruments (namely the Promotion of Cooperatives Recommendation, 2002 (No. 193), the Human Resources Development Recommendation, 2004 (No. 195) and the Employment Relationship Recommendation, 2006 (No. 198)). Additional ILO Conventions

dealing specifically with occupational health and safety issues that should be included are Convention 162 on Safety in the Use of Asbestos, as well as others concerning sectors which are recognized as hazardous by the ILO, and Convention 187 on the Promotional Framework for Occupational Safety and Health.

Question 26: Should the current procedural arrangements for ongoing monitoring of the compliance of GSP+ beneficiaries with the substantive requirements of the special regime be reinforced in any way? How could this be achieved, while not duplicating or undermining the role of international organizations and their monitoring bodies?

The monitoring and approval arrangements under the GSP+ regime could be greatly strengthened by firstly allowing other parties to provide additional information on compliance that complements monitoring bodies, and secondly making monitoring processes more transparent. The procedural arrangements for monitoring compliance and approving applications of GSP+ beneficiaries should be amended to allow stakeholders with a demonstrable interest in the matter, such as trade unions or human rights organisations, to submit relevant information on the question of effective implementation. This is important for several reasons. Firstly, conclusions from monitoring bodies can be out of date, particularly where events on the ground are moving quickly (e.g. the military coup in Honduras) or fall outside of the reporting cycles of monitoring bodies. When countries apply to join GSP+ often the reports from monitoring bodies are out of date. Secondly, some conventions do not have monitoring bodies allied with them. Thirdly, many monitoring bodies report against their own criteria which do not necessary fit with the EU's test of "effective implementation". Fourthly, allowing third party submission would be adopting best practice on obtaining the views of civil society, in line with similar processes, increasing public confidence in the system. None of this is to duplicate or undermine the role of the ILO, which has the clear mandate for setting and monitoring the application of labour standards. Additionally, the Commission can play an enhanced role in monitoring and approval through the creation of specialist Labour Attaché posts (including some staff drawn from European social partners' organisations) in EU delegations under the new External Action Service, tasked with ensuring coherence with the ILO and EU Human Rights dialogue processes and monitoring and benchmarking national level progress on effective implementation. They could also play the central role in ensuring EC technical assistance is best targeted to assist national governments in reaching benchmarks.

Further, there are other GSP schemes and FTAs which have their own monitoring processes - for example, the United States, through its US Trade Representative conducts its own monitoring and approval processes for GSP beneficiaries. Coordinating with these other schemes or mechanisms would greatly increase the

effectiveness of both monitoring, and with coordinated leverage, improvements in implementation. The best way to drive such coherence in the longer term would be through the formation within the WTO of a working party on trade, globalisation, development and decent work, with a key role for the ILO - a long standing demand of the international trade union movement. Transparency in monitoring is an area that needs urgent reform. For trade unions, it is not clear what information the Commission considers in approving applications or monitoring, nor how it uses that information. Concerns about transparency are shared by many member states and also called for in a recent draft opinion of the Committee on Employment and Social Affairs for the Committee on International Trade (see 2009/2219(INI)). As a basic principle, the Commission should list and publish what information it is considering, what decision it has arrived at, and the reasons for that decision, before the approval of applications. The applications from countries applying or seeking renewal of their GSP+ status should also be made public. Consideration should also be given to what role the Vienna-based Fundamental Rights Agency could play in monitoring and enforcement and ensuring coherence in EU approaches.

Question 27: The current eligibility criteria for GSP+ require that beneficiaries have implemented a set of international conventions. What would be the best ways to measure effectively achievements in this domain?

The Commission currently adopts an informal approach of requiring beneficiary countries to demonstrate continual improvements in implementation. However, without clear benchmarks measuring improvement, and with a lack of transparency of this process, it can be difficult for trade unions to see such improvements and have confidence in the system. To address these problems the revised regulation should firstly, capture this requirement of **"**continuous improvement**"** by reference to existing monitoring systems and especially the ILO supervisory system, including reference to using observations by the Committee of Experts which, read carefully, indicate various stages of progress, standstill or backsliding. Secondly, the Commission should develop a clear system of benchmarks to monitor, drive and demonstrate progress. The ILO is currently developing **"**Decent Work**"** Indicators, which will include benchmarks for quantifying progress in the application of the core labour standards. The Commission could revise the GSP regulation to ensure that it considers such benchmarking in making assessments of effective implementation, while recognising that not all principles of conventions can be easily quantified and that qualitative measures of progress will also remain relevant.

Question 28: What alternatives or complements, if any, to the criterion of "effective implementation" of international standards in these fields might be relevant for the support of sustainable development and good governance through the GSP+ scheme?

