

**THE TRADE-LABOUR LINKAGE IN EU TRADE PREFERENCE PROGRAMMES:**

**A TRADE UNION RESPONSE TO THE “PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL APPLYING A SCHEME OF GENERALISED TARIFF PREFERENCES”**

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**SUBMITTED BY THE**

**EUROPEAN TRADE UNION CONFEDERATION (ETUC) &  
INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)**

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## EXECUTIVE SUMMARY

Our response to the EU's proposed new regulation for its Generalised System of Preferences (GSP) offers a series of observations and recommendations to ensure that countries benefitting from GSP are better implementing their sustainable development and good governance commitments.

Although the GSP has been successful in pressing beneficiary countries to ratifying the core labour rights conventions, it has had little effect in getting those countries to effectively implement the conventions in domestic law and practice. The Commission's new GSP proposal contains welcome features, such as allowing the Commission to consult additional sources of relevant information and shifting the burden of proof of compliance onto beneficiary countries. However, to be most effective in driving change, the GSP scheme must contain firmer and clearer expectations on beneficiary countries, provide for civil society participation in monitoring and review of implementation and be far more transparent.

Key changes to the new GSP regulation that the ITUC and ETUC are calling for include:

### For All Arrangements:<sup>1</sup>

Introduce a public submission process which can lead to the initiation of an investigation, public hearings and a final decision on initial eligibility (as regards GSP+) and continuing eligibility (as regards all arrangements) (see pages 12 to 15).

Increase transparency by publishing its decisions, its rationales and the evidence considered when granting, suspending or terminating preferences.

Coordinate with other GSP granting countries and other countries that have sustainable development commitments under trade agreements (see page 15).

### For GSP+:

Remove the "serious failure" test in Article 9(1)(b) for GSP+ beneficiaries. The Commission is proposing only to reject applications from beneficiary countries if there is a "serious failure" to effectively implement the required international conventions. This sets the bar much lower than the current GSP+ test and risks undercutting existing international commitments (see page 8). Further, as to initial eligibility, the Commission should not refer only the reports of the relevant monitoring bodies (id.).

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<sup>1</sup> The EU's GSP contains three arrangements: (i) the general arrangement, applying to any developing countries; (ii) the special incentive arrangement (often called "GSP+") which grants additional trade preferences to countries effectively implementing international human rights and environment conventions; and (iii) the Least Developed Countries arrangement which grants full market access for "Everything but Arms" (often called "EBA").

For GSP and EBA:

Require countries to progressively improve their effective implementation over time. Many countries on this arrangement scheme have made no progress on improving their poor record on labour rights and some have gone backwards. As a first step, countries should be expected to bring their domestic legislation in line with the conventions over a reasonable transition period (see pages 8 to 9).

Trade unions look forward to continuing to engage with the EU over the development of an effective regulation, especially over the drafting of the delegated acts envisaged in the draft regulation. Many of the proposals in this submission can be addressed there.

## INTRODUCTION

For over 40 years, the Generalised System of Preferences (GSP) has been a useful programme, offering to developing and least developed countries reduced or duty-free access to developed-country markets. Today, several countries (or groups of countries) maintain a GSP scheme, including Australia, Canada, the European Union, Japan, New Zealand, Norway, the Russian Federation, Switzerland and the United States. However, only the European Union and the United States currently condition initial and continued eligibility for preferences on compliance with international labour rights.

The rationale for linking labour rights and trade is clear. If enforced, labour rights conditionality has the potential to enhance distributional fairness in the economy, ensuring that the benefits of international trade accrue not only to capital but also to labour through the exercise of freedom of association and collective bargaining. A country that respects labour rights will also enjoy a more productive and efficient workforce that will contribute to overall economic growth and trade. Further, workers with additional discretionary income will be able to consume additional goods and services and thereby inject needed capital into local markets – encouraging more employment.

These assertions are also fully supported by economic research. Indeed, the Organization for Economic Cooperation and Development (OECD) pointed out in a 2000 report, *International Trade and Core Labour Standards*, that “countries which strengthen their core labour standards can increase efficiency by raising skill levels in the workforce and by creating an environment which encourages innovation and higher productivity.” The OECD also found in a 1996 report, entitled *Trade, Employment and Labour Standards*, that “any fear on the part of developing countries that better core standards would negatively affect either their economic performance or their competitive position in world markets has no economic rationale.”

