



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 September 2012

13898/12

**SPG 25
WTO 305
COASI 158**

COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	17 September 2012
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

No Cion doc.:	COM(2012) 525 final
Subject:	Report from the Commission to the Council pursuant to Article 2 of Council Regulation (EC) No 552/97 with respect to the forced labour in Myanmar/Burma

Delegations will find attached Commission document COM(2012) 525 final.

Encl.: COM(2012) 525 final



EUROPEAN COMMISSION

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REPORT FROM THE COMMISSION TO THE COUNCIL

**pursuant to Article 2 of Council Regulation (EC) No 552/97 with respect to the forced
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1. INTRODUCTION

1. Myanmar/Burma is a beneficiary country of the special arrangement for the least-developed countries (Everything but Arms - hereinafter 'EBA arrangement'), provided under Article 11 of Council Regulation (EC) No 732/2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009¹. Beneficiary countries of the EBA arrangement are listed in Annex I, Column D of this Regulation.

2. LEGAL BACKGROUND FOR TEMPORARY WITHDRAWAL OF THE GSP PREFERENCES

2. Myanmar/Burma's access to the tariff preferences granted by Regulation (EC) No 3281/94² and Regulation (EC) No 1256/96³ was temporarily withdrawn by Council Regulation (EC) No 552/97⁴. Regulation (EC) 732/2008 amended Regulation (EC) 552/97 and replaced reference to those Regulations. Regulation (EC) 732/2008 is the current legal basis for the application and administration of the Union's generalised scheme of tariff preferences (hereinafter 'GSP').
3. Article 2 of Regulation (EC) No 552/97, as amended by Article 28(2) of Regulation (EC) No 732/2008, provides that the application of Regulation (EC) No 552/97 shall be brought to an end in the light of a Commission report on forced labor in Myanmar/Burma, showing that the practices mentioned in point (a) of Article 15(1) of Regulation (EC) No 732/2008 no longer exist.
4. Point (a) of Article 15(1) of Regulation (EC) No 732/2008 provides that the preferential arrangements granted under this Regulation may be withdrawn temporarily, in respect of all or of certain products originating in a beneficiary country, for the serious and systematic violation of principles laid down in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. The International Labour Organization's (ILO) Convention concerning Forced or Compulsory Labour, No. 29, (1930) (hereinafter 'the Convention No 29') is listed in Annex III, Part A of Regulation (EC) No 732/2008.

¹ OJ L 211, 6.8.2008, p. 1

² Council Regulation (EC) No 3281/94 of 19 December 1994 applying a four-year scheme of generalized tariff preferences (1995 to 1998) in respect of certain industrial products originating in developing countries (OJ L 348, 31.12.1994, p. 1).

³ Council Regulation (EC) No 1256/96 of 20 June 1996 applying multiannual schemes of generalised tariff preferences from 1 July 1996 to 30 June 1999 in respect of certain agricultural products originating in developing countries (OJ L 160, 29.6.1996, p. 1).

⁴ OJ L 085, 27.03.1997, p. 0008-0009

3. THE CONCLUSIONS OF THE ILO MONITORING BODIES

3.1. A summary of ILO action in respect of forced labour in Myanmar/Burma

5. The ILO Commission of Inquiry was established in 1997 to examine the observance by the Government of Myanmar/Burma of the Convention No 29. In view of the Government's flagrant and persistent failure to comply with the Convention, the Commission of Inquiry made the following recommendations:
 - (a) to bring legislative texts, in particular the Village Act and the Towns Act, in line with the Convention No 29;
 - (b) to ensure that in actual practice forced labour is no longer imposed by the authorities, in particular the military;
 - (c) to ensure that the penalties, which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention No 29.
6. In view of the Government's failure to take the necessary action to implement the recommendations of the Commission of Inquiry, the International Labour Conference (ILC) adopted at its 87th Session (June 1999) a resolution on the widespread use of forced labour in Myanmar/Burma (hereinafter 'the 1999 resolution').
7. Subsequently, at its 88th Session (June 2000), the ILC adopted a resolution under article 33 of the Constitution on measures to secure the compliance of Myanmar/Burma with the recommendations of the Commission of Inquiry (hereinafter 'the 2000 resolution'). This is the only case in ILO history where article 33 of the Constitution was applied to ensure the compliance of a Member with international obligations.

3.2. Observations of the Committee of Experts on the Application of Conventions and Recommendations

8. In its observations of 2012 the Committee of Experts on the Application of Conventions and Recommendations (CEACR) welcomed the positive developments in Myanmar/Burma, such as submission to Parliament of the draft legislation repealing the Towns Act and the Village Act of 1907. However, the Committee observed that, in spite of the efforts made towards the implementation of the recommendations of the Commission of Inquiry, the Government has not yet fully implemented these recommendations. Besides the steps taken towards the amendment of the legislation, the Government still has to ensure that, in actual practice, forced labour is no longer imposed by the authorities, in particular by the military; and it still has to ensure that penalties for the exaction of forced labour under the Penal Code are strictly enforced against civil and military authorities.

