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## Sanctions under the EU Generalised System of Preferences and foreign policy: coherence by accident?

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This article investigates the relationship between the European Union's withdrawal of trade benefits for developing countries under the Generalised System of Preferences (GSP) and its sanctions under the Common Foreign and Security Policy (CFSP). Our expectation is that GSP withdrawals and CFSP sanctions will not cohere. However, our research reveals that GSP suspension has been coherent with CFSP sanctions when the latter exist prior to the decision-making process on GSP sanctions *and* when the International Labour Organisation has set up a Commission of Inquiry condemning the country, as with Myanmar/Burma and Belarus. The presence of separate institutional frameworks explains the GSP suspension towards Sri Lanka in the absence of CFSP sanctions.

**Keywords:** EU trade; sanctions; development; GSP; Myanmar/Burma; Belarus

### Introduction

The European Union (EU) produces different sets of foreign policies in two separate institutional arrangements: the supranational framework and the intergovernmental context of the Common Foreign and Security Policy (CFSP). The EU is often torn between the necessity to respect the co-existence of the specific tools and objectives under each institutional arrangement and a requirement that the different foreign policies cohere. Its policies towards developing countries illustrate this tension. Trade remains an exclusive EU competence, largely isolated from other policies. Development constitutes a shared competence between the EU and its member states. Foreign and security policy remains largely intergovernmental.

This article explores the relationship between trade, development, and foreign policy by analysing the withdrawal of trade preferences under the EU's Generalised System of Preferences (GSP). The 'stick and carrot' conditionality of the EU's GSP system constitutes the 'flagship' of trade initiatives aimed at supporting sustainable development and human rights (European Commission 2012a, p. 13). GSP preferences may be withdrawn in case of serious and persistent violations of core human and labour rights. To date, this only happened in the cases of Myanmar<sup>1</sup> and Belarus although it has been contemplated on various occasions. Also, Sri Lanka, a beneficiary of the so-called GSP+ scheme, saw its preferences downgraded.

The extent to which GSP withdrawals cohere with CFSP sanctions has not been researched yet. The aim of this article is to ascertain whether and why GSP and CFSP sanctions coincide, and which factors contribute to it. Given the lack of existing literature, the low number of cases, the complexity of the context surrounding sanctions decisions, and the extended time span of the

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study (1995–2013), we use an explorative and inductive approach. Although expectations on the incoherence between both types of sanctions are advanced, we refrain from using a pre-determined theoretical framework. The research is based on an analysis of the GSP and CFSP sanctions decisions, a review of secondary literature, and a number of interviews.

We proceed in three steps. Firstly, we review the GSP conditionality system and posit why coherence between GSP withdrawals and CFSP sanctions cannot be expected. Secondly, we review cases where GSP preferences have been suspended (Myanmar, Belarus, and Sri Lanka) or where it has been contemplated but not effected (Pakistan, China, Russia, and India). Thirdly, we compare these different cases and find that GSP withdrawal coincides with some, but not all, cases of CFSP sanctions. In conclusion, we propose explanations for the unsuspected occurrence of coherence.

### **Expected incoherence between GSP and CFSP sanctions**

Policy coherence can be defined as the absence of contradiction among different policies formulated by an actor, although some authors have gone beyond the sheer absence of contradiction to suggest the need for complementarity or even synergy of policies (Krenzler and Schneider 1997). In the case of the EU, incoherent outcomes are likely due to its fragmented legal–institutional structures. Two main dimensions of incoherence have been identified: vertical coherence refers to the lack of contradiction between policies formulated by the EU on the one hand and the member states on the other, while horizontal coherence, also called ‘cross – or inter-pillar’ coherence, is ensured when no contradiction exists between first-pillar policies adopted under the community method and the intergovernmental framework (Carbone 2008). The requirement of coherence was spelt out for the first time with the Single European Act (SEA) of 1986, bringing together two previously unconnected areas: the external policies of the community and the foreign policy co-operation among the member states. In the absence of a single executive, different actors of the EU have been granted coordinating powers in subsequent treaty revisions: the Presidency, the Council, the Commission, and recently also the High Representative for Foreign Affairs and Security Policy. In sum, the requirement of coherence aspires to hold together different policies whose formulation corresponds to different actors and institutions within the EU. It obliges all actors involved in European foreign policy to coordinate with a view to generating coherent outputs (Portela and Raube 2012). Yet, while the aspiration of coherence has been present since it was introduced in the treaties in 1986, it has been consistently criticised for its suboptimal design and insufficiency to bring about coherence (Smith 2004, Cremona 2011). While the Lisbon Treaty strengthens the coherence requirements, the trade sphere remains institutionally isolated within the Commission and the binding rules of the World Trade Organization (WTO) make it difficult to integrate foreign policy considerations into trade policies (Bossuyt *et al.* 2013). The issue of EU coherence has attracted particular attention from development scholarship due to the Organisation for Economic Co-operation and Development (OECD)’s commitment to the notion of ‘policy coherence for development’ since 2003. In essence, it recognises that development policy not only entails the transfer of financial resources, but also other economic tools such as trade preferences and foreign direct investment as well as political considerations such as the promotion of human rights and democracy assistance (Bourriche 2008, Carbone 2008). The need to make EU external policies, in particular trade and foreign policy, cohere with development policy objectives was recognised in the European Consensus on Development of 2005 as well as in the Lisbon Treaty.

