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Report on EU Enhanced Engagement with three Everything But Arms beneficiary countries: Bangladesh, Cambodia and Myanmar

Accompanying the document

Joint Report to the European Parliament and the Council

Report on the Generalised Scheme of Preferences covering the period 2018-2019

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Enhanced Engagement

1. Introduction

As set out in the *Trade for All* Communication of 2015¹, in 2017 the European Commission and the European External Action Service (EEAS) stepped up engagement with three GSP beneficiary countries: **Bangladesh, Cambodia and Myanmar**. In the GSP Report covering the period 2016-2017² the Commission reported on the start of its enhanced engagement with these beneficiaries.

Enhanced engagement is built on EU experience gained from the GSP+ monitoring process. Its aim is to facilitate and incentivise partner countries to make progress on critical areas with regard to the 15 core human rights and labour rights international conventions covered in the GSP Regulation. While these countries have not necessarily ratified these conventions (as GSP+ beneficiaries have), they are obliged by Article 19 of the GSP Regulation³ requires them to adhere to the principles of those conventions.

The three EBA beneficiaries were identified for enhanced engagement taking into account:

- The seriousness of violations of principles of international conventions (laid down in United Nations (UN) and International Labour Organisation (ILO) reports);
- The deep concerns regarding these violations as expressed by the European Parliament and the Council, international organisations, and civil society, including trade unions;
- The countries' substantial trade with the EU under the GSP/EBA arrangement. In 2018, the EU imported from Bangladesh, Cambodia and Myanmar €23.7 billion or 87.3% of its preferential imports from all EBA beneficiaries.

Through enhanced engagement, the EU asks for concrete actions and sustainable solutions to serious and systematic shortcomings in respecting fundamental human rights and labour rights. Action is expected from the countries concerned that leads to discernible progress either in the short term or – if, as is often the case, issues are more complex and sensitive – over the medium term. The overall objective of enhanced engagement is the same as in the case of all GSP beneficiaries, namely to support countries through trade and engagement towards sustainable development.

Enhanced engagement builds on the recommendations and conclusions of the ILO and UN monitoring responsible for overseeing the implementation of the 15 human rights and labour

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Trade for All Towards a more responsible trade and investment policy, COM/2015/0497 final, Brussels, 14.10.2015. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0497&from=en>

² COM(2018) 36 final of 19.1.2018. <https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-36-F1-EN-MAIN-PART-1.PDF>

³ Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303, 31.10.2012. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0978&from=EN>

rights conventions listed in the GSP Regulation. In addition, information from stakeholders like civil society and social partners is taken into account. The use of these recommendations and conclusions facilitates an objective and transparent way of assessing the adherence to the principles of the international conventions.

The process includes, among others:

- Political and senior officials' level dialogue/engagement;
- Presentation of a "list of issues" to the countries to which they are requested to respond;
- Monitoring missions including official dialogues, discussions with stakeholders, and on-the-spot visits;
- Exchange of letters and discussions on progress made and to be made.

Table 1: EU imports by GSP arrangement and from EBA enhanced engagement countries⁴

	EU28 imports (€ M), including non-preferential				growth	share of EBA preferences*
	2015	2016	2017	2018		
World / Extra EU28	1,727,322	1,708,303	1,856,864	1,977,487	14.5%	
GSP	185,247	175,539	196,644	212,855	14.9%	
GSP - general	126,785	120,909	139,220	150,890	19.0%	
GSP - plus	17,921	17,672	19,473	20,056	11.9%	
GSP - EBA	40,542	36,958	37,951	41,909	3.4%	
Enhanced Engagement						87.3%
Bangladesh	15,326	16,434	16,961	17,836	16.4%	61.8%
Cambodia	4,148	4,622	5,011	5,359	29.2%	18.4%
Myanmar	682	996	1,561	2,293	236.1%	7.1%

* Imports under EBA as part of total EU EBA imports

If the enhanced engagement fails to produce results, the Commission has the option of a temporary withdrawal of EBA tariff preferences. In the case of Cambodia, the Commission launched the procedure for a temporary withdrawal in February 2019⁵.

The withdrawal procedure is detailed in Article 19 of the GSP Regulation, which provides a number of grounds that can constitute the basis to launch the process (see box 1). It marks the start of a formal monitoring and evaluation process within a specific procedural framework. This provides the possibility for interested third parties to intervene as well.

⁴ Statistics presented include all EU imports ('regime 4'). GSP-specific statistics are reported under 'regime 1' which excludes some EU-imports, like goods imported for inward and outward processing.

⁵ OJ C55 of 12.2.2019, p.11

The launching of the withdrawal process does not lead automatically to a withdrawal of preferences. The EU's goal remains to support the beneficiary country to demonstrate commitment and take the necessary measures to address concerns in order to benefit from preferential EU tariffs. This is instrumental to the country's sustainable development objectives. Withdrawal of preferences remains, therefore, a measure of last resort⁶.

Box 1: If all engagement fails... temporary withdrawal of preferences

Under the GSP Regulation, EBA preferences are conditional upon the beneficiary country respecting the principles of 15 core United Nations (UN) and International Labour Organisation (ILO) Conventions on human rights and labour rights. Article 19 of the GSP Regulation spells out that the preferential tariffs may be withdrawn temporarily, in respect of all or of certain products originating in a beneficiary country.

The Commission can launch a temporary withdrawal procedure if it considers that there are "sufficient grounds" of serious and systematic violations. In its assessment, the Commission uses the reports and recommendations of the relevant UN and ILO bodies as well as additional information including the analyses made by the EU Delegations, EU Member States, the European Parliament, civil society and social partners.

The withdrawal procedure starts with an Implementing Decision adopted by the Commission after having consulted the EU Member States. The country concerned is informed and a Notice of Initiation is published in the Official Journal (C series), to announce the start of the procedure and to invite interested parties to register to the procedure.

Following a six-month monitoring and evaluation period, the Commission has three months to submit a Report of Findings and conclusions to the beneficiary country, which then has one month to comment. Finally, within 12 months from the start of the procedure, the Commission takes a decision whether or not to go ahead with the temporary withdrawal.

Throughout the procedure, the Commission provides the country with every opportunity to cooperate and to provide additional information.