Despite having conditioned trade preferences on respect for fundamental labour rights (to varying degrees depending on the arrangement), the EU Commission has done apparently little to apply these conditions in practice. As to the general arrangement, few countries have undergone a formal investigation for non-compliance with their labour obligations despite credible evidence of widespread and systematic labour violations. Further, it is unclear what measures the EU Commission may have taken short of formal investigations to press GSP beneficiary countries to undertake needed reforms, and the extent to which these measures have been effective. To date, only two countries, among the world’s worst, have been suspended for labour violations - Burma (in 1997) and Belarus (in 2007). Sri Lanka was suspended in 2010, although for reasons unrelated to the labour violations raised by trade union organisations at the time. As market leverage appears to be used so infrequently to encourage improvements in law or in practice, it is little surprise that workers in beneficiary countries have seen little improvement in the enjoyment of their labour rights.

As to the special incentive arrangement (GSP+), the EU Commission's record is worse. Here, the EU Commission has extended and maintained benefits for countries that it *knows* do not meet the minimum criteria. A 2010 evaluation by the Centre for the Analysis of Regional Integration at Sussex (CARIS), found that Georgia, Nicaragua and Peru, the three countries studied, did not implement effectively Conventions 87, 98 and 100 in terms of transposition into national legislation.<sup>2</sup> Indeed, an EU Commission Staff Report in 2008 acknowledged that the labour code in Georgia, revised in 2006, "falls short in addressing the obligations of the ILO Conventions on freedom of association and on the right to organize and collectively bargain" and that "The Code is to be revised accordingly if Georgia wants to benefit from the GSP+ scheme in 2009."<sup>3</sup> The code was not revised, but Georgia received GSP+ benefits nonetheless (and continues to enjoy them). Beyond encouraging greater ratification of international conventions, the study found little impact of GSP+ on promoting legal reforms necessary to conform to the conventions or enforcement of the laws in practice. Several other GSP+ beneficiaries are frequently in the news for serious violations of core labour standards.

This document is the response of the ETUC and ITUC to the labour rights aspects only of the "Proposal for a Regulation of the European Parliament and of the Council Applying a Scheme of Generalised Tariff Preferences," dated May 10, 2011. To be clear, we support the continuation of the GSP programme in general; we seek here to improve the trade-labour linkage. We do not attempt to comment on the overall structure of the scheme, on non-labour related eligibility criteria or on product coverage and tariff rates.

Our comments are divided in two broad sections. In the first, we critique the proposed *labour standards* for the general and special incentive arrangements and offer alternative proposals for each. In the second, we critique the proposed *procedures* for initial eligibility, continuing eligibility and suspension and offer an alternative proposal which contemplates a public submissions mechanism.

## **I. LABOUR STANDARDS**

### **A. TRADE UNION CONCERNS WITH PROPOSED EU GSP AND GSP+ LABOUR STANDARDS**

#### *1. General Arrangement (GSP)*

Article 19 of the proposal does not modify the existing labour rights obligation, namely that a beneficiary country not engage in "*serious and systematic*" violations of the principles of the conventions listed in Part A of Annex VIII (which includes the eight

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<sup>2</sup> CARIS, Mid-term Evaluation of the EU's Generalised System of Preferences (2010), p. 159.

<sup>3</sup> Id. at 163, citing European Commission Staff Working Document (SEC (2008) 393).

“core” conventions of the International Labour Organization) in order to remain eligible for preferential trade treatment. It is our understanding that the EU Commission will determine that a “serious” violation is established only when the ILO Conference Committee on the Application of Standards (CAS) has reviewed a country for non-compliance with a ratified convention and has decided to put its conclusions in a special paragraph finding a “serious failure”.<sup>4</sup> Similarly, a “systematic” violation is established when the CAS has noted repeated non-observation of the convention at issue in a special paragraph. Alternatively, it appears that a serious and systematic violation may be established if the ILO Governing Body establishes a Commission of Inquiry to investigate a country’s failure to secure the effective observance of a convention. The Commission should employ a more expansive interpretation of “serious and systematic”. It could do so by referring to the conclusions and recommendations of the relevant monitoring bodies (i.e. the ILO Committee of Experts or the ILO Committee on Freedom of Association) rather than only the conclusions of the most politicized body of the ILO – namely the CAS.