The main preoccupation of the EU coherence literature so far has mainly consisted in assessing the adequacy of existing mechanisms to ensure coherence (Smith 2004, Bourriche 2008, Cremona 2011), exploring the fit or misfit between sets of policies produced under different

frameworks (Carbone 2008). By contrast, in the present investigation, we depart from the premise that the withdrawal of GSP and the imposition of CFSP sanctions cannot be expected to coincide. Instead, we expect them to be applied to different targets. We justify this expectation on the basis of the differences in the grounds for adoption of each set of measures, the institutional procedures leading to adoption decisions, and finally, the absence of any provisions linking both sets of measures. Thus, we expect that GSP withdrawals and CFSP sanctions practice will not coincide, but will be applied against different targets and for different reasons. Contrary to our expectations, an empirical examination of the practice points to a coincidence of GSP withdrawals and CFSP sanctions, even though GSP withdrawal practice is minimal. The remainder of the article represents an attempt to solve this puzzle.

### **GSP withdrawals and CFSP sanctions: grounds for activation and procedure**

The European Commission (EC)/EU<sup>2</sup> has given preferential market access to developing countries under the GSP since 1971. The GSP is implemented unilaterally by means of a Council regulation, which is revised periodically. Political conditionality made its appearance in the GSP in 1991, when the EU included a provision granting a number of Latin American countries more favourable access in reward for their efforts in fighting drugs production and trafficking. Negative political conditionality was first introduced in the 1994/1995 regulations which foresaw the temporary withdrawal of preferences in case of evidence of forced labour as defined in the Geneva Conventions (1926 and 1956) and International Labour Organisation (ILO) Conventions Nos 29 and 105.<sup>3</sup> It was applied for the first time to Myanmar in 1997. Complaints against alleged labour standard violations in Pakistan and China in 1997 in the same year did not result in investigations. The 1998 regulations introduce a social incentive system which allows developing countries to benefit from enhanced tariff preferences if they 'have adopted and actually apply domestic legal provisions incorporating the substance of' the ILO Conventions Nos 87 and 98 concerning freedom of trade unions and No 138 concerning child labour. The GSP revision of 2001 extended the legal basis of both the withdrawal and the incentive clause to correspond with all the eight fundamental Conventions of the ILO. This reflects an emerging consensus on fundamental labour rights recognised by virtually all states since the 1995 UN World Summit for Social Development in Copenhagen and the 1998 ILO Declaration on Fundamental Principles and Rights. According to this authoritative ILO Declaration, the rights enshrined in Conventions Nos 87 and 98 on 'Freedom of Association and Collective Bargaining'; No. 138 on 'Elimination of Exploitative Forms of Child Labour'; Nos 29 and 105 on the 'Prohibition of Forced Labour'; and Nos 100 and 111 on 'Non-Discrimination in Employment' constituted the core labour standards. Each of these principles is simultaneously considered as human rights law (Alston 2005). The EC started an investigation into violation of trade union rights in Belarus in 2003, which led to GSP withdrawal in 2006.

The 2005 revision was motivated by a decision by the WTO's Appellate Body declaring the GSP drugs incentive system discriminatory: in 2003/2004, India had successfully challenged the legality of the EU's drugs incentive system after the inclusion of Pakistan shortly after 9/11. According to the WTO, linking trade preferences with non-trade objectives was only admissible if it concerned a 'positive response' to an 'objective development, financial or trade need' (Bartels 2007). The reform broadened the list of international conventions relevant to the GSP+, going beyond the core labour conventions to encompass agreements related to sustainable development and human rights. All 'vulnerable' developing countries were now eligible for GSP+ incentives, provided that they 'ratified and effectively implemented' 16 human rights conventions, including the 8 fundamental ILO Conventions,<sup>4</sup> and at least 7 (out of 11) conventions on environment and governance<sup>5</sup> by the end of 2008. Withdrawal of GSP was allowed

when beneficiaries perpetrated ‘serious and systematic violations’ of the principles laid down in the labour and human rights conventions. The 2005 regulation also mentions the possibility of downgrading GSP+ privileges to the general scheme, which was subsequently applied to Venezuela due to its failure to ratify the UN Convention against Corruption and to Sri Lanka because of human rights violations.<sup>6</sup> In 2012, the EU embarked on an overhaul of the GSP system (see Siles-Brügge, this volume) which entailed a slight modification of the conditionality system. The Apartheid Convention was removed, while the Climate Change Convention was added. Compared to the previous regulation that was criticised for focusing only on the ratification requirement rather than on the implementation of the conventions (Orbie and Tortell 2009), the new system puts more emphasis on guaranteeing compliance.