Since the first letters announcing the enhanced engagement were sent to the three countries, engagement with each has followed a different track. The engagement with **Bangladesh** has initially focused on compliance with international conventions related to labour rights. The enhanced engagement with **Myanmar** focused more broadly on compliance with human rights conventions, and labour rights. Lack of results in **Cambodia** on human rights and labour rights led to the start of a formal withdrawal of EBA preferences procedure.

Enhanced EU engagement has helped to create awareness of and responsiveness to the issues of concern related to principles of fundamental human rights and labour rights conventions by

⁶ The EU withdrew preferences in the past (though not under the current GSP Regulation): from Myanmar and Belarus.

Bangladesh, Cambodia, and Myanmar, leading to a more intensive dialogue on addressing the above mentioned concerns.

Pressure will be kept up with the three countries to ensure further progress takes place and accelerates in order to align legislation, policies, and practice with international standards. This is also with a view to contributing to a global level playing field and to preventing a race-to-the-bottom as regards fundamental human rights and labour standards.

This report first covers the two countries – **Bangladesh and Myanmar** – with which enhanced engagement is ongoing. Overall, since the start of this process, these countries have become more responsive and adopted some legislative changes or improved implementation regarding the principles of the conventions.

For **Bangladesh**, and **Myanmar**, the Commission will review the situation and decide on the next steps. If dialogue fails to produce sufficient results, the EU remains ready, as a last resort, to launch the procedure for withdrawal of preferences with due consideration for the economic and social impact of such a withdrawal. For Myanmar, discussions on restrictive measures will continue concurrently with the EU Member States to review the list of targeted individuals and to explore possibilities for expanding the scope to include economic entities.

The report then describes EU actions regarding Cambodia. However, the information provided is limited as the temporary withdrawal procedure is ongoing at the time of writing of this report.

For **Cambodia**, the Commission should adopt the relevant legal act in February 2020 deciding whether to terminate the withdrawal procedure or withdraw trade preferences. Meanwhile, Cambodia is encouraged to continue addressing the issues of concern and engaging with the EU.

Engagement will continue with the countries, who need to demonstrate they will address the most salient issues.

The EU provides these countries with every opportunity to cooperate and continue dialogue on any of the issues addressed in this report.

2. Enhanced Engagement: Bangladesh

Context

EU concerns with Bangladesh include both human rights and labour rights. Labour rights are also being raised through the *Compact for Continuous Improvements in Labour Rights and Factory Safety in the Ready-Made Garment and Knitwear Industry in Bangladesh* (Sustainability Compact) established in reaction to the collapse of the Rana Plaza factory in April 2013. The Sustainability Compact is a collaborative initiative whereby the EU has been engaging with the Government of Bangladesh, together with the US, Canada (since 2016) and the ILO. The Sustainability Compact outlines concrete commitments to be undertaken by Bangladesh in respect of labour rights. This includes in particular freedom of association and the right to collective bargaining - as well as structural integrity of factory buildings, occupational safety and health, and promotion of responsible business conduct. Therefore, the enhanced engagement's initial focus has been on labour rights, building upon the Compact engagement. Progress expected on labour rights includes the need to bring the Bangladesh Labour Act (BLA), its implementing rules, and the Export Processing Zones (EPZ) Act in line with the ILO Conventions.

The Commission and its partners actively monitor the implementation of the Sustainability Compact, including through yearly high-level meetings (the last one took place in June 2018) and dedicated reports. In addition to existing Compact activities, new actions aim to facilitate consensus on priority issues and to enhance cooperation with EU garment brands in order to maximize industry leverage. The Sustainability Compact and the EBA processes are complementary.

With regard to human rights, EU concerns include the shrinking civil society space, freedom of expression and right to peaceful assembly, extrajudicial killings, enforced disappearances and torture, discrimination and violence against ethnic and religious minorities. These and other pertinent human rights issues are addressed in the Subgroup on Human Rights and Good Governance under the EU-Bangladesh Cooperation Agreement.

Economic impact of EU tariff preferences under EBA

Bangladesh remains by far the most important beneficiary of the EU's EBA arrangement. EBA has directly contributed to Bangladesh's economic growth and social and economic development. Exports from Bangladesh to the EU have more than tripled between 2006 and 2018. The EU is currently the main trading partner of Bangladesh, absorbing almost half of its exports. EBA has contributed to the generation of millions of employment opportunities in the ready-made garment industry. In 2018, figures show that EBA exports from Bangladesh to the EU amounted to €17.4 billion and approximately €2 billion in duties were saved in Bangladesh on an annual basis.

Key Concerns

The benefits that Bangladesh enjoys thanks to the tariff preferences while exporting to EU market under EBA must go hand-in-hand with the respect of human rights and labour rights.

Bangladesh has been marked as a serious and urgent case for many years by the ILO supervisory mechanism. The ILO has issued detailed recommendations to Bangladesh on necessary amendments in legislation and changes in practice to align with international labour

standards. The Commission has raised concerns regarding labour rights, in particular freedom of association under the Sustainability Compact, and, as from 2017, in the context of the EBA enhanced engagement. The EU has in particular raised the alignment of the Bangladesh Labour Act and the Export Processing Zone (EPZ) Act with the fundamental ILO Conventions 87 and 98.⁷

Specifically Bangladesh is asked to:

- Remove legal obstacles to the right to establishment of trade unions and the free organisation of their activities, reduce the minimum membership requirements to form trade unions, enabling coverage of all sectors and workers, and allow the formation of trade unions in EPZs;
- Eliminate anti-union discrimination including violence, harassment, dismissal, and arrest of workers including through proper investigations and prosecutions of such cases;
- Put in place a simple, objective, and transparent process of trade union registration;
- Reinforce the labour inspectorate (ensuring sufficient capacity in terms of numbers and ability), with a view of promoting fundamental rights at work;
- Eliminate forced and child labour through concrete action plans;
- Improve freedom of expression and civil society space;
- Investigate cases of alleged torture, ill treatment, extra judicial killings, and enforced disappearances.

Process of Engagement

Since the start of enhanced engagement in March 2017, this process included numerous communications to Bangladesh on the EU's concerns as well as two monitoring missions (11-15 September 2018 and 14-21 October 2019).