The proposal does eliminate the clause “on the basis of the conclusions of the relevant monitoring bodies,” which is certainly a positive step. Under the existing GSP regulations, conditioning review on the conclusions of the relevant monitoring bodies (namely the ILO) easily prevents the EU Commission from ever taking action – especially where a beneficiary has failed to ratify a convention or to report on its compliance with a ratified convention. In such cases, there will be no conclusions from the Committee of Experts on the Application of Conventions and Recommendations and, consequently, from the Conference Committee on the Application of Standards, which could serve as the basis for the EU Commission’s action. The process of obtaining a “special paragraph” is also an extremely long one, sometimes taking years even in very egregious cases. As the decision as to which cases are brought before the CAS is the subject of negotiation that may not necessarily be based entirely on the severity of the case, cases that may deserve a special paragraph for a serious failure may never be reviewed in the first place.

In sum, we have two comments on the proposal. First, it is unclear how a violation of the “serious and systematic” standard will be determined once the exclusive linkage with the “conclusions of the relevant monitoring bodies” ceases to exist. We hope (and expect) that credible, well-documented reports by trade unions and/or NGOs with regard to the violation of a convention could alone be sufficient to make a case for a “serious and systematic” violation even where the CAS (or other ILO bodies) has not yet made such a determination. At the very least, we would expect that such third-party information could supplement the conclusions of the CAS or other ILO supervisory mechanisms – in effect pushing a case “past the post” where the supervisory

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<sup>4</sup> The Conference Committee has for several years drawn the attention to certain particularly serious cases relating to non-compliance with the provisions of ratified Conventions by including them in special paragraph in the general part of its conference report.

mechanisms have not yet produced the special paragraph or similar conclusion. Second, we believe the proposal should require countries to progressively improve their implementation over time. So long as a country is viewed as having conduct that is marginally better than a serious and systematic failure to comply with the principles of the conventions, the country faces no threat of a review and can continue on with these substandard laws and practices for years (and indeed do). We understand that this introduces some (or a greater degree of) subjectivity into the GSP scheme. However, we note that it is not unlike the *core element* of the US GSP scheme – to “take steps to afford internationally recognized worker rights”.

## 2. *Special Incentive Arrangement (GSP+)*

Article 9.1 sets forth the labour criteria for the special incentive arrangement. A beneficiary country would benefit from the reduced and zero tariff preferences provided under this arrangement if: 1) it has ratified all the conventions listed in Annex VIII and the most recent available conclusions of the relevant monitoring bodies do not identify a *serious failure* to effectively implement any of these conventions; 2) it gives a binding undertaking to maintain ratification of the conventions listed in Annex VIII and to ensure their effective implementation; 3) 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 conventions listed in Annex VIII; and 4) it gives a binding undertaking to participate in and cooperate with the monitoring procedure referred to in Article 13.

As explained below, this proposal, at least on paper, appears to be a step back from Council Regulation 732/2008, which requires, at Article 8(1)(a), that a country “has ratified and effectively implemented all of the conventions” and gives an undertaking not to derogate from these commitments and to accept regular review of their practices.

We reject the proposal at Article 9(1)(b) which would allow an applicant country to be *eligible* for the special incentive arrangement so long as the relevant monitoring bodies did not identify a “serious failure” to effectively implement the conventions. First, the “serious failure” standard is far too low, especially for a country benefiting from higher levels of reduced and duty free market access. As it is, all countries, regardless of their level of development, are required to respect, promote and realise the principles of the eight ILO core conventions by the mere fact of membership in the ILO. This is the global minimum floor. To go below that is a step backwards from existing international commitments. Second, referencing *only* the reports of the relevant monitoring bodies may in some cases lead the EU to conclude that there are not serious failures when in fact there are. As explained above, the regular reports of the ILO Committee of Experts on the Application of Conventions and Recommendations are issued once a year and only cover certain of the ratified conventions with regard to any country. Indeed, reporting on the core conventions is now required only every three years barring other

circumstances. Even if there is a serious failure, it may not be noted in a special paragraph unless there is an agreement between workers, employers and the governments. Thus, in the best cases, these reports provide useful snapshots of major issues in a country but may not necessarily be comprehensive or up to date. At a minimum, the references to the “relevant monitoring bodies” and “serious failure” must be removed.