The suspension procedure, matured over subsequent regulations, provides that any EU member state or any natural or legal person which can show an interest in withdrawal can bring violations to the attention of the Commission, which is empowered to start an investigation. This investigation can last over one year. If the Commission concludes that withdrawal is advisable, it submits a proposal to the Council, which decides on suspension by qualified majority. Decisions to withdraw trade preferences should take into account ‘available assessments, comments, decisions, recommendations, and conclusions of the relevant supervisory bodies’ including the ILO. After the suspension has been decided upon, the beneficiary is given another six months to rectify the breach or to show its commitment to do so before the suspension takes effect.

The grounds and procedures for the imposition of CFSP sanctions are different. These sanctions – also called ‘restrictive measures’ – are imposed in pursuance of the CFSP objectives as defined by the Treaty. Originally introduced in the Maastricht Treaty, the objectives of the CFSP can be summarised as follows: to safeguard the common values, fundamental interests, independence, and integrity of the Union; to strengthen the security of the Union; to preserve peace and strengthen international security; to promote international co-operation; to promote democracy, rule of law, and respect for human rights and fundamental freedoms.<sup>7</sup> In addition, the Council declared in 2004 that it will impose sanctions to advance the fight against terrorism and the proliferation of weapons of mass destruction, and for upholding human rights, democracy, the rule of law, and good governance (Council 2004). The decision-making procedure to adopt CFSP sanctions has largely remained unaltered since the Maastricht Treaty. The Council agrees the imposition of sanctions regimes in the intergovernmental CFSP setting. Proposals for the imposition of sanctions can be tabled at the initiative of the High Representative or any of the member states. Any modifications to the sanctions regimes are decided by unanimity.

The comparison shows that GSP and CFSP sanctions cannot be expected to cohere. Firstly, they are designed to address different kinds of violations. CFSP sanctions are imposed in support of the objectives of the CFSP as stipulated by the treaty, in response to violations of international norms. They can be imposed in support of an ample pallet of broadly defined objectives from combating terrorism to upholding democratic principles. By contrast, the grounds for GSP withdrawal are much narrower: serious breaches of core human and labour rights as stipulated in a number of international conventions. Secondly, the decision-making processes differ considerably. The procedure leading to the suspension and reinstatement of trade preferences is a complex and lengthy process embedded in the (former) first pillar. It involves several EU institutions, has to be preceded by an investigation, can be triggered by non-state actors, and takes into account assessments by external agencies. It leaves ample discretion to the Commission, which is responsible for the launch of an investigation and the recommendation on withdrawal to the Council, which ultimately decides on suspension. The beneficiary at fault is invited to provide evidence, and international monitoring agencies (primarily the ILO) are given a major role. The 2012 GSP regulation has granted the European Parliament a role in the

decision-making process: decisions on withdrawal are adopted by delegated acts, which can be revoked by the Parliament or Council anytime.<sup>8</sup> In contrast, CFSP sanctions and any alteration thereof have to be agreed by the Council by unanimity. Here, the Council enjoys considerable leeway: it decides on sanctions regimes in the absence of any requirement to consult any other EU institution or external actor. Thirdly, there are no mechanisms devoted to ensuring coherence between sanctions adopted under the CFSP and GSP withdrawals beyond the general requirement of coherence enshrined in the treaties since the SEA but effectively unaccompanied by measures allowing for enforcement (Portela and Raube 2012).

### **GSP sanctions as foreign policy tools?**

#### ***GSP withdrawal of Myanmar, Belarus, and Sri Lanka***

##### *Myanmar*

The investigation against Myanmar was triggered by a joint complaint filed by the European Trade Union Confederation (ETUC) and the International Confederation of Free Trade Unions (ICFTU) in 1995. The Commission did not obtain permission from Burmese authorities to dispatch a fact-finding mission. The investigation, which included hearings with non-governmental organisations (NGOs) and experts, pointed to the existence of forced labour. Ordinary civilians were compelled to work as labourers on infrastructure projects, often without salary. Civilians were also forced to support counter-insurgency operations as porters or as ‘human minesweepers’ (Howse and Genser 2008, p. 171). Burmese authorities contested the charges arguing that the practice was covered by an exception in the ILO Convention No. 29 allowing the population to carry out works as community service (art 2(2)), an interpretation that was challenged by the ILO. The Commission consulted representatives of the democratically elected government of Burma, which was favourable to the GSP withdrawal. Meanwhile, in 1996 also an ILO Commission of Inquiry had been established on forced labour in Burma. The EU regulation on withdrawal ‘on account of the use of forced labour’ was eventually approved by the Council in 1997. It stipulated that reinstatement of the trade preferences could be considered based on a Commission report which showed that the practices of forced labour in Myanmar no longer existed.<sup>9</sup> However, the provision on Myanmar’s suspension was modified in subsequent GSP regulations. While the 2001 regulation remains silent on the reasons for the continuation of Burma’s withdrawal, the 2005 and 2012 regulations state that it should be maintained ‘due to the *political situation* in Myanmar’ (italics added). This departs from the original stipulation that the suspension would be reversed once the condemned practices ceased.