EU concerns on non-compliance with labour rights under the EBA arrangement were communicated to the Bangladesh authorities in March 2017. During the enhanced engagement dialogue, clear messages have been passed that the tariff preferences under EBA are conditional on the respect for labour standards and human rights, as reflected in the international conventions enumerated in the GSP Regulation. As a result of the dialogue, Bangladesh made commitments to address the ILO recommendations. In September 2018, the first EBA monitoring mission focused on labour rights. In the period October 2018 - March 2019, Bangladesh made certain amendments to its labour laws and a second EBA mission took place in October 2019. The mission noted progress in certain areas but also underlined that this was insufficient and there was need for further efforts to fully align Bangladesh labour laws and practice with ILO standards. Further to the mission, Bangladesh agreed to develop a roadmap with concrete timelines envisaging actions on the concerns, with the involvement of EU experts. In parallel, the legislative amendments are in the process of being

⁷ Convention No 87 on the Freedom of Association and Protection of the Right to Organize and Convention No 98 on the Rights to Organize and Collective Bargaining.

formally evaluated by the ILO supervisory mechanism (the next report is expected by February/March 2020).

With regard to human rights, the EU engages with Bangladesh also in the framework of the Sub-group on Human Rights and Good Governance under the EU-Bangladesh Cooperation Agreement. At the last meeting of the Sub-group (17 October 2019), both sides reaffirmed their commitment to strengthening cooperation in the field of human rights on the basis of internationally recognised human rights standards. The meeting of the Sub-group allowed for an extensive exchange on a number of issues of concern in Bangladesh, namely transparency, the rule of law, law enforcement, extrajudicial killings, enforced disappearances and torture, elections, women's and children's rights, rights of the persons belonging to minorities and marginalised groups, freedom of expression and of the media, freedom of assembly, death penalty, and the implementation of Chittagong Hill Tracts Peace Accord. Fundamental labour rights, trade unions' registration, and unfair labour practices were also discussed at the meeting of the Sub-group. Both sides agreed to continue working to address human rights challenges in Bangladesh, including in the context of the EU-Bangladesh Joint Commission.

State of Play

In 2018 and 2019, Bangladesh started adopting amendments on freedom of association and collective bargaining to its labour law. This includes the Bangladesh Labour Act and EPZ Act.

The EBA dialogue and the recent mission established that there were still difficulties in the registration process of trade unions and allegations of arrests, surveillance, violence, and intimidation of workers persist. Serious legislative restrictions, such as the existing minimum membership requirement, hamper the establishment of trade unions. The minimum membership requirement has been reduced in October 2018 from 30% to 20% of the workforce, but remains a major barrier to the formation of trade unions and does not go far enough to bring the country in compliance with the ILO rules. Therefore, further efforts are necessary to fully address the concerns raised by the ILO supervisory mechanism.

Furthermore, Bangladesh law foresees disproportionate sanctions - such as imprisonment - for taking part in activities of unregistered trade unions. Certain sectors are excluded from the scope of the Bangladesh Labour Act and the EPZ labour law. Workers in EPZs do not have the same rights as other workers (for example, they are not allowed to affiliate with trade unions or non-governmental organisations outside the EPZs). A complaint has been currently filed to the Governing Body of the ILO against Bangladesh with a view to appointing a Commission of Inquiry on the non-effective observance of ILO Convention 87 on freedom of association.

In 2019 Bangladesh was denoted as a serious case under ILO Convention 81 on labour inspection. The ILO found that the 575 posts for labour inspectorates are not being filled and that in 2018 the number of inspectors has even decreased from 345 to 320.

There are also serious shortcomings in addressing child labour. Though legal provisions allowing light work for children as of the age of 12 were removed, Bangladesh has not provided a concrete plan to eliminate (hazardous) child labour by 2021 as earlier announced, and in all its forms by 2025 in line with the 2030 Agenda (Sustainable Development Goal 8.7). There seems to be in particular a lack of effective law enforcement with only few (204)

cases being filed against companies' management for using child labour while a total of 1.2 million children are estimated to be involved in hazardous work.

On human rights, Bangladesh indicated its intention to adopt a National implementation plan to implement the large number of UPR recommendations accepted by the country.

Looking ahead

The October 2019 EBA mission asked Bangladesh to take urgent, comprehensive, and sustainable action to fully bring its laws and practices in compliance with ILO standards. As a result of the discussions during the mission, Bangladesh and the EU agreed on the development of a joint roadmap with timelines addressing suggested actions on labour rights. Furthermore, Bangladesh and the EU agreed for their experts to work together in implementing the roadmap.

Enhanced engagement takes due consideration of the recommendations of the ILO supervisory mechanism. In that respect, the next ILO report assessing all recent legislative reforms is expected to be published by February/March 2020.

Labour issues will also be discussed in 2020 at the next meeting of the Sustainability Compact.

Progress, among others, is expected in the following areas:

- Removing various legal obstacles in the right to establish and organise trade unions, to elect officers, and to carry out freely activities of a trade union;
- Tackling violence and anti-union discrimination;
- Making urgent progress on the full elimination of forced and child labour;
- Addressing gaps in implementing occupational safety and health and fundamental labour rights in practice through reinforcing the labour inspection's capacity;
- Improving freedom of expression and civil society space;
- Investigating cases of alleged torture, ill-treatment, extra-judicial killings and enforced disappearances;
- Ratifying the Convention on Enforced Disappearances;
- Fully implementing the recommendations of the Human Rights Council Universal Periodic Review and the conclusions by UN treaty monitoring bodies.

3. Enhanced Engagement: Myanmar

Context

In 2011, Myanmar's military-led government embarked on a substantial reform process by taking the first steps towards democratisation, peace with the country's ethnic armed groups, and socio-economic recovery. In April 2012, National League for Democracy (NLD) candidates swept the board in parliamentary by-elections, with Daw Aung San Suu Kyi becoming a member of parliament. The European Union suspended all non-military sanctions against Myanmar for a year. As a recognition of its efforts to launch ambitious democratic reforms in 2013, the EU lifted all restrictive measures with the exception of an arms embargo and an embargo on equipment that can be used for internal repression. Myanmar was reinstated as an EBA beneficiary in 2013.

The holding of credible and competitive elections in November 2015 marked an important milestone in the transition process and gave the NLD, led by Daw Aung San Suu Kyi, an absolute majority in parliament. The new government took office in April 2016, with U Htin Kyaw becoming the first civilian president in more than half a century and Daw Aung San Suu Kyi serving as State Counsellor and Minister of Foreign Affairs.

