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COMMISSION DELEGATED REGULATION (EU) .../...

of 12.2.2020

amending Annexes II and IV to Regulation (EU) No 978/2012 as regards the temporary withdrawal of the arrangements referred to in Article 1(2) of Regulation (EU) No 978/2012 in respect of certain products originating in the Kingdom of Cambodia

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED REGULATION

Cambodia benefits from tariff preferences provided under the special arrangement for least-developed countries – Everything But Arms (“EBA”) – under Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalized tariff preferences and repealing Council Regulation (EC) No 732/2008 (the “GSP Regulation”). Pursuant to Article 19(1)(a) of the GSP Regulation, preferential arrangements may be temporarily withdrawn in respect of all or certain products originating in a beneficiary country, for serious and systematic violation of principles laid down in certain international conventions listed in Part A of Annex VIII to the GSP Regulation.

In its conclusions of 26 February 2018, the EU Foreign Affairs Council expressed deep concern about the continuing of deterioration of democracy, respect of human rights and the rule of law, including the escalating repression of the opposition, media and civil society in Cambodia.

On 11 February 2019, the Commission adopted an Implementing Decision initiating the procedure for the temporary withdrawal of tariff preferences from Cambodia for serious and systematic violations by Cambodia of principles laid down in four human and labour rights United Nations /International Labour Organization (“UN/ ILO”)conventions listed in Part A of Annex VIII, including the International Covenant on Civil and Political Rights (1966) (“ICCPR”). Following the initiation of the procedure, the Commission carried out monitoring and evaluation of the situation in Cambodia seeking and assessing all necessary and relevant information, including assessment and conclusions of monitoring bodies, and documents and comments submitted by the parties to the procedure and by Cambodia. At all stages of the procedure Cambodia was provided with every opportunity to cooperate, provide comments, and be heard.

On 12 November 2019, the Commission submitted to Cambodia a report on its finding and conclusions. Cambodia submitted its observations on the report on 12 December 2019. This Delegated Regulation is based on the findings contained in the report and its underlying evidence, subsequent evaluations and assessments in light of Cambodia’s comments of 12 December 2019 and any new facts and developments that occurred after 12 December 2019.

In particular, given the nature of the