Myanmar’s GSP suspension followed the imposition of a broader range of restrictions that had started in 1990 (Table 1). The decision came only a few months after an EU Common Position condemning ‘the absence of progress towards democratisation and at the continuing violation of human rights’ in Myanmar, and deploring forced labour alongside arbitrary executions, political arrests, forced displacement of the population, and restrictions on the fundamental rights of freedom of speech, movement, and assembly. It confirmed earlier sanctions including an arms embargo and wielded visa bans for individuals associated with the ruling junta. Following the reform process initiated by President Thein Sein and its subsequent handover to a partially civilian government, the EU phased out sanctions in April 2012 and lifted them altogether in April 2013, with the only exception of the arms embargo (Bünthe and Portela 2012). In this context, the Council indicated a readiness to work towards the reinstatement of the GSP to Myanmar, an intention that was quickly backed by the European Parliament. Because no procedure was foreseen in the regulation which installed the sanctions, the Commission chose to follow the ordinary legislative procedure, taking into account the enhanced role of

Table 1. Chronology of CFSP and GSP sanctions against Myanmar, Belarus and Sri Lanka.

	CFSP measures	GSP sanctions
Myanmar	<ul style="list-style-type: none"> <li>• 1990 first imposition of sanctions</li> <li>• July 1996: Presidency statement</li> <li>• October 1996: Parliament resolution</li> <li>• October 1996: new sanctions</li> </ul>	<ul style="list-style-type: none"> <li>• June 1995: complaint received</li> <li>• January 1996: investigation launched</li> <li>• December 1996: withdrawal proposed</li> <li>• March 1997: adoption by Council</li> </ul>
Belarus	<ul style="list-style-type: none"> <li>• 2000 first imposition of sanctions</li> <li>• September 2004: new sanctions</li> <li>• April 2006: new sanctions</li> <li>• October 2006: new sanctions</li> </ul>	<ul style="list-style-type: none"> <li>• January 2003: complaint received</li> <li>• December 2003: investigation launched</li> <li>• August 2005: Commission report</li> <li>• June 2006: withdrawal proposed</li> <li>• December 2006: adoption by Council</li> </ul>
Sri Lanka	No sanctions	<ul style="list-style-type: none"> <li>• October 2008: investigation launched</li> <li>• October 2009: Commission report</li> <li>• February 2010: adoption by Council</li> </ul>

Parliament by the Lisbon Treaty (European Commission 2012b). It also waited for the findings of an ILO report on forced labour in Myanmar (Reuters 2012). Reinstatement was completed in June 2013. Hence, GSP withdrawal followed CFSP sanctions, while reinstatement of GSP preferences followed the lifting of CFSP sanctions.

*Belarus*

In 2003, the Commission initiated an investigation against alleged violations of the ILO Conventions on freedom of association and the right to collective bargain, triggered by a joint request of the ICFTU, ETUC, and the World Confederation of Labour. In parallel to this process, the ILO appointed a Commission of Inquiry to investigate the freedom of trade unions in Belarus, which urged Belarusian authorities to implement 12 recommendations in July 2004. In June 2005, in view of the lack of implementation, the EC announced that it intended to submit a proposal for withdrawal to the Council unless Belarus ‘made a commitment to take the measures necessary to conform with the principles referred to in the 1998 ILO Declaration on Fundamental Principles and Rights at Work’ (European Commission 2006, p. 37). Belarusian authorities tried to create the impression of compliance on several occasions; however, all these attempts were assessed by the Commission as lacking any ‘indication of effective implementation of ILO Conventions Nos 87 and 98’ (European Commission 2006, p. 39). Trade Commissioner Peter Mandelson declared: ‘Almost four years after the start of the withdrawal process . . . Belarus has not taken any real, tangible measure to remedy the situation’ (Mandelson 2006). In the absence of progress by Belarusian authorities in the six months that followed, the regulation entered into force in June 2007. It indicated that the preferences would be reinstated when the violations no longer prevailed.

Like in Myanmar, the procedure leading to GSP sanctions chronologically followed the adoption of restrictive measures under the CFSP (Table 1). In 2004, two Common Positions expressed the EU’s concern about the violation of democratic principles and human rights in Belarus and upgraded existing sanctions.<sup>10</sup> Less than a year later, the Commission completed its report into violations of trade union rights in Belarus. The conclusions of the Commission’s investigation and the Council’s decision to withdraw GSP preferences followed the imposition of new CFSP sanctions. In subsequent years, CFSP sanctions continued to be extended several times before the EU eventually decided to withdraw GSP. CFSP and GSP sanctions were adopted in tandem.