Further, we reject any attempt to read into Article 9(1)(c) the “serious failure” standard – i.e. that a country could satisfy the “effective implementation” standard and *maintain eligibility* for trade preferences so long as there was no “serious failure” to effectively implement the conventions. Indeed, such a reading appears to be contrary to the proposal’s definition of “effective implementation.”

We realise this sets a high standard. Of course, we do not expect perfection – a standard that no country could meet. Countries that are found initially eligible should not lose trade preferences over minor or isolated failures to effectively implement the conventions, and trade unions would not waste the time pursuing suspension for such violations. However, we cannot justify a country becoming eligible and maintaining eligibility for enhanced trade benefits when it is failing to comply with its minimum obligations to the ILO (especially when the determination, as to the initial eligibility, is based on whether the CAS has issued its conclusions on a core ILO convention in a special paragraph).

## **B. TRADE UNION PROPOSAL ON LABOUR STANDARDS**

### *1. General Arrangement*

Trade unions believe that for a country to remain eligible under the general arrangement, it should adopt laws and regulations consistent with the eight core conventions of the ILO. Of course, we understand that this will take time and a transition period may be necessary. We would accept a transition period of two years from the promulgation of the new regulations in order to undertake the necessary legal reforms. In the meantime, it should be stressed that the beneficiary country cannot be permitted to have laws that (*de jure* or *de facto*) prohibit or seriously restrict the exercise of a core labour right (e.g., a ban on formation of trade unions or a minimum requirement of 100 members to form a union - which is tantamount to a ban). As to the enforcement of labour laws, the country should make continual progress towards effectively implementing its laws related to the core conventions. Any country that fails to make continual progress on effective implementation of its laws should be subject to a review for its failure to meet the minimum eligibility requirements of the general arrangement.



Of course, targeted capacity building should be made available to help countries that need it to both strengthen their labour laws (during the transition period) and labour inspection institutions (on an on-going basis).

## 2. *Special Incentive Arrangement (GSP+)*

Here, our proposal is simple. In order to become and remain eligible to receive the trade preferences available under the special incentive arrangement, a country must have ratified the eight core conventions and have adopted national laws and regulations that give full effect to those conventions and effectively implement them in practice. the country should also comply with the reporting requirements associated with the conventions and accept review of its implementation record by the EU (and cooperate with the monitoring procedure). We also fully support the proposed definition of “effective implementation” in Article 2(k) of the proposed regulations.

## **II. REVIEW AND SUSPENSION PROCEDURES**

### **A. TRADE UNION CONCERNS WITH PROPOSED GSP AND GSP+ REVIEW AND SUSPENSION PROCEDURES**

As to review and suspension procedures, the current proposal departs from current practice in creating separate review procedures for the general arrangement and the special incentive arrangements. However, common to both is the absence of a public submissions process that could result in the opening of an investigation into a beneficiary country’s compliance with its labour rights obligations.

#### 1. Delegated Acts

We recognise that some of our procedural concerns set forth in II.A.2 and II.A.3 might be addressed through the promulgation of “delegated acts.” The proposal refers to delegated acts in three areas:

- The procedure for granting the special incentive arrangement with regard to deadlines, and submission and processing of requests (Art.10(8)).
- Procedures for temporary withdrawal under special incentive arrangements (Art.15(12)).
- Procedures regarding temporary withdrawal under the general arrangement (Art 19(13)).

We urge the EU Commission to consider both our concerns and proposals (in II.B below) in developing these “delegated acts.” Further, we request that the ETUC and ITUC be fully consulted in the process of preparing these acts.

