



Decision in cases 1056/2018/JN and 1369/2019/JN on the European Commission's actions regarding the respect for fundamental labour rights in Bangladesh in the context of the EU's Generalised Scheme of Preferences

Decision

Case 1056/2018/JN - Opened on 19/07/2018 - Decision on 24/03/2020 - Institution concerned European Commission (No maladministration found) |

Case 1369/2019/JN - Opened on 22/07/2019 - Decision on 24/03/2020 - Institution concerned European Commission (No maladministration found) |

The case concerned the actions taken by the European Commission regarding Bangladesh in the context of the EU's Generalised Scheme of Preferences. The complainants considered that Bangladesh does not fully respect fundamental labour rights and that, therefore, the Commission should start the procedure allowing it to withdraw Bangladesh's trade preferences under the scheme.

The Commission informed the Ombudsman of how it has engaged with Bangladesh on the issue so far and the actions it has taken. It said that it may decide to withdraw Bangladesh's trade preferences as a measure of last resort.

The decision as to whether or not to launch a withdrawal procedure involves complex policy judgments. The Commission has a broad margin of discretion in determining when to do so. The Ombudsman took the view that the explanations the Commission had provided for its chosen course of action were reasonable. She closed the inquiry with a finding of no maladministration.

Background to the complaint

1. The EU's Generalised Scheme of Preferences (GSP) [1] removes import duties from products coming into the EU market from vulnerable developing countries. This helps developing countries to alleviate poverty and create jobs. The GSP is based on international values and principles, including labour and human rights.

2. In October 2016, four trade union organisations wrote to the European Commission alleging that Bangladesh did not comply with its obligations in the area of fundamental labour rights. They drew attention to very serious issues and urged the Commission to investigate this matter in the context of the GSP.



3. Dissatisfied with the fact that the Commission had failed to launch an investigation, the International Trade Union Confederation, the Clean Clothes Campaign and HEC-NYU EU Public Interest Clinic turned to the Ombudsman in June 2018.

The inquiry

4. The Ombudsman opened an inquiry into the Commission's failure to reply to the trade unions' letter of 4 October 2016 and invited it to explain why it had not taken action in the case of Bangladesh (complaint 1056/2018/MMO). The Commission replied on 16 October 2018. The complainants made comments on this reply, and had further exchanges with the Commission on the related matters. On 8 July 2019, the complainants submitted a second complaint to the Ombudsman (case 1369/2019/MMO) concerning the substance of the Commission's reply. Both complaints are dealt with jointly in this inquiry.

Arguments presented to the Ombudsman

5. The complainants argued that Bangladesh does not respect fundamental labour rights guaranteed by international law. The Commission should investigate this using the powers it has under the GSP Regulation. [2] In particular, the complainants considered that the Commission had failed to initiate the procedure, under Article 19 of the GSP Regulation, to temporarily withdraw the favourable tariff regime for Bangladesh. In doing so, they contended that the Commission was acting arbitrarily and had failed to explain convincingly why it was not initiating the procedure. The complainants further criticised the procedures the Commission has in place for such cases, including the scope for interested parties to submit observations.

6. In its replies, the Commission said that:

- It shares the complainants' concerns that the countries benefiting from EU trade preferences must respect fundamental human and labour rights. However, to maximise the chances of compliance, all available channels of engagement should be used before withdrawing trade preferences. The partial or full withdrawal of trade preferences should be a measure of last resort, also because the countries concerned are the least developed countries.
- It has stepped up its engagement with Bangladesh, Myanmar and Cambodia due to serious human rights concerns. It aims to use all channels - including bilateral trade and political dialogue and dedicated monitoring missions - in order to make Bangladesh address labour issues. The option of initiating the process of withdrawal of preferences remains open. However, at this stage, the Commission considers that pursuing the matter through dialogue is more appropriate.
- It has been monitoring the situation in Bangladesh closely. It has held several meetings with Bangladeshi authorities, in particular, in the context of the 'Compact for Continuous Improvements in Labour Rights and Factory Safety in the Ready-Made Garment and Knitwear Industry in Bangladesh' (Sustainability Compact). The Commission's 'enhanced engagement' has had some positive, although modest, results.
- Launching a withdrawal procedure involves two stages:



o Initially, the Commission considers whether there are grounds to launch the withdrawal procedure. During this phase of 'enhanced engagement', the Commission and the European External Action Service (EEAS) conduct intense dialogue with the country concerned, and monitor the human and labour rights situation based on reports of international monitoring bodies.

o If this is not successful, the Commission starts the formal withdrawal procedure under Article 19 of the GSP Regulation. Only a handful of such procedures have been launched so far. The Commission said that, in the past, it withdrew preferences from Myanmar and Belarus as a result of serious and systematic labour rights violations. It also initiated the withdrawal procedure for Cambodia - the only least-developed country concerned by such a procedure so far.

- The Commission starts an 'enhanced engagement' with countries, such as Bangladesh, where this is justified by the need to protect fundamental rights. Enhanced engagement involves closely monitoring the assessments made by relevant international organisations including the United Nations (UN) and the International Labour Organisation (ILO), as well as enhanced dialogue with relevant ministries, civil society and other partner countries. The Commission uses all channels of communication to press for reforms. It may also launch monitoring or fact-finding missions. The process is always adapted to the particular situation of the country concerned with the result that it has taken a different approach to each of these countries.

- In its assessment, the Commission mainly relies on the recommendations and conclusions of international organisations such as the UN and the ILO. These sources of information facilitate an objective and transparent assessment of compliance with the relevant international conventions. However, the Commission also relies on other sources, including information from civil society and social partners, to the extent that it is accurate and reliable.

- When it decides whether to launch the withdrawal procedure, the Commission further consults the Member States. It also considers (i) whether constructive efforts through dialogue fail to produce satisfactory results and (ii) the negative economic, social and human consequences the potential withdrawal of trade preferences would have. Decisions on whether to launch the withdrawal procedure are taken on the basis of the provisions of the GSP Regulation and in line with the criteria announced in the *Trade for All* Communication [3], the 2018 biennial report on the GSP and the relevant World Trade Organisation rules.

- In its assessment, the Commission takes into account the submissions made by third parties. The Commission is open to dialogue with civil society and appreciates its contributions. The Commission receives and examines such submissions, it also replies to letters, organises meetings and discusses regularly GSP matters, including in the context of regular Civil Society Dialogues. It routinely reaches out to civil society organisations during monitoring missions. Third parties receive a formalised role once the Commission has decided to launch a withdrawal procedure. They may submit information and evidence, have access to the file and can take part in oral hearings.

- In response to the complainants' letter of October 2016, the Commission held a meeting with them. During the meeting, the Commission explained how it was engaging with Bangladesh and the actions it has taken to address the complainants' concerns.



7. The complainants reiterated their concerns about the situation in Bangladesh. They expressed doubts whether pursuing political dialogue is likely to produce any concrete results. In their view, there has been no meaningful progress and Bangladesh has failed to implement its obligations under the Sustainability Compact within the applicable time limits. The complainants claimed that Bangladesh thus breaches the clear provisions in the GSP Regulation regarding labour rights and human rights. Consequently, the Commission has not fulfilled its duty by failing to start the withdrawal procedure.

The Ombudsman's assessment

8. The Ombudsman cannot take any position on the human and labour rights situation in Bangladesh, and on Bangladesh's compliance with the GSP Regulation. It is for the Commission to assess these matters. The Ombudsman may investigate only possible maladministration by the Commission.

9. Consequently, this inquiry aimed to determine whether the Commission has provided adequate explanations for its actions and the procedures it has in place.