### *Sri Lanka*

Sri Lanka is the first – and so far the only – developing country that lost its GSP+ privileges for failure to effectively implement relevant conventions. It has been a beneficiary of the GSP+ scheme since 2004.<sup>11</sup> While Sri Lanka's compliance with labour standards was never challenged, in October 2008 the Commission launched an investigation into violations against the Covenant on Civil and Political Rights, the Convention against Torture, and the Convention on the Rights of Child. The Sri Lankan government was suspected of violating these conventions in the context of its offensive against the separatist group of the Tamil Tigers. Independent experts were tasked to conduct an investigation which included interviews with NGO representatives and officials of international organisations as well as a field visit to Sri Lanka. They concluded that the national legislation in Sri Lanka did not effectively implement these three human rights conventions and deplored the lack of co-operation from the Sri Lankan government (Hampson *et al.* 2009). On this basis, the Commission proposed to withdraw GSP+ preferences in October 2009. Since the regulation was to enter into force six months after its adoption, in June 2010 Commissioners De Gucht and Ashton communicated to the Sri Lankan government the corrective action to be taken for the Commission to reconsider its proposal to the Council. These included the cancellation of the state of emergency, the abolishment of the 'Prevention of Terrorism Act', and the implementation of the 17th Amendment to the Constitution. However, the government of Sri Lanka denounced these proposals as a breach of the country's national sovereignty. Thus, in August 2010 Sri Lanka reverted to standard GSP tariffs. The regulation states that withdrawal will last 'until it is decided that the reasons justifying the temporary withdrawal no longer prevail'. Unlike the cases of Myanmar and Belarus, GSP+ withdrawal was neither preceded nor accompanied by CFSP sanctions.

### ***Beneficiaries which came close to withdrawal: Pakistan, India, China, and Russia***

The examination of GSP withdrawal practice offers but meagre empirical evidence for our analysis. Thus, the article now turns to instances in which GSP sanctions were contemplated but ultimately aborted. On the one hand, this 'almost' GSP withdrawal helps us palliate the minimalistic character of GSP withdrawal practice, as it allow us to consider cases which incited EU actors to push for withdrawals. At the same time, these instances provide a basis for comparison, offering interesting insights regarding the criteria considered by Council and Commission in their decisions to adopt withdrawals.<sup>12</sup> A number of beneficiaries, Pakistan, India, China, and Russia, came close to withdrawal during the 1990s, but the EU ultimately fell short from suspending trade preferences. Shortly after the complaint against Myanmar, international trade unions filed a complaint regarding child labour practices in Pakistan, this time including the International Textile, Garment and Leather Workers' Federation. After it was rejected, the complaint was resubmitted in 1998 with charges of massive forced and child labour, especially in the carpet industry. The complaint was supported by the EU's Economic and Social Committee. This time the Commission launched an investigation. In contrast to the Burmese case, the Pakistani authorities supplied information on the internal legislation to combat forced labour and requested assistance from the Commission to address the problem (Clapham and Martignoni 2006). Nevertheless, an ILO assessment which the Commission took into consideration during the investigation concluded that the Pakistani government had made practically no effort to ascertain the scale of the problem, prevent it or provide for penalties. Eventually, a negative opinion on the appropriateness of withdrawal was enacted (Fierro 2003, p. 375). According to the Commission, the reasons for the negative decision were of a technical–legal nature: Art 9 of the GSP regulation referred to 'forced labour' and not to 'child labour' as such. Indeed, when the EU received a complaint alleging the use of child labour in the

country in 1997, ILO committees had not commented on Pakistan's observance of child labour conventions because it had not ratified any of those conventions and was thus not bound by them. Therefore, the complaint had to be worded as 'forced labour'. In the absence of formal condemnation of Pakistan by the ILO, the EU was unable to make reference to any formal decisions by supervisory bodies (Orbie and Tortell 2009, p. 676). Brandtner and Rosas (1998) argue that international rules on the subject of child labour were 'less than clear' (p. 5). Further arguments put forward by the Commission was that Pakistan had already committed to take effective steps to reverse the practice of child labour, and that the suspension of trade preferences would predictably aggravate the problem (Lerch 2004).

In 1997, the European Parliament called on the Commission to open investigations into forced and prison labour in China (European Parliament 1997). At the time, China was one of the main GSP beneficiaries, and evidence of practices contrary to the labour standards embedded in the GSP regulation existed, such as forced prison labour (Lerch 2004). However, the Commission rejected the complaint given that, according to procedural requirements at the time, only a member state or a natural or legal person showing interest in the complaint were legitimised to trigger the investigation. Also, evidence of the presence of forced labour in China necessary to support the complaint was difficult to obtain because it takes place primarily in prisons. In addition, this practice only represents a violation of ILO Convention No. 29 if the produced goods are exported (Lerch 2004).

In the case of India, the EU considered the suspension of GSP in condemnation of the nuclear tests conducted in May 1998. In response to the Indian tests, the Council instructed the Commission to reconsider India's eligibility for the GSP. Following the tests conducted by Pakistan shortly after, the Council temporarily postponed the conclusion of the impending Partnership and Co-operation Agreement with Islamabad. Yet, the CFSP Common Position issued the following October did not make any reference to those measures.<sup>13</sup> Instead, it announced a package of incentives supportive of non-proliferation as well as the provision of technical assistance in the implementation of export controls (Portela 2003).