Having been extremely disappointed in a range of recent GSP+ cases, the TUC supports a much clearer definition of what is meant by "effective implementation", and a transparent process for deciding when a country has met, or has failed to meet that definition. In practice, the European Commission has interpreted "effective implementation" to mean that a beneficiary country is "continually improving". While we support the idea of encouraging continuous improvement, this should be a complement to the objective of effective implementation, and not a substitute for it. A systematic violator of trade union rights could be improving, but still fail to meet a test of "effectively implementing". To remedy this, beneficiary countries on the GSP+ regime should be able to demonstrate, in addition to maintaining the ratification of the conventions and their implementing legislation and measures: a basic level of implementation, additionally including effective enforcement of the rights in the international conventions through a judicial system respecting the rule of law, and the adequate resourcing of systems of labour inspection; that the conclusions of the relevant monitoring bodies show material progress in implementing the Annex III conventions as benchmarked (also see answer question 27); that it is not perpetrating, sanctioning, failing to prevent, ignoring or otherwise causing individual or repeated gross violations of the conventions; and that it is not failing to co-operate with the monitoring bodies in the manner required under the conventions.

Question 32: Should any of the current "temporary withdrawal instruments" (eg for cases of fraud, unfair trading practices, goods made by prison labour etc) be reinforced or rather relaxed and if so in which way? Should any new instruments be included?

The temporary withdrawal provisions under Article 15 theoretically allow the GSP system to respond quickly to violations as they occur. This is particularly important where the reporting cycles of monitoring bodies are slow to pick up on serious abuses, or where Commission investigation processes may be slow in remedying them. However to our knowledge this mechanism has never been used in the case of labour standards. However the effectiveness of the Article could be improved through refining the language of Article 15(1)(a) - the first grounds for temporary withdrawal based on: "the serious and systematic violation of principles laid down in the conventions listed in Part A of Annex III, on the basis of the conclusions of the relevant monitoring bodies". Firstly, the phrase "serious and systematic" should be replaced with the word "serious" to ensure that it capture violations that may be of an extremely serious nature e.g. a massacre, but not necessarily be systematic.

Secondly, temporary suspension should also be possible based on other sources of information, where monitoring bodies are unable to respond quickly. The phrase "or credible evidence" could be added to the end of the sentence, or "on the basis of the conclusions of the relevant monitoring bodies" could be deleted. An additional reason supporting this last point is that not all the conventions have "relevant monitoring bodies", associated with them.

We believe that trade preferences should only be suspended as a measure of last resort, given the impact this action can have on the livelihoods of workers. Yet the threat of suspension must be credible for the scheme to be effective. An under-utilised way to achieve this balance would be for the Commission to consider using its powers to investigate and suspend preferences on a sectoral or tariff line basis, as opposed to a national basis. This is could be particularly relevant for serious labour abuses that may be concentrated in a particular sector.

Question 33: Should the criteria for opening an investigation under the Regulation be specified in more detail?

Under Article 17 in the current regulations, only the Commission can initiate an investigation where it is satisfied that there are "sufficient grounds" for doing so. It can consult the GSP committee and member states in doing so. In practice, this has meant that on some occasions, when unions have requested the Commission to initiate investigations in cases such as Colombia, no action has been taken. The same problem was experienced previously in the case of ETUC/ITUC submissions regarding forced labour in Pakistan. In short this process, while effective in some cases such as Belarus and Sri Lanka, lacks transparency and clarity. Having a clear procedure for filing and considering complaints and initiating investigations would aid the process. We believe that the European Parliament should be extended the right to initiate an investigation, should a simple majority decide. In the case of a violation of labour standards, an investigation should commence: upon application by one of the EU social partners recognised by the Commission; or where the ILO Conference Committee on the Application of Labour Standards has approved a "special paragraph" on labour practices - an unambiguous ILO conclusion that a serious violation has taken place - in a GSP beneficiary country. Under the US GSP system, third parties can submit petitions alleging violations of the eligibility criteria. Finally, there should be a clearer process for re-admitting suspended countries onto the GSP+ scheme. Suspended countries should, naturally, have to comply fully with GSP conditions with regard to respect of core labour standards in order to be readmitted.

Question 34: The European Commission during its administrative procedures observes general principles of EU law including the rights of

defence. The rights of defence include the right to be heard, the right of access to the file and the principle of sound administration. Should there be any specific rules, including in the GSP Regulation, that would allow the country being subject of proceeding for the temporary withdrawal to better exercise its rights of defense?

The right of defense should be accompanied by principles of openness and transparency to allow complainants or alleged victims of violations - often trade unions and the workers they represent - to understand the defense being put, and allow them a right of reply to rebut untrue and misleading statements.

Question 35: Following the entry into force of the Lisbon Treaty, the legislative procedure for the GSP Regulation has changed and will inevitably be more drawn-out than was the case previously. As a result, the current approach based on relatively short-duration (3-year) Regulations within a broad framework lasting 10 years is no longer sustainable. What would be the appropriate duration for the next GSP Regulation?

The new procedures need not to be more drawn-out under the Lisbon Treaty if the institutions co-operate effectively, and if the Commission improves its own systems of monitoring and investigation as mentioned in this response. The central focus of any review of the system should be on how to guarantee the integrity of the system, by ensuring that status is granted or withdrawn in a more open and transparent way, taking into account the valuable input from third parties. If the duration of the regulations is extended beyond the current 3 years, which we are not convinced is necessary, then monitoring and investigations of complaints, and procedures for withdrawal where necessary, will need to be rapid, credible and effective.