#### 2. General Arrangement

Under Article 19(3) of the proposal, if the Commission determines that there are “sufficient grounds” justifying the temporary withdrawal of preferences, it shall adopt a decision to initiate the procedure for temporary withdrawal in accordance with the advisory procedure. If such a determination is made, a notice is published in the *Official Journal of the EU* with the grounds for the decision and stating that the Commission will monitor and evaluate the situation for six months. The Commission is to provide the beneficiary country “every opportunity to cooperate” during this period. In drawing its conclusions, it will review all relevant information, drawing from the recommendations and conclusions of the relevant monitoring bodies, among other sources. Within three months from the expiry of the notice period, the Commission will issue its final report and give the beneficiary one month to comment. Within six months from the expiry of the notice period, the Commission will make a final determination. If it decides to temporarily withdraw benefits, it will go into effect after six months.

First, we note that the EU Commission may now look at a broader array of information to make the initial determination as to “sufficient grounds” – not just the reports of the relevant monitoring bodies. We also note that in drawing up its final conclusions, the Committee may consult other relevant sources. We support the change and hope that in practice the Commission will in fact consult a broad range of credible sources to make the initial determination and conclusions.

Although the EU Commission currently does receive communications from the public urging it to take action with regard to specific countries (and will in the future), these submissions are not part of any formal review process and therefore can be and often are dismissed without any further (apparent) action. The proposed process is also exceedingly long and non-transparent. It may be years before the EU Commission actually decides it has “sufficient grounds” to move forward, even in the face of substantial evidence of serious and systematic violations. Even once it finds sufficient grounds, the process could take at least 18 months from the issuance of the initial notice in the *Official Journal* until the decision is finally implemented. At no point beyond the initial notice is the public ever informed of the Commission’s conclusions, the government’s response and the Commission’s rationale to suspend (or not) the trade preferences. Also, under Article 20, the preferences may be reinstated in the absence of any public process whatsoever, and again with no published rationale. A country that loses its preferences must be required to reapply through a formal, transparent process that allows for civil society input (described in our proposal below).

To the extent that the transparency issues noted above are to be specifically addressed in the “delegated acts”, we urge the drafters to take note of these concerns and ensure that the process is as transparent and participatory as possible. The fact that the EU Parliament will also have a greater role in the GSP programme we also hope will introduce greater transparency and public participation in the process. We believe that a public, transparent process that leads to a formal review (as described in Section II.B below) is the best approach.

### 3. Special Incentive Arrangement

Article 14 of the proposal establishes a biennial reporting process (in addition to the ongoing monitoring undertaken under Article 13) which produces three reports on each beneficiary country's compliance with its obligations under the special incentive arrangement. In principle, the regular review is a good one and is welcome – though it is no substitute for the public submission process proposed below. The information in each of the reports is drawn from the “relevant monitoring body” as well as information the Commission “considers appropriate.” Once *again, this is a positive step*. It is unclear from Article 14(4), however, whether the EU Commission, in drawing its conclusions on effective implementation of the conventions, will also consult other “appropriate” sources, or only the conclusion and recommendations of the relevant monitoring bodies. We believe that other sources of information should be consulted.

Article 15 of the proposal provides that the special incentive arrangement shall be withdrawn temporarily in respect of all or certain products originating in the beneficiary country, when in practice a beneficiary country does not respect its binding undertakings as referred under Article 9. Importantly, the burden of proof is now on the beneficiary country. If on the basis of the report or on the evidence available, the Commission has a reasonable doubt that the country is not respecting its binding undertakings, it shall adopt a decision to initiate the procedure for withdrawal and shall inform the Parliament and the Council. The Commission shall state grounds for the reasonable doubt, and specify a time not greater than 6 months for the beneficiary country to submit its observations, during which the Commission will give it every opportunity to cooperate. The Commission will also seek additional information from relevant monitoring bodies and “all relevant information.” The Commission will make a final decision within 3 months after the expiration of notice period. A temporary withdrawal will go into effect 6 months after the decision is made.

There is much to appreciate here, from the burden shifting to the beneficiary country to the resort to various sources of information – not merely the reports of monitoring bodies. As with the general scheme, we are concerned that few if any of the reports, conclusions and other decisions made by the Commission will be public and contain a complete rationale for the actions taken. We again hope that these matters are squarely addressed in the delegated acts. And, while action may be taken on the basis of the Article 14 reports or other information, we are concerned that the EU Commission might be reluctant to act “out of cycle”, meaning in a year in which reports are not due. We thus urge the EU Commission to not to establish a practice towards contemplating action only during reporting years.