Finally, in the context of the war in Chechnya, the European Council denounced human rights violations by Russian security forces in late 1999 and mandated the suspension of some provisions of the Partnership and Co-operation Agreement (PCA); the transfer of some Technical Aid to the Commonwealth of Independent States (TACIS) funds towards humanitarian assistance; and the limitation of TACIS funds for the year 2000 to priority areas (European Council 1999). These instructions were to be subsequently concretised by the Council. The formulation used by the European Council allowed sufficient flexibility to limit the scope of the measures to be decided by the Council. The Council considered the suspension of GSP privileges, which affected 10% of Russian exports to the EU, and the suspension of the Most-Favoured Nation (MFN) status that Russia enjoyed under the PCA. However, it eventually decided on milder measures, including, among others, the prohibition to extend GSP privileges to products not yet covered (Portela 2010). Commissioner Patten questioned the use of cutting off financial assistance which may 'provoke a political backlash against the international community in the run-up to the Duma elections' (Patten 1999). Eventually, GSP were only affected in the sense that Russia's application for GSP remained frozen for a few months (Lerch 2004).

### Explaining unexpected coherence

The findings show more coherence between trade and CFSP sanctions than initially expected. Trade sanctions against Burma and Belarus, the two most severely sanctioned countries under the EU's GSP, constituted the tail of a whole range of CFSP sanctions. Table 1 shows that in both cases the imposition of CFSP sanctions pre-dated the withdrawal of GSP. The reference to the 'political situation' in Myanmar in the 2005 GSP regulation constitutes the clearest

indication of a connection between CFSP sanctions and GSP withdrawal: ‘Due to the political situation in Myanmar, temporary withdrawal of all tariff preferences in respect of imports of products originating in Myanmar should remain in force’ (point 18 of preamble). Similarly, the 2012 regulation stipulates that ‘due to the political situation in Burma/Myanmar and in Belarus’, the withdrawal of all tariff preferences should be maintained. These provisions contradict the conditions for lifting in the original regulation withdrawing Burma’s GSP in 1997, which stipulated that preferences will be reinstated when practices of forced labour disappear, rather than when the political situation changes. This reformulation makes the reinstatement of GSP conditional on the fulfilment of the objectives of the CFSP Common Position. Although the complete withdrawal from GSP has always followed foreign policy sanctions, the inverse relationship does not apply. Most countries under CFSP sanctions do not face GSP withdrawals, even if these measures were considered as in the cases of China, India, and Russia. Thus, CFSP sanctions seem to be a necessary but not a sufficient condition for GSP withdrawal. Then, under which circumstances can foreign policy sanctions can be expected to coincide with GSP sanctions? The answer appears to lie in a combination of three factors.

Firstly, an authoritative condemnation by the ILO facilitates the imposition of GSP sanctions. What Myanmar and Belarus have in common is that both had reached the highest level of condemnation by the relevant ILO instance, the Commission of Inquiry, which was established for each of these countries in parallel to the EU procedure leading to GSP withdrawal (Table 2). No ILO Commission of Inquiry was established for Pakistan, in spite of ILO criticisms of practices of forced and child labour in this country, nor for Sri Lanka, China, Russia, or India.<sup>14</sup> As argued by Orbie and Tortell,

the EU would only take such drastic steps as the withdrawal of trade preferences for breach of labour standards in cases in which the ILO has unambiguously held that such breach has not only occurred but has been persistent and serious. (2009, p. 679)

Burma in particular reached an unprecedented level of ILO condemnation when in 2000 the ILO adopting a resolution under article 33 of its constitution for the first time in its history (Howse and Genser 2008, p. 172).

Table 2. GSP beneficiaries at fault.

Name of beneficiary	Previous CFSP sanctions	ILO Commission of Inquiry	Type of (alleged) violation	Type of suspension
Myanmar	Yes	Yes (1996 established, report in 1998); art 33 in 2000	Core labour standard	GSP withdrawal
Pakistan	No	No	Core labour standard	None
China	No <sup>a</sup>	No	Core labour standard	None
India	No	No	Non-proliferation	None
Russia	No	No	HR/humanitarian law	None
Belarus	Yes	Yes (2003 established, report in 2004)	Core labour standard	GSP withdrawal
Sri Lanka	No	No	HR/humanitarian law	GSP+ to GSP
Zimbabwe	Yes	Yes (2008 established, report in 2010)	Core labour standards	None

Source: Own elaboration based on European Commission (2013), Portela (2010), and Orbie and Tortell (2009).

<sup>a</sup>The arms embargo on China is not a CFSP sanction (see Portela 2010).

GSP sanctions follow the ILO's level of condemnation as an objective benchmark, in line with the EU's commitment to taking into account multilateral institutions' assessment. Thus, even though the Commission's behaviour is not formally bound to any external agency, withdrawal practice shows that the EU tends to rely on ILO assessments. ILO condemnations in the cases of Burma and Belarus also make it easier for the EU to document violations. By contrast, the breaches detected in China were difficult to document, and the relevance of child labour practices in Pakistan to the ILO conventions appears not to have been sufficiently clear-cut. It should also be considered that a high level of ILO condemnation implies that there is a wide consensus in the international trade union movement on the violations of labour standards, because trade unions are actively involved in the ILO's tripartite structure. In turn, the existence of ILO condemnations makes it easier for trade unions to file a complaint under the EU's GSP system. Because the filing entity has to furnish evidence of the violation, the preparation of the complaint dossier is burdensome. Recent practice suggests that the EU also tends to rely on ILO assessments: the re-establishment of Burma's trade preferences in July 2013 only took place after a favourable ILO report.