Less than two years later, the international community became seriously concerned about gross human rights violations and abuses amounting to crimes against humanity, particularly in Rakhine, Kachin and Shan States. This was also described in the final report of the Advisory Commission on Rakhine State (Annan Report),⁸ the various reports of UN Independent International Fact-Finding Mission (IIFFM),⁹ the Special Rapporteur on the situation of Human Rights in Myanmar, the Office of the High Commissioner for Human Rights, and the reports of the ILO supervisory mechanism.¹⁰

These concerns, also expressed by the EU, are notably with regard to full accountability of those who have committed serious atrocities and violations of human rights that took place in Rakhine State and elsewhere in the country. The EU has also requested full humanitarian access not only to Rakhine State, but also to Kachin and Shan States; and the establishment of conditions conducive to the safe, dignified, sustainable, and voluntary return of refugees from Bangladesh and internally displaced persons (IDPs), in particular by fully implementing the recommendations made by the Advisory Commission on Rakhine State.

In September 2016, following a request made by State Counsellor Aung San Suu Kyi, an **Advisory Commission on Rakhine State**, led by former UN Secretary General Kofi Annan, was established in order to address the root causes of the latent conflict in Rakhine State. The final report of the Advisory Commission on 24 August 2017 gave 88 recommendations. These include proposed measures to address the systematic discrimination faced by the stateless Rohingya people and other related issues such as freedom of movement, citizenship

⁸ See Annex No 15, Advisory Commission on Rakhine State Report (Annan Report).

⁹ See Annex No 16 for UN FFM Report from August 2018; and Annex No 17 for UN FFM Report of the Detailed Findings from September 2018.

¹⁰ ILO Committee of Experts on the Application of Conventions and Recommendations, ILO Committee on the Application of Standards, ILO Committee on Freedom of Association.

status, and ensuring that all communities have equal access to education, health, livelihood opportunities, and basic services¹¹.

Following serious violence against the Rohingya in Rakhine State in October 2016, an Independent International Fact-Finding mission (IIFFM) was established by means of an EU sponsored UN Human Rights Council resolution.¹² This Mission was to establish the facts and circumstances of the alleged human rights violations and abuses by military and security forces in Myanmar, in particular in Rakhine State. After the coordinated attacks on 30 border guard police and an army post on 25 August 2017 by the Arakan Rohingya Salvation Army (ARSA), the Myanmar military (Tatmadaw) and security forces undertook a large-scale security clearance operation in northern Rakhine State. The EU has condemned these attacks as well as the violence that followed in northern Rakhine State. The use of disproportionate and excessive force against civilians triggered a massive and unprecedented displacement of Rohingya refugees into Bangladesh. About 730,000 Rohingya crossed the border and reside in crowded refugee camps in Cox's Bazaar.

In this regard, Council Conclusions were adopted on 16 October 2017, 28 February 2018, and 10 December 2018 to express the EU's concerns in particular about the lack of full accountability for serious and systematic human rights violations committed by the Myanmar armed forces, for restrictions to humanitarian access, the situation of internally displaced persons (IDPs) in Rakhine, Kachin, and Shan States, and the slow progress in implementing the recommendations of the Advisory Commission on Rakhine State.

In its Conclusions of 28 February 2018, the Council recalled *"that the respect of human rights and fundamental freedoms is a crucial part of the EU's trade policy and underpins the granting of trade preferences to Myanmar under the EBA"* and invited the Commission *"to continue monitoring the situation and to step-up engagement with Myanmar in light of the provisions of Regulation (EU) No. 978/2012"*.

The EU also put in place in April 2018 an enhanced arms embargo and embargo on equipment that can be used for internal repression, a framework for targeted restrictive measures including asset freezes and travel bans against 14 senior officers of the Myanmar military, the border guard, and police officials responsible for serious and systematic human rights violations¹³. Moreover, the Council, in its Conclusions of 10 December 2018, agreed to explore possibilities for extension of these targeted restrictive measures to entities¹⁴.

The European Parliament also adopted several resolutions, including on 13 December 2017¹⁵, on 14 June 2018 and 13 September 2018¹⁶. In its Resolution on 19 September 2019, the

¹¹ See Annex No 15, Advisory Commission on Rakhine State Report (Annan Report).

¹² A/HRC/RES/34/22, Resolution adopted by the Human Rights Council on 24 March 2017.

¹³ Council Decision (CFSP) 2018/655 of 26 April 2018 amending Decision 2013/184/CFSP concerning restrictive measures against Myanmar/Burma, OJ L 108 of 27.4.2018.

¹⁴ Council Decision (CFSP) 2019/678 of 29 April 2019 amending Decision 2013/184/CFSP concerning restrictive measures against Myanmar/Burma, OJ L 114 of 30.4.2019.

¹⁵ P8 TA (2017) 0500, European Parliament resolution of 14 December 2017 on the situation of the Rohingya people.

¹⁶ P8 TA (2018) 0261, European Parliament resolution of 14 June 2018 on the situation of Rohingya refugees, in particular the plight of children; P8 (TA (2018) 0345, European Parliament resolution of 13 September on Myanmar, notable the case of journalists Wa Lone and Kyaw Soe Oo.

European Parliament, called on the Commission to launch an investigation under the EBA scheme. The Council and the European Parliament called on the authorities of Myanmar to cooperate with the International Criminal Court (ICC), and to become a signatory to the Rome Statute. It reiterated its call for the EU and its Member States to take the lead at the UN Security Council to refer the situation in Myanmar to the ICC and to support efforts to open a case on Myanmar's possible violation of the UN Genocide Convention before the International Court of Justice; to extend the scope of the arms embargo; and to "reinvigorate" the EU-Myanmar Human Rights dialogue.

The IIFFM released its first report on detailed findings on 17 August 2018 which stated: "*The Mission concluded on reasonable grounds that gross human rights violations and serious violations of international humanitarian law have been committed in Myanmar since 2011 and that many of these violations undoubtedly amount to the gravest crimes under international law.*" In its Final Report released on 5 August 2019, the IIFFM stated that further investigations confirmed its initial finding that "*clearance operations against the Rohingya that began on 25 August 2017 gave rise to an inference of genocidal intent*". In its recommendations, the IIFFM welcomed the establishment of the Independent Investigative Mechanism (IIMM) through a joint EU-OIC tabled resolution in the UN Human Rights Council in September 2018 and confirmed by the UN General Assembly in December 2018. The IIMM is collecting, consolidating, preserving and analysing evidence of the most serious crimes and violations of international law committed in Myanmar since 2011. It is further tasked with preparing files to facilitate and expedite fair and independent criminal proceedings, in accordance with international law.