10. Article 19 of the GSP Regulation provides for the withdrawal procedure as an option where the Commission considers a country breaches the principles referred to in the regulation. [4] However, according to EU case-law, there is no obligation on the Commission to start the withdrawal procedure if it identifies possible breaches. [5]

11. Article 19 of the GSP Regulation empowers the Commission to initiate the withdrawal procedure where it finds "*sufficient grounds*" to do so. However, it does not clearly define what constitutes 'sufficient grounds' or the criteria on which the Commission should assess this. Importantly, it does not determine under what circumstances the Commission should resort to the withdrawal procedure.

12. Deciding whether to launch a withdrawal procedure involves complex policy judgments. Accordingly, the Commission has a broad margin of discretion in determining when to do so.

13. That said, it has been the Ombudsman's longstanding view that where EU institutions enjoy broad discretion, this does not mean that they may proceed arbitrarily. The principles of good administration require them to exercise their discretion objectively and to take decisions based on a full consideration of all the circumstances of a given case. Moreover, EU institutions must be able to provide a convincing explanation for their decision.

14. The Ombudsman considers that, given the variety of circumstances covered by the principles referred to in Article 19 of the GSP Regulation and the different situations in countries benefitting from the GSP, the Commission's case-by-case approach is appropriate and justified. The fact that the Commission has withdrawn preferences in certain cases makes clear that it is ready to make use of this important sanction when it finds it justified.

15. The Ombudsman notes that the complainants do not want the Commission to impose



trade sanctions. Instead, they would like the Commission to use the withdrawal procedure as a further incentive to make Bangladesh comply with its international commitments, notably regarding labour rights. The Ombudsman finds that the Commission's explanations as to why it has so far considered that it would not be justified to initiate a withdrawal procedure against Bangladesh are reasonable.

16. In this case, the Ombudsman finds no evidence of maladministration in how the Commission has exercised its discretion or that its actions regarding Bangladesh are arbitrary and inconsistent with its approach in other cases (Myanmar, Belarus, Cambodia).

17. The Commission clearly shares the complainants' concerns, and has been actively seeking to promote the respect for fundamental rights, including labour rights, in Bangladesh. Although this process may be long, it is for the Commission to determine how best to achieve this under the GSP.

18. The Ombudsman is also satisfied by the Commission's explanations on how civil society participates in this process, and that the Commission takes the contributions of civil society into account.

19. Accordingly, the Ombudsman closes this inquiry with a finding of no maladministration.
Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

Given the detailed account provided by the Commission on the actions it is taking, the Ombudsman finds no maladministration in this case.

The complainant and the European Commission will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 24/03/2020

[1] See:

<https://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferenc>

[2] Regulation 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 732/2008:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1581002553929&uri=CELEX:02012R0978-20190101>

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[3] *Trade for All* is a strategy paper, published by the Commission in 2014, which outlines its approach to EU trade policy:

https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf .

[4] Article 19 of the GSP Regulation:

*" 1. The preferential arrangements ... **may** be withdrawn temporarily, in respect of all or of certain products originating in a beneficiary country, for any of the following reasons:*

(a) serious and systematic violation of principles laid down in the conventions listed in Part A of Annex VIII; ...

3. Where the Commission considers that there are sufficient grounds *justifying temporary withdrawal of the tariff preferences provided under any preferential arrangement ... on the basis of the reasons referred to in paragraph 1 ... it shall adopt an implementing act to initiate the procedure for temporary withdrawal in accordance with the advisory procedure ... "*

(emphasis added).

[5] See Case T-338/14, order of 27 January 2015, Unione Nazionale Industria Conciaria (UNIC) v European Commission - Action for annulment concerning the rejection of the application for a temporary withdrawal of the generalised tariff preferences granted to treated and partly treated leather originating from India, Pakistan and Ethiopia, paragraph 25:

<http://curia.europa.eu/juris/liste.jsf?num=T-338/14&language=EN> .