Secondly, condemnations of the CFSP have not led to GSP sanctions when considerable commercial or strategic EU interests were at stake in the target countries due to resistance by a 'blocking minority' in the Council. Even if the Commission had proposed withdrawal in the above-mentioned instances where this step was contemplated, a minority of member states could have blocked the decision in the Council. The case of Pakistan illustrates how the prioritisation of geopolitical interests made the EU reluctant to impose sanctions. An official from one of the international trade unions which prepared the complaint observed that 'the Pakistani government was very active in lobbying member states and the Commission' (interview 2000). The EU's failure to suspend Pakistan's GSP preferences was criticised as motivated by the interests of certain member states reluctant to imperil the ongoing negotiation of a co-operation agreement with Pakistan (Greven 2005, p. 22). Illustratively, the Council's decision to extend the drugs incentive scheme to Pakistan in October 2001 caused India to successfully challenge its legality at the WTO. The extension of preferences represented a barely veiled attempt to reward Pakistan for its role in the fight against terrorism. Indeed, the Commission justified the move with reference to the response to 9/11:

As a consequence of the events of 11 September, Pakistan is facing [serious] problems [...] The international community acknowledged this by agreeing on a number of programs and actions providing special assistance to this country. The European Union is called upon to join these efforts.

Further attempts by the EU to offer Pakistan better tariffs, e.g. through a 'humanitarian' measure following the floods of 2010, proved highly controversial (Van Elsuwege and Orbie forthcoming). The 2012 regulation has relaxed the vulnerability criterion for the GSP+ from 1% to 2%, making Pakistan eligible.

Also in the India/Pakistan nuclear tests case, disagreements within the Council softened the EU's approach. In the case of China, the EU was wary of jeopardising relations with this important partner, as exemplified by Commissioner Lamy's rejection of calls for the activation of the withdrawal procedure with China on account of the Commission's 'incentivative approach by strengthening of the GSP social incentive scheme'.<sup>15</sup> Tougher sanctions against Russia were dismissed by the Council due to its geopolitical importance and for fear of obstructing Russia's democratic course. By contrast, impoverished Myanmar counted few friends in the Council, and even though the UK reportedly opposed suspension, the weak relationship Yangon entertained with the EU did not allow for an anti-suspension coalition to crystallise. In the case of Belarus, there was some opposition to suspension by some members, including Poland, Lithuania, and Latvia. Eventually, 'horse trading' solved the stalemate in the Council: Italy, Greece,

and Cyprus gave up their opposition to withdrawal in exchange for British, German, and Swedish agreement to antidumping measures against Chinese footwear (*EUObserver* 2006). Against this backdrop, international trade unions lost interest in filing complaints against strategically or commercially important countries. As explained by an international trade unionist involved in the Myanmar complaint: ‘after our experience with Pakistan, we did not start with [...] China, India, Bolivia, Peru or Brazil ... partly because of a lack of encouragement that we would be successful’ (interview 2000).

Thirdly, the EU is wary of withdrawing GSP unless the connection between the violation at hand and government action is manifest. Kryvoi posits that the responsibility of the government in labour rights violations is central to triggering penalties. While elsewhere labour rights violations are often committed by the private sector, in Myanmar and Belarus these were perpetrated by the authorities themselves (Kryvoi 2008). The same applies to the Sri Lankan case. Conversely, this factor would account for the lack of suspension of Pakistan, which did not engage in proscribed labour practices but failed to enforce the ban against them. In contrast to the above-mentioned cases, Pakistani authorities co-operated with the EU investigation.

However, GSP withdrawals have not invariably followed CFSP sanctions. Sri Lanka constitutes an exception to the general picture of coherence between foreign policy and GSP withdrawals. In a departure from the pattern of CFSP sanctions pre-dating GSP withdrawal, the EU suspended Sri Lanka’s GSP+ preferences in the absence of CFSP sanctions. The isolation of the GSP sanctions against Sri Lanka from other foreign policy measures remains puzzling. In addition, the choice of the instruments appears to be out of keeping with the nature of the situation addressed, namely actions affecting non-combatants protected under humanitarian law. While the GSP+ suspension is warranted from a legal vantage point, CFSP measures appear as a better fit for breaches committed in armed conflict. How can this outcome be explained?