On 11 November 2019, The Gambia brought a case against Myanmar in the International Court of Justice (ICJ). On 13 November 2019 Rohingya and Latin American human rights groups lodged a lawsuit in Argentina under the principle of "universal jurisdiction" for crimes against the Rohingya. On 14 November 2019 the International Criminal Court launched an investigation into the "forced deportation" of the Rohingya. The ICJ has held public hearings in the case of the proceedings brought by The Gambia against Myanmar on 10-12 December 2019 on the request for the indication of provisional measures.

Myanmar has received urgent requests from the ILO supervisory mechanism for many years, in particular on forced and child labour and freedom of association. The EU and its Member States have closely followed the cases and developments and urged Myanmar for concrete and swift action¹⁷.

Economic impact of EU tariff preferences under EBA

Based on statistics of the Ministry of Commerce of Myanmar (as of February 2019), the EU is **the 3rd largest trading partner of Myanmar** (after China and Thailand) and **the 3rd largest export market** (following China and Thailand), absorbing 18.6% of its total exports.

¹⁷ See in 2019: EU statement at 108th International Labour Conference, https://eeas.europa.eu/delegations/un-geneva_en/64951/ILO%20-%20ILC%20108%20-%20EU%20Statement%20-%20Committee%20on%20Application%20of%20standards:%20Republic%20of%20the%20Union%20of%20Myanmar; EU statement at 335th ILO Governing Body, https://eeas.europa.eu/delegations/myanmar-burma/61456/ilo-gb-335-eu-statement-ins-12-follow-resolution-concerning-remaining-measures-subject-myanmar_en.

Total EU imports from Myanmar in 2018 increased by 46.8% (compared to +56.7% in 2017), totaling around €2.3 billion. The EBA resulted in around €250 million import duty savings. The strong growth of imports from the country continued in the first seven months of 2019 (+35.5%). This growth is mainly driven by garments and footwear.

Imports of **garment and footwear** from Myanmar increased by 50.6% and made up nearly 80% of exports to the EU in 2018. In the first seven months of 2019, **this growth continued at a similar rate (+44.3%)** and the share of garment and footwear in the import basket is now nearly 85% of total imports from Myanmar. Imports of **rice**, the second largest import commodity from Myanmar, increased in value by 27.5% and in quantity by 14.7% in 2018. In January 2019, the EU imposed – under the GSP regulation - safeguard measures on Indica rice from Cambodia and Myanmar for three years, thus introducing normal customs duties on this product for the first year (€175 per tonne), and then progressively reducing it to €150 per tonne in year two and €125 per tonne in year three.

EU industry in Myanmar is present in telecom, logistics, manufacturing, and services. A recent business survey showed that, despite the current political situation, EU industry sees potential in the country especially in sectors of wholesale, retail, banking, and insurance. The country is attractive thanks to its growing middle class, young population, economic reforms, and regional perspective.

Analysts foresaw robust FDI flows into manufacturing, as well as foreign funding for power-generation and infrastructure projects, to underpin continued strong GDP growth in 2019-2023. The acceleration was driven by the recovery of natural gas exports and strong garment exports. Growth in the services sector remains strong, in particular in finance and telecommunications. Some of the more recent reports, however, note a drop in interest of foreign investors in the country also due to challenges in terms of human resources, infrastructure, and slow pace of reforms.

Key concerns

Key EU concerns regarding the situation in Myanmar relate to the non-implementation of the principles of several international human rights conventions listed in the GSP Regulation, namely: the Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant for Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (CESCR), Convention on the Rights of the Child (CRC), the Conventions on Elimination of Racial Discrimination (CERD), Convention of the Elimination of Discrimination against Women (CEDAW), Convention against Torture (CAT); and fundamental labour (ILO) principles. The EU concentrates on the following areas:

- **Full accountability** of those individuals who have committed serious and systematic violations of human rights;
- **Co-operation with all UN procedures and mandates;**
- **Full and unhindered humanitarian access** to Rakhine, Kachin, and Shan States;
- **Improvement in the situation of internally displaced persons (IDPs)** in Rakhine, Kachin and Shan States;
- **Conditions conducive to voluntary, safe, dignified, and sustainable return of refugees** to their places of origin in Rakhine State, in particular with regards to discrimination against ethnic minorities;

- **Tackling hate speech and discrimination;**
- **Freedom of expression** including restrictive legislation and abuses in its implementation;
- **Respect for labour rights.** This includes alignment with the fundamental principles and rights at work, in particular eliminating forced and child labour, and ensuring freedom of association both in legislation and in practice.

Process of Engagement

Concerns were communicated already in October 2017. Following the Council Conclusions of 28 February 2018, the Commission stepped up its engagement, starting with a preliminary analysis of the issues to be monitored under the EBA enhanced engagement. A Non-Paper on key concerns was handed over to the Myanmar authorities in October 2018. The first EBA mission to Myanmar on 28-31 October 2018 was followed by a visit to Brussels of the Permanent Secretary of the Ministry of Foreign Affairs for further dialogue in December 2018. From 18 to 22 February 2019, a second high level EBA mission took place that included a visit to an Internally Displaced People's camp in central Rakhine State. The EBA engagement was also discussed in the margin of the 22nd EU-ASEAN Foreign Ministerial Meeting in Brussels in January 2019; and follow-up meetings on 16 May 2019 when the first EU-Myanmar Senior Officials Meeting took place in Brussels; and during the Fifth Human Rights Dialogue and bilateral meetings of the EU Special Representative for Human Rights in June 2019 (including meetings with the State Counsellor and Commander-in-Chief) in Myanmar.

State of Play

Myanmar has shown a **constructive attitude and engagement on the issues of concern raised by the EU**. There are some positive signs but progress on more complex issues remains difficult. Serious human rights violations in conflict areas are reported to continue. Further challenges are due to the continued conflicts in Rakhine State with the Arakan Army and renewed fighting in northern Shan State between various non-state actors and the Tatmadaw. General elections are announced for late 2020.