## **B. TRADE UNION PROPOSAL ON REVIEW AND SUSPENSION PROCEDURES**

### **1. Public Submission Process**

Most importantly, the scheme must include a public submissions process which leads to the initiation of an investigation, public hearings and a final decision on initial (GSP+) and continuing eligibility (GSP and GSP+). This should be structured along the lines proposed below.

The EU should be required to accept submissions from EU social partners such as the European Trade Union Confederation (ETUC), as well as other persons or organisations. Such submissions should be receivable at any time. The elements of a basic submission should include: the name and contact information of the submitter (which should remain confidential if requested), a summary of the relevant facts, if possible the specific domestic laws or international labour rights alleged to have been violated and the relief sought (limitation, suspension or withdrawal of preferences). No additional information should be required at this initial stage.

A submission should be accepted by email, mail or fax, and such contact information should be made readily available. If a submission originates in a beneficiary country and the submitter does not have the means to transmit the submission, the EU Mission in that country should accept and transmit it to the Commission. If needed, the EU Mission should provide technical assistance to the worker(s) in formulating a submission. The Commission should publish notice of the receipt of the submission and a summary of the facts in the *Official Journal of the European Union* (or other appropriate publication).

The submission should be accepted for review if the statements contained therein, if substantiated, would constitute a failure of the beneficiary country to comply with the obligations under the relevant preference scheme. The EU Commission should communicate its determination to the submitter within 30 days of the receipt of the petition. If the information provided is insufficient to make an initial determination, the Commission should notify the submitter within 30 days of the receipt of the submission and request any information needed to make a determination. The submitter should have 60 days from receipt of the notification to supply the requested additional information. The EU Commission should have 30 days from the date the submitter resubmits the submission in order to make its determination. If the submitter does not supply the requested additional information within 60 days, or if the information is still insufficient, then the submission may be rejected. If the submission is rejected, the EU Commission shall publish its determination and the reasons therefore within five days of the date of the determination.

If accepted, the EU Commission shall publish a notice in the *Official Journal* that a submission to review the eligibility of a beneficiary country has been accepted for

review, and should send specific notice to the foreign government and submitter(s). The notice will start a process not to exceed 120 days. The EU should invite the public to submit supplemental written testimony in support of or in opposition to the submission within 30 days. Thereafter, the EU should conduct an investigation, including interviews with submitters, government officials, employers or employer associations specifically named or in an industry identified in the complaint, NGOs and other relevant stakeholders. The Commission should also conduct site visits as appropriate and consider any relevant conclusions and recommendations of the relevant monitoring bodies. As part of its investigatory process, the Commission should also hold a public hearing.

Within 60 days from the close of the investigation, the Commission should publish a written determination as to whether a violation of the labour criteria has occurred, and the facts and rationale supporting that determination.<sup>5</sup>

## 2. Levels of Review

In the past, decisions to temporarily suspend preferences have been made at the country level. No doubt, in some (if not most) cases that may be appropriate. However, the EU Commission could also consider action at the industry level. The availability of more targeted action may provide the EU the flexibility to address the most critical problems directly.<sup>6</sup>

## 3. Remediation & Suspension

If the EU determines, based upon a public submission (or other review) that the beneficiary country is not in compliance with the labour eligibility criteria, then it shall enter into consultations with the beneficiary country, with the participation of worker and employer representatives, to develop a plan of action with clear benchmarks to enable the country to comply with the criteria. Such a work plan should be no longer than two years in duration, with a mid-point review. At the time the plan is in effect,

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<sup>5</sup> The EU should develop a methodology setting forth clear and consistent procedures for the conduct of investigations, the criteria used to determine whether a violation of the labour clause has occurred, how such factors are weighed, and how a final determination is made. The methodology should also set forth procedures for drafting and implementing a remedial work plan, if applicable, and oversight of the implementation of such a plan. This proposed methodology should be published in the Official Journal for public comment.