3.3. Report of the ILO Liaison Officer

9. In 2012, the ILO Liaison Officer to the special sitting on Myanmar (Convention No 29) of the Committee on the Application of Standards (CAS) reported that important developments have been observed in a number of areas since the CAS last reviewed

the situation in 2011. In the context of the recommendations of the Commission of Inquiry, the previous legislation has been repealed and new legislation has been adopted, including legislation confirming the exaction of forced labour as a criminal offence. Perpetrators, and in particular military personnel, accused of the use of forced labour are now prosecuted and punished under the law. Whilst there has been a noticeable reduction in the use of forced labour, the problem persists and complaints continue to be received. This has been recognized by the Government through their initiation of a joint strategy with the ILO for the full elimination of all forms of forced labour by 2015, if not before, and by their agreement to detailed action planning for the implementation of that strategy.

3.4. Conclusions of the ILO Committee on Application of Standards

10. On 4 June 2012, the Committee on the Application of Standards (CAS) in its special sitting to examine developments concerning the question of the observance by the Government of Myanmar/Burma of the Convention No 29 adopted the conclusions regarding Myanmar/Burma. The CAS took note of the observations of the CEACR, as well as the report of the ILO Liaison Officer. In its conclusions the CAS welcomed:
 - (a) the progress achieved towards complying with the 1998 recommendations of the Commission of Inquiry. The Committee observed that many important steps had been taken by the Government in this regard since its meeting last year;
 - (b) the elaborate and detailed Action Plan developed between the Government and the ILO. The Committee insisted that all the social partners and civil society organizations would play an active role in prioritizing and assisting in the accelerated application of the elements in the Plan most relevant to the immediate implementation of the Commission of Inquiry recommendations;
 - (c) the Government representative's statement that a culture of impunity was not tolerated and that the President had called for steps to be taken to ensure the respect for the rule of law throughout the country. The Committee considered that the action taken to prosecute forced labour should continue to be reinforced and the newly adopted legislation effectively applied so as to ensure complete accountability under the law. The Committee trusted that effective and dissuasive sanctions would be imposed to punish the use of forced labour in all sectors and requested the Government to review the impact of the measures that it had reported on so as to be in a position to strengthen them where necessary.
11. The Committee did, however, raise its continuing concern over the Constitutional provision which provided an exception from the prohibition of forced labour for "duties assigned by the Union in accordance with the law in the interest of the public". It welcomed the Government representative's statement that the Constitution could be amended where it was the will of the people and trusted that steps would be taken to ensure that any exception to forced labour provided for in the constitutional and legislative framework was strictly limited to the narrow scope of exceptions under Convention No. 29

3.5. Resolution of the International Labour Conference

12. On 13 June 2012, the International Labour Conference (ILC) taking note of the conclusions adopted on 4 June 2012 by the CAS and considering that maintaining the existing measures would no longer help in attaining the desired result of compliance with the recommendations of the Commission of Inquiry adopted the Resolution 'Concerning the measures on the subject of Myanmar adopted under article 33 of the ILO Constitution' and decided:
- (a) to lift with immediate effect the limitation of ILO technical cooperation or assistance to the Government of Myanmar/Burma, enunciated in paragraph 3(b) of the 1999 resolution to enable the ILO to assist the Government, employers and workers on a variety of issues coming within the ILO's mandate.
 - (b) to lift the measure enunciated in paragraph 3(c) of the 1999 resolution to allow the Government of Myanmar/Burma to participate in ILO meetings, symposia and seminars in the same way as any other Member, with social partners from Myanmar/Burma receiving the same treatment.
 - (c) to suspend for one year the recommendation contained in paragraph 1(b) of the 2000 resolution requesting its members to review their relationships with Myanmar/Burma to ensure forced labour is not being used in those relationships, with immediate effect. The ILC will review the recommendation again in 2013 in the light of information available to it in respect of the elimination of forced labour in Myanmar/Burma.

4. CONCLUSIONS AND RECOMMENDATIONS

13. Based on the above information the Commission concludes that the progress made by Myanmar/Burma towards complying with the ILO recommendations justifies that violations of the principles laid down in ILO Convention No 29 are no longer 'serious and systematic'.
14. It is therefore recommended that the access to generalized tariff preferences should be reinstated to Myanmar/Burma.
15. The Commission should continue to monitor the developments in Myanmar/Burma with respect to forced labour and react to them in accordance with the procedures in force, including, if necessary, with renewed withdrawal procedures.