In terms of the key areas of concern the following can be reported:

Accountability: Myanmar's Independent Commission of Enquiry (ICoE) established by presidential order in May 2018, has collected victim testimonies but has so far been unable to perform in-depth field investigations into possible sites of mass atrocities in Rakhine State. Its core team visited Bangladesh to prepare for future interviews with victims of atrocities. Despite some contacts, the ICoE has so far failed to cooperate with the relevant international mechanisms (IIFFM and the Independent Investigative Mechanism (IIMM), and the International Criminal Court (ICC)). The ICoE's mandate was extended and work is ongoing on a final report, which is expected to be submitted to the Government in January 2020. In March 2019 the Tatmadaw formed its own Court of Inquiry to "*further scrutinise and confirm the respective incidents*" during the military's security clearance operations following the 25 August 2017 ARSA attacks. On 26 November 2019 court martial proceedings started for Tatmadaw soldiers in Buthidaung accused of violating the military's rules of engagement

during operations in Gu Dar Pyin village in 2017. There is cooperation between the ICoE and the Court of Inquiry.

On 17 September 2019, the IFFM presented its final report to the UN Human Rights Council, and handed over the evidence collected to the Independent Investigative Mechanism for Myanmar (IIMM) which will prepare future case files to ultimately determine individual criminal responsibility. The IFFM recommended that the international community adopts a global arms embargo and imposes restrictive measures on individuals and economic entities linked or controlled by the Tatmadaw, while supporting the development of the non-military economy.

Cooperation with the UN procedures and mandates: Myanmar cooperates with the UN Special Envoy and several other UN special procedures and mandates, notably on sexual violence in armed conflict and children in armed conflict. At the same time, cooperation was discontinued with the UN Special Rapporteur on the situation of human rights in Myanmar in December 2017. Myanmar refused to cooperate with the IFFM and so far with the IIMM, and has not allowed OHCHR to open an office in Myanmar. Myanmar announced that it would sign the International Covenant for Civil and Political Rights (ICCPR) and **ratified the Optional Protocol to the Conventions on the Rights of the Child on the involvement of children in armed conflict (OPAC)** in September 2019. **A new Child Rights Law was enacted on 24 July 2019** which contains important provisions such as on minimum age for marriage and birth registration for all children, while gaps remain in tackling statelessness. Myanmar indicated its intention to ratify ILO convention 138 on minimum working age (linked to labour reform) and a discussion in Parliament is expected to take place in the beginning of 2020.

Humanitarian access: Access to Rakhine, Kachin, and Shan States remains severely restricted also as a result of fresh clashes with the Arakan Army since early 2019. Myanmar signed a tripartite Memorandum of Understanding (MoU) on 6 June 2018 with UNDP and UNHCR to prepare for the return of refugees from Bangladesh that is now valid until 5 June 2020. This MoU, however, covers only approximately 10% of the remaining communities in northern Rakhine state. There is also cooperation with the ASEAN Humanitarian Assistance Centre (AHA), who issued its first assessment report in 2019.

Situation of internally displaced people (IDPs): Progress, albeit partial, has been made in this area, notably with the adoption by the government of a national camp closure strategy on 19 November 2019. Although this is an important deliverable in itself, it is diluted in particular in regards to a) human rights (notably freedom of movement, citizenship and reference to international standards b) engagement with IDPs, UN and INGOs in the process; and c) Humanitarian access. Myanmar was asked by the UN to abstain from further IDP camp closure as long as this strategy is not adopted and to consult actively local communities when implementing this strategy. Unfortunately, the Government continued with its plans during the final drafting period (construction of houses, schools in “closed camps”) and consultations with IDPs were not conducted in a meaningful manner. The Government will need to follow through with the development and implementation of robust and coherent Action Plans with clear timelines, and with the assurance that return is only done once conditions on the ground are effectively in place, and in line with international standards.

Conditions for voluntary, safe, dignified, and sustainable return: Two years after the release of the Annan Report and its endorsement by the Government, little progress has been achieved in the implementation of its 88 recommendations. The Myanmar Government is still

establishing a related Action Plan with focus on five priority areas: (i) freedom of movement; (ii) citizenship; (iii) IDP camp closure; (iv) education; and (v) health. The situation on the ground for the remaining Rohingya people in Rakhine State, including for 124,000 Rohingya in squalid IDP camps since 2012, remains largely unchanged without freedom of movement and only very limited access to education, health, and livelihood. Myanmar senior officials visited Cox's Bazar, Bangladesh, in July 2019 and distributed a "Fact-sheet" to Rohingya community representatives on the condition of return to Myanmar, including the national verification process but no detailed information is given about the situation prevailing in envisaged places of return to allow for informed decisions by the potential returnees. Two Bangladesh-Myanmar coordinated attempts to repatriate refugees failed in 2019. A Tri-lateral Working Group (Myanmar-Bangladesh-China) has been set up to facilitate return; however, the Government of Myanmar refused a proposal from China to allow "go-and-see" visits of Rohingya from Cox's Bazar to Rakhine State. In parallel, some 450 Rohingya have so far reportedly returned spontaneously from Cox's Bazar to Rakhine State.

Hate speech, discrimination and integration of returnees: A draft anti-hate speech law has been prepared since 2015 and the Government stated some openness to cooperate with the EU in this area. Institutional discriminatory practices against Rohingya or other ethnic minorities continue to exist and there is no overarching anti-discrimination legislation in place. No real progress can be observed on access to mixed ethnic schools in Rakhine State. Equally, there is very limited prospect for amending the 1982 Citizenship law.

Media freedom: The release of the two Reuters journalists by means of presidential pardon on 7 May 2019 contrasts with the fact that some legislation such as Art. 66d of the Telecommunication Law or Art. 505b of the Penal Code or the Official Secrets Act continue to be used to charge, arrest, and detain journalists, political activists, and human rights defenders critical of the government or the Myanmar military. A new Media law has been under consideration, taking into account comments made by the Myanmar Press Council, still to be adopted by the Parliament.