<sup>6</sup> For example, a situation could arise in which a submission alleges: 1) that the government has failed in a systematic way to enforce its laws them and 2) alleges rampant violations in a specific industry, with illustrative cases. In cases where there is a widespread failure in the administration of labour justice (ministry, inspectorate, courts), and/or where the government as employer is violating worker rights, the EU should consider application of country-level remedies. Where violations are especially concentrated in a particular industry (which benefits from trade preferences), the EU could consider remedies that target the products of that industry.

the EU should offer technical expertise and capacity funding (as required) to assist in the implementation of the plan.

If, after such consultations, a plan of action cannot be developed, eligibility should be terminated. If such a plan is not fully implemented after the determined period, the EU shall consider what progress had been made towards fulfilling the plan. If the country has demonstrated political will and has taken substantial steps towards implementing that plan, the EU may consider extending the period for an additional period not to exceed one year. If, however, the country has not demonstrated the requisite will or has made insufficient progress, the preferences shall be limited or suspended. In any case, the EU Commission must publish within five days of the determination a statement of that determination along with a report setting for the facts and rationale supporting that determination.

If a submission targets a particular industry or industries, or the EU otherwise determines that violations described in a submission against a beneficiary country are concentrated in a specific industry or in industries, it should develop a special work plan (or sub plan) with specific recommendations to address violations in the identified industry or industries. Of course, persistent worker rights violations in any industry are the responsibility of both the employers (who violate the law) and the government (which fails to enforce the law), so a sectoral approach will necessarily have to set forth specific benchmarks in a work plan that are directed to both the government and to the employers. As with the country-level work plan, government, employers and workers should all be engaged in developing that plan.

If the country and employers have demonstrated the will and have taken substantial steps towards implementing that plan, the Commission should extend the review period for an additional period not to exceed one year. If, however, the country has not demonstrated the requisite will or has made insufficient progress, and the violations are especially concentrated in an industry or industries, the Commission shall terminate the preferential treatment for the products in the identified industries.

#### 4. Reinstatement of Eligibility

The EU may reinstate the eligibility for preferential treatment of a country (or sector) whose eligibility has been terminated if it is determined that the qualified beneficiary country has fully implemented the work plan. Countries seeking reinstatement should file a written request with the EU. Notice of the request, and the application, shall be published in the *Official Journal*. Any interested party shall have 60 days to provide information in response to the notice as to whether the country has implemented its work plan and/or any new additional information post-suspension with regard to the country's compliance with the labour clause generally. A public hearing should be held within 30 days after comments are due. All comment should be made publicly available. The EU shall thereafter review the evidence and conduct such investigations as

necessary and make a determination within 90 days whether the beneficiary country has complied with the work plan. The preferences shall remain limited or suspended unless EU makes an affirmative finding that the beneficiary has fully complied with the work plan (and has not engaged in subsequent violations that justify the continuation of the suspension). If so, it should make a recommendation of reinstatement. If not, preferences shall remain suspended until such time that the beneficiary country can demonstrate full compliance through the process described above. As before, the Commission must publish within five days of the determination a statement of that determination along with a report setting forth the facts and rationale supporting that determination.

### **III. ADDITIONAL ISSUES**

There appears to be little coordination among GSP granting nations on trade preference policy generally or, in the case of the US, further coordination on labour issues specifically. Where possible, the EU and the US should coordinate, sharing for example best practices in labour capacity building, and, more importantly, to coordinate on remediation when a beneficiary country is under scrutiny by both the US and EU. The US and EU should also work to encourage other GSP granting nations to incorporate labour rights criteria into their preference programmes. This encouragement is good both from a point of a consistent message and policy, but would also mean more countries contributing both technical expertise and resources to develop labour capacity in beneficiary countries.

Additionally countries are increasingly leaving the GSP scheme as they become party to Economic Partnership Agreements and other bilateral and regional trade agreements. These agreements typically have sustainable development chapters that could draw on the lessons of the GSP scheme, for example, by including the review and suspension elements of the GSP and those outlined in this proposal. Further, the effectiveness of such chapters would be greatly improved if their implementation was coordinated with other agreements and GSP mechanisms. In this regard, the EU could take the lead in establishing a joint WTO-ILO mechanism tasked with overseeing the collaboration and coordination of all trade and sustainable development mechanisms.