

Dear Sir/Madam,

We as the GSP Reform Platform, would like to share concerns and submit the following considerations to the proposed inception impact assessment titled "Towards the future Generalised Scheme of Preference Regulation granting trade advantages to developing countries" ([https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-1815362\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-1815362_en)).

Having adopted several guidelines to enhance the quality of its human rights impact assessments<sup>1</sup>, we would like to see the European Commission modifying its proposed inception impact assessment (IA) to better comply with these guidelines, especially regarding its human rights component.

### **Definition of the objectives**

Articles 21 of the TUE and 207 of the TFUE specify that in the EU's external action in the field of commercial policy the EU "***shall define and pursue common policies and actions [...] in order to [...] (b) consolidate and support democracy, the rule of law, human rights and the principles of international law***". Dealing with the FTA between the EU and Singapore, the Court of Justice, on 16 May 2017, opined that the principles enshrined in Article 21 of the TEU are an integral part of the common trade policy and imply "*the obligation on the European Union to integrate those objectives and principles into the conduct of its common commercial policy*". And the European Ombudsman, in case 1409/2014/MHZ on the EU-Vietnam FTA, considering article 21 of the TEU and article 207 of the TFEU, recalled that "*respect for human rights cannot be made subject to considerations of mere convenience*"<sup>2</sup>. She found "*that EU institutions and bodies must always consider the compliance of their actions with fundamental rights and the possible impact of their actions on fundamental rights.*" The Commission should ensure that its trade policy "***will have no adverse effects on human rights***" Or, depending on the results of its impact assessment, "***the Commission might need to consider appropriate measures which would ensure that no such adverse effects would occur***"<sup>3</sup>.

In addition, according to the EU guidelines on impact assessments, "*an impact assessment should verify the existence of a problem, identify its underlying causes, assesses whether EU action is needed, and analyse the advantages and disadvantages of available solutions*"<sup>4</sup> "*A problem can be caused by several factors, such as [...] the need to ensure respect of fundamental rights*"<sup>5</sup> "*The objectives of policy action should be clearly identified, including the level of policy ambition and the criteria against which alternative policy options would be compared and the success of any initiative assessed*" this supposes also "*clarifying the relationship between an initiative's specific goals and any horizontal EU objectives*"<sup>6</sup>

We consider that the objectives defined in the proposed inception IA are not in line neither with the treaties nor with the guidelines requirements.

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<sup>1</sup> The "Better Regulation Package" adopted by the Commission on 19 May 2015, its "Better Regulation Guidelines" and Better Regulation tool 24 on Fundamental Rights and Human rights Commission Staff Working Document, "Better Regulation Guidelines", SWD(2015) 111 final, 19 May 2015, [http://ec.europa.eu/smart-regulation/guidelines/docs/swd\\_br\\_guidelines\\_en.pdf](http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf) [http://ec.europa.eu/smart-regulation/guidelines/tool\\_24\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/tool_24_en.htm) reaffirming the pre-existing "Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments" dated 2011 Commission Staff Working Paper, "Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments", SEC(2011)567, 6 May 2011, [http://ec.europa.eu/justice/fundamental-rights/files/operational-guidance\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/operational-guidance_en.pdf); The "Guidelines on the analysis of human rights impacts in impact assessment for trade-related policy initiatives" adopted in July 2015 European Commission, DG Trade, "Guidelines on the analysis of human rights impacts in impact assessment for trade-related policy initiatives", 2 July 2015 [http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc\\_153591.pdf](http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf)

<sup>2</sup> *ibidem* § 13

<sup>3</sup> *ibidem* § 12

<sup>4</sup> "Guidelines on the analysis of human rights impacts in impact assessment for trade-related policy initiatives" p2

<sup>5</sup> Better Regulation Guidelines p.20.

<sup>6</sup> Better Regulation Guidelines p.21

Indeed, the Mid-Term evaluation has actually identified several problems that are not reflected in the proposed inception IA, creating misleading bias that have to be corrected. Among these problems were raised :

*“The GSP’s legal conditionality through the temporary withdrawal mechanism and the GSP+ arrangement has incentivised beneficiary countries to adhere to fundamental labour and human rights. Even though in practice, the temporary withdrawal mechanism under the GSP Regulation has not been applied during the period under review. The GSP can be considered as a facilitator of social development and adherence to fundamental labour and human rights. While increased exports and subsequent economic growth could contribute to social development and poverty reduction, the positive impact **depends on whether the beneficiary countries have policies in place** to effectively channel the extra resources to social and distribution-improving policies as well as adaptation and mitigation measures to limit the potential detrimental effects of increased production on the environment. However **in several instances, economic growth and export opportunities did not go hand-in-hand with adherence to fundamental labour and human rights (e.g. instances of land grabbing and the violation of fundamental labour rights were reported in several of the country case-studies)**. [...]While the increased exports and resulting economic growth could contribute to sustainable development, the impact will only be positive if the beneficiary countries have policies in place to effectively direct their resources to environmental policies and mitigation measures to limit any potentially detrimental effects of increased economic activity on the environment. Textiles and clothing are the main import products under the GSP. Their production and trade tend to have a detrimental effect on the environment in the absence of adequate environmental and waste management mechanisms. [...]the accelerated environmental degradation linked to export industries in beneficiary countries is emphasized”<sup>7</sup>.*

In consequence, we request that to the three objectives raised in the proposed inception IA, namely:

*“Problem the initiative aims to tackle : The current EU GSP regulation is the result of a major reform that entered into force in January 2014. This reform had three basic objectives:*

*(i) to contribute to poverty eradication by expanding exports from countries most in need;*

*(ii) to promote sustainable development and good governance; and*

*(iii) to ensure better safeguards for the EU’s financial and economic interest”*,

the Commission must add “to consolidate human rights and rule of law” to complement the second objective referring to the the promotion of good governance (ii) and, the Commission must also add “to **prevent, mitigate and remedy potential negative impacts on Human rights and environment**” as a **fourth objective** (iv)

### **Definition of the options**

The proposed inception IA identified three options: Discontinuation of current GSP (Option 1), Improving the current GSP (Option 2), Expanded GSP scheme (Option 3). We however note that the difference between Option 2 and Option 3 is not clear and the components determining both options seem to be to a certain extend arbitrary (E.g. defining components of Option 3 could equally reside under Option 2 and vice versa). While we appreciate that the difference between both option is one of ambition to reform, currently the two options distinguished are relatively in line with each others. This seems not in line with the Better regulation guidelines that require to identify several options, and that insist on the fact that *"if it is difficult to identify at least two credible alternatives on top of the baseline, make an extra effort to think 'outside of the box' (e.g. have all choices been considered?)"*<sup>8</sup>. Indeed, Impact assessments must *"demonstrate that all relevant options have been considered, taking into account stakeholders' views and justifying why some options were discarded without a full assessment of their impacts"*<sup>9</sup>

The assertion made by the Commission in the outline of the different scenario's the Baseline option where it states "the policy is effective", as well as under Option 2 that "from stakeholder seems to indicate that overall

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<sup>7</sup> Development Solution, midterm evaluation of the current GSP Regulation (Regulation (EU) 978/2012), July 2018  
[http://trade.ec.europa.eu/doclib/docs/2018/august/tradoc\\_157270.pdf](http://trade.ec.europa.eu/doclib/docs/2018/august/tradoc_157270.pdf)

<sup>8</sup> as stated in p24 of the Better Regulation Guidelines (BRG)

<sup>9</sup> Better Regulation Guidelines p. 24;

the policy is effective" seem to compress stakeholders views. Indeed, stakeholders have at several instances indicated that the policy is effective for increased market access, yet questioned the effectiveness or full potential of the policy to actually "contribute to poverty eradication" and "promote sustainable development and good governance". Indeed, reforms (both in policy and practice) are needed to better harness the potential of the GSP regulation notably to the objectives.

We therefore want to see the Commission shifting the focus of the impact assessment to its true aim, namely to identify "*those options which intrude less on fundamental rights*" and have "*the highest positive impact on fundamental rights*"<sup>10</sup>. Indeed, the ECJ requires that, from a human rights perspective, EU institutions prove "*that they have carefully considered different policy options and have chosen the most proportionate response to a given problem*"<sup>11</sup>. Furthermore, the guidelines require that, "*after a first assessment of impacts, it may be necessary to go back [...] with modifications to the **original alternatives to further improve them**. This will typically be the case when options fail to meet the objectives in a satisfactory way or when they are likely to lead to disproportionate negative effects (of any type, for instance, **on fundamental rights**, [...] developing countries, etc.)*"<sup>12</sup>. Once this is considered, the guidelines require that, "*if there are no other alternatives, [which needs to be duly justified] the focus of the subsequent analysis should be on determining the detailed design of the retained option, for example, by considering alternative **"sub-options"** for some of the individual elements of the proposal or different implementation modes*"<sup>13</sup>

We would therefore propose that in the consultation, the scenario's aren't presented as whole and indivisible, but that we look at the separate components of reform options in the light of their contribution to the effectiveness of the GSP regulation to the stated objectives.

**These "building blocks"** include updating the list of convention, the role of civil society in Europe and in beneficiary countries in terms of monitoring and implementing of the conventions, transparency, positive conditionality, possibility for human rights related complaints etc. These "building blocks" should also be assessed in light of the fourth objective that has to be added, namely to prevent, mitigate and remedy potential negative impacts on Human rights and environment. This requires to envisage new mechanisms like monitoring bodies, roadmaps and problem solving mechanism operating when negative impact occur, ex ante country impact assessment and positive conditionality requiring human rights improvement or safeguards to mitigate risks of negative impacts. Also, regarding withdrawal procedures, creative options could envisage withdrawal process of preferences combined with possibilities of derogation for companies complying with UNGPs and ILO Standards.

In consequence, and in conformity with the guidelines, we believe this will result in the necessity to redefine the options to be assessed, and provide for options able to better reconcile the objectives that should be fulfilled in the field of human rights. In any case, the options should be better detailed. As required, "*a sufficiently detailed description of the alternatives retained should be provided*"<sup>14</sup>.

Kind regards,

GSP Reform Platform

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<sup>10</sup> as stated in p. 21 of the Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments

<sup>11</sup> see Commission Staff Working Paper, "Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments", SEC(2011)567, 6 May 2011, [http://ec.europa.eu/justice/fundamental-rights/files/operational-guidance\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/operational-guidance_en.pdf)

<sup>12</sup> Better Regulation Guidelines p. 24;

<sup>13</sup> Better Regulation Guidelines p. 24;

<sup>14</sup> Better Regulation Guidelines p. 24;