Labour rights: Myanmar ratified the fundamental ILO Convention 138 on minimum working age in December 2019 and assured that the provision to raising the minimum age of work of children was included in the new Child Rights Law. Similar commitments on the list of hazardous work are yet to materialise. Following the reinstatement of the tripartite dialogue mechanism, the Government adopted an Occupational Health and Safety Law. Myanmar was a serious and urgent case at the 2019 International Labour Conference due to persisting challenges in addressing forced labour. Myanmar has committed to take action to eliminate forced labour, while it still needs to concretise the action. Among others there is the pending establishment of a National Complaint Mechanism. Concerns remain also regarding the Labour Organisation Law. . The Settlement of Labour Disputes Law was adopted by the Parliament in May 2019.

Looking Ahead

The EU will continue its active engagement with the Government of Myanmar including within the EBA enhanced engagement and in multilateral fora such as UN Human Rights Council, UN General Assembly, and ILO and will possibly consider additional targeted restrictive measures in order to promote progress in all areas of concern.

Progress, among others, is expected in the following areas:

- reviewing **legislation on freedom of expression** and right to peaceful assembly;
- effectively **combating hate speech**, while safeguarding freedom of expression;
- facilitating **humanitarian access** to Rakhine, Kachin and Shan States, also by simplifying relevant administrative procedures;
- improving the **conditions for IDPs** in Rakhine, Kachin and Shan States, including for those living in camps;
- making substantial progress in the **implementation of the recommendations of the Report of the Advisory Commission on Rakhine State**, including on citizenship, freedom of movement, access to basic social services and education and livelihood;
- stepping up domestic efforts on **accountability** for human rights violations and **cooperating with all UN-mandated bodies**, including the Special Rapporteur on the situation of human rights and the UN Independent Investigative Mechanism on Myanmar (IIMM);
- **eliminating hazardous child labour**, including through strengthening the capacity and expanding the reach of labour inspectors; adopting the list of hazardous jobs;
- **addressing child and forced labour**; immediate action is needed with regard to eliminating forced labour used by Tatmadaw, including through thorough investigation and prosecution and through the establishment of an effective complaints handling procedure in cooperation with the ILO;
- providing a **timeline on amending section 359 of the 2008 Constitution**, which exempts from the prohibition of forced labour. It is to be noted that a constitutional amendment process is currently ongoing;
- ensuring **freedom of association and collective bargaining** in line with international labour standards; aligning the draft Labour Organisation Law with the ILO fundamental principles and ensuring freedom of association in practice including protection against harassment, free choosing and establishment of organisations, and effective registration of trade unions.

4. Temporary withdrawal procedure: Cambodia

Context

Over the last three years, there has been a deterioration of democracy, respect for human rights and the rule of law, including shrinking space for political opposition, media, and civil society in Cambodia. In September 2017, the Cambodian authorities arrested Kem Sokha, the leader of the main Cambodian opposition party (Cambodia National Rescue Party - CNRP) on charges of treason.¹⁸ In November 2017, the Cambodian Supreme Court ordered the dissolution of the CNRP and banned 118 of its senior officials from political activity for five years. The dissolution of the party also led to the removal from their positions of 5007 CNRP commune councillors who had been elected in June 2017.

Following this, Cambodia's ruling party, Cambodia's People's Party (CPP), won all 125 seats in the National Assembly at the 29 July 2018 general election. For the first time since the UN-supervised election in 1993, there is no parliamentary opposition in Cambodia.

Since 2017, the Commission and the EEAS have engaged actively with Cambodia in the context of the GSP Regulation. The Commission had for many years raised its concerns on issues related to Economic Land Concessions (ELCs) in the sugar sector, recommending the establishment of an independent and transparent mechanism in order to deal with claims for compensation arising from the granting of ELCs for sugar cane plantations.

Following the deterioration of democracy, human rights and labour rights in Cambodia, the EU concerns covered the following main areas: a) political rights and the shrinking of the democratic space; b) freedom of expression and freedom of association; c) labour rights; and d) concerns over land issues arising from ELCs in the sugar sector.

The EU outlined its concerns on a number of occasions, including in particular in the EU Foreign Affairs Council Conclusions in February 2018¹⁹, the European Parliament resolutions of 13 December 2017²⁰ and 13 September 2018²¹, as well as by the Commission services and the EEAS throughout the period of enhanced engagement with Cambodia.

On 11 February 2019²², the Commission decided to launch the procedure for a temporary withdrawal of the tariff preferences provided to Cambodia under Article 1(2) of the GSP Regulation²³.

¹⁸ Opposition leader Kem Sokha was released on bail on 10 September 2018 and put under judicial supervision, confined to a small area around his house and still faces treason charges. On 12 November 2019, he was released from house arrest. However, his case is not closed and he still faces criminal charges. In addition, he is banned from engaging in any political activities, and cannot travel abroad.

¹⁹ <http://data.consilium.europa.eu/doc/document/ST-6416-2018-INIT/en/pdf>

²⁰ http://www.europarl.europa.eu/doceo/document/RC-8-2017-0686_EN.html

²¹ http://www.europarl.europa.eu/doceo/document/TA-8-2018-0346_EN.html

²² In accordance with the provisions of Article 19, paragraph 1, point (a) of Regulation EU No 978/2012 (GSP Regulation).

²³ OJ C55, 12.02.2019, p 11.

The Commission found that there were sufficient grounds to substantiate the existence of "serious and systematic violations"²⁴ of principles laid down in the following conventions:

- International Covenant on Civil and Political Rights (ICCPR);
- ILO Convention 87 on Freedom of Association and Protection of the Right to Organise;
- ILO Convention 98 on the Right to Organise and to Bargain Collectively; and
- International Covenant on Economic, Social and Cultural Rights.

The Commission prepared the report of findings and conclusions, taking into account the information gathered during the monitoring and evaluation phase, and sent it to Cambodia on 12 November 2019

Economic impact of EU tariff preferences under EBA

Over the last twenty years, Cambodia's economy has had a strong growth rate averaging over 7%. A major factor in this has been the growth of export industries, notably garments and footwear, and the development of significant exports of rice and other agricultural produce. Growth in exports has been facilitated by Cambodia's free access to EU markets under the EBA. In terms of socio-economic development, the percentage of the population living under the poverty line has steadily declined from 50.1% in 2007 to 13.5% in 2014.