CFSP sanctions were contemplated in response to the human rights violations perpetrated by the armed forces against the Tamil Tigers. However, these never materialised due to opposition by certain member states. Some of them opposed suspension on account of their close ties to Sri Lanka, while others were reluctant to issue a stronger condemnation of government actions in the fight against separatist group (interview 2013). Then, why were GSP suspended in the face of this opposition? GSP+ withdrawal is decided by Qualified Majority Voting (QMV), which might have prevented the wielding of a veto by a small number of Council members. In addition, Sri Lanka clearly is of only relative strategic or commercial importance for the EU, especially when compared to Russia, China, India, or even Pakistan. Perhaps as importantly, officials suggest that failure to suspend GSP+ in the face of overwhelming evidence of human rights violations reported by independent experts would have seriously damaged the credibility of the GSP+ system (interviews 2011).<sup>16</sup> Interestingly, the extensive procedural requirements for GSP withdrawal, which include an independent investigation involving consultations with various actors, limit the EU’s options. In contrast, CFSP decision-making on sanctions depends directly on the political constellation in the Council.

## Conclusions

The expectation that GSP and foreign policy sanctions would not cohere has been invalidated in our exploratory analysis. On the contrary, CFSP sanctions co-existed, and even pre-dated, GSP withdrawal in the two cases that constitute our extremely small sample. Yet, the presence of CFSP sanctions does not suffice to account for the decision to withdraw GSP. GSP suspension seems to come about when CFSP sanctions are in place *and* the ILO has set up a Commission of Inquiry that has condemned the beneficiary for failure to apply core standards. In the absence of

both factors, the EU refrained from suspending GSP. The EU's manifest reluctance to apply GSP sanctions is only overcome when *both* conditions are met.

On the other hand, the design of the procedure for GSP withdrawals largely explains why GSP sanctions, but not CFSP sanctions, were adopted against Sri Lanka. Initiated following a complaint by human rights organisations, the elaborate procedure took into account an independent expert report whose findings ultimately made it difficult for the Council to maintain special preferences. By contrast, decision-making in the CFSP framework is manifestly politically driven, lacking any obligation to consider independent assessments. Nevertheless, these examples also show that in a setting of institutional fragmentation, certain outcomes can come about despite dissimilar member states' interests thanks to the presence of authoritative assessments on human and labour rights violations. These enhanced the likelihood of GSP withdrawal, illustrating the influence of multilateral organisations such as the ILO and of independent assessments on EU responses to human rights violations.

Our enquiry into the EU's GSP sanctions reveals some useful insights that depart from the conventional assumptions about incoherence in EU foreign policy and merit further research. Perhaps one of the most evident findings from the point of view of sanctions theory is that coherence between CFSP and GSP sanctions is not a forcibly desirable outcome. In Myanmar and Belarus, GSP withdrawal became subsumed into the CFSP sanctions regime. Illustratively, the GSP regulations stipulate that only a change in the 'political situation' – rather than the observance of the relevant labour conventions – justifies reinstatement of trade preferences. The linkage between both measures reduces the incentives for the target to correct violations of labour standards, since he cannot expect GSP benefits to be reinstated until the political situation is altered. Besides, the policy implications of linking trade and foreign policy sanctions can be negative. The impact of foreign policy objectives on trade policy has already proven controversial at the WTO, as witnessed notably with the now defunct drugs incentive scheme. In coming years, conflicts between both spheres are likely to proliferate given the growing role of the European Parliament in EU trade policy, the stronger coherence requirements in the Lisbon Treaty, and the growing securitisation of international trade politics.

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### Notes

1. The historical name of Burma and the official name of Myanmar are used interchangeably throughout the article.
2. Throughout the article, we refer to the 'EU' even when the former European (Economic) Community is meant.
3. Council Regulation No. 3281/94 of 24 March 1997.
4. In addition to the eight fundamental ILO Conventions: International Covenant on Civil and Political Rights; International Covenant on Economic Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; Convention on the Prevention and Punishment of the Crime of Genocide; and International Convention on the Suppression and Punishment of the Crime of Apartheid.

5. Montreal Protocol on Substances that Deplete the Ozone Layer; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; Stockholm Convention on Persistent Organic Pollutants; Convention on International Trade in Endangered Species; Convention on Biological Diversity; Cartagena Protocol on Biosafety; Kyoto Protocol; UN Single Convention on Narcotic Drugs; UN Convention on Psychotropic Substances; UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; and UN Convention against Corruption.
6. The 2008 GSP reform did not alter the conditionality system.
7. This summary is based on art 11 Treaty on European Union (TEU) of 1992. The Lisbon Treaty subsumes these objectives into an expanded list (art 21). However, the withdrawal cases discussed here were considered in the pre-Lisbon era.
8. See Regulation (EU) No. 978/2012, Art 19(10).
9. See Council Regulation No. 552/97 of 24 March 1997 (supra fn 2).
10. See Common Position 2004/848/CFSP and Common Position 2004/661/CFSP.
11. See Council Regulation No. 2342/2003 of 29 December 2003.
12. The list is not exhaustive as no official record exists.
13. 98/606/CFSP, 26 October 1998.
14. An ILO Commission of Inquiry was also created for Zimbabwe. However, Zimbabwe is not a GSP beneficiary.
15. Answer to the question by Bernard Poignant (*Parti Socialiste Européen* (PSE)) to the Commission, 21 February 2002 (E-0384).
16. Interview material collected by Stefanie Proost.

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