In 2014, the EU became the first Cambodian export market, ahead of the US. The EU market currently accounts for more than one-third of Cambodia's exports, particularly garment, footwear and bicycles. The EU ranked as the second biggest trade partner of Cambodia (after China), accounting for 17.3% of the country's total trade (China 23.8%). Cambodia is the EU's 56th largest trading partner (accounting for 0.2% of the EU's total trade). In 2018, Cambodian exports to the EU registered a record of €5.3 billion (compared to €3 billion in 2014), concentrated on garments at 73.4% of total exports, footwear 12.7%, bicycles 5.7%, and rice 3%. Total trade in goods between the two partners equalled €6.2 billion. Over 95% of these exports entered the EU market under EBA tariff preferences (one of the highest ratios of any EBA beneficiary country). Overall, Cambodia is the second largest user of EBA preferences, after Bangladesh. In January 2019, the EU imposed – under the GSP regulation - safeguard measures on Indica rice from Cambodia and Myanmar for three years, thus introducing normal customs duties on this product for the first year (€175 per tonne), and then progressively reducing it to €150 per tonne in year two, and €125 per tonne in year three.

Key Concerns

Political participation. Over the last three years, the Cambodian authorities have taken a series of repressive actions against the opposition, civil society organisations, and media. The democratic space for political opposition has significantly narrowed. The 29 July 2018

²⁴ See in particular point 5 of the Annex to the Notice of Initiation, OJ C55, 12.02.2019, p. 13.

general elections were held in a highly restrictive political atmosphere marked by the exclusion of the main opposition party (CNRP) and growing repression, harassment and intimidation of the opposition, civil society, and human rights defenders. The Commission's analysis has been confirmed by several UN reports, including reports and statements of the UN Special Rapporteur on the situation of human rights in Cambodia.

Freedom of expression. Under Cambodia's Constitution Articles 31 and 41, freedom of expression is guaranteed. However, the use of certain laws as well as other actions by the Government, in particular repressive actions against journalists, repression of press and media activities, have restricted the right to freedom of expression.

Freedom of association and of peaceful assembly. Restrictions to freedoms of assembly and association, including a shrinking of the space for civil society, remain a cause of concern. Procedural requirements going beyond the law are creating additional obstacles to legitimate work of civil society organizations. Some positive steps took place such as the Instruction of the Ministry of Interior to repeal the 'three-day notice requirements' and the establishment of a Government Working Group under the Ministry of Interior to consult with civil society. However, no concrete actions were taken to amend restrictive provisions of the Law on Associations and Non-Governmental Organizations (LANGO). Harassment and intimidation of journalists, human rights defenders, trade union members and workers, land and environmental activists continued to be reported by the UN and civil society organisations.

Non-discrimination, land and housing rights. Dispossession with no or inadequate compensation of families living or working on land designated as Economic Land Concessions related to sugar farming constitutes a violation of the relevant international conventions: International Covenant on Economic, Social and Cultural Rights (ICESCR), Committee on the Elimination of Racial Discrimination (CERD) and ICCPR. The EU recognises the actions taken by the Cambodian authorities to resolve these issues, but continues to be concerned over lack of transparency in the process, and the lack of a clear set of criteria for establishment of the validity of claims and the appropriate level of compensation.

Labour rights, notably freedom of association and collective bargaining. The ILO has repeatedly urged Cambodia to take immediate measures to address serious and systematic problems related to the **application of the fundamental ILO Conventions 87 on freedom of association and 98 on collective bargaining**. These relate to the need to address and prevent anti-union harassment and discrimination. In addition, legal changes introduced since 2014 contributed to the limitations and restrictions in trade unions' activities and has significantly deteriorated the social dialogue. There are particular concerns over the Law on Trade Union (LTU) of 2016, which is not in line with the two conventions, including for restrictions and its effects to the right to join and establish worker's organisations. Meanwhile, the Annual report by the ILO and the International Finance Corporation (IFC) 2018²⁵, shows that Cambodia is making progress in the welfare of garment and factory workers, but significant concerns remain over health and safety issues.

²⁵ Better Factories Cambodia: Annual Report 2018 An Industry and Compliance Review.

Process of Engagement

In its **Conclusions of 26 February 2018**, the **EU Foreign Affairs Council** expressed its serious concerns with regard to the deterioration of the situation in Cambodia, and the impact this deterioration could have on relations between the EU and Cambodia. Furthermore, the **European Parliament in its resolutions in 2017 and 2018** noted the decline in civilian and political rights in Cambodia, in addition to other long-standing issues linked to economic land concessions and labour rights. The EU has urged the Cambodian Government to take all necessary measures to address key concerns of the international community and relevant United Nations monitoring bodies linked to political participation, freedom of expression, freedom of association and collective bargaining, and land concession.

Some of these concerns were discussed on 14 March 2018, during the 10th EU-Cambodia Joint Committee. A Commission/EEAS fact finding mission visited Cambodia in July 2018 in order to assess the situation in terms of human rights and labour rights. On 18 October 2018, the EU's High Representative/Vice President, Federica Mogherini, met Cambodia's Prime Minister Hun Sen in Brussels and reiterated the EU's concerns regarding the situation in Cambodia. This was followed by a meeting on 21 January 2019 of Commissioner for Trade, Cecilia Malmström, and Cambodian Deputy Prime Minister/Minister of Foreign Affairs Prak Sokhonn.

On 11 February 2019, the Commission adopted a decision launching the procedure for a temporary withdrawal of Cambodia's trade preferences due to the severe deterioration of democracy and human rights and labour rights in Cambodia. A Commission/EEAS high-level mission visited Cambodia on 19-20 March 2019, as part of the continued political dialogue and engagement with the Government of Cambodia. This was followed by a Commission/EEAS EBA fact-finding mission to assess the situation of human rights and labour rights on 3-10 June 2019.

State of Play

The monitoring and evaluation period ended on 12 August 2019. On 12 November 2019, the Commission submitted its EBA report of findings and conclusions to Cambodia. Cambodia provided its comments on 12 December 2019.

The EU's aim is to have Cambodia address the human rights and labour rights concerns. The EU is committed to continue working with the Cambodian authorities to achieve this. Cambodia must show real, credible improvement on the issues of concern in order to avoid the withdrawal of EBA trade preferences.

Looking ahead

The Commission should take a decision on the outcome of the temporary withdrawal process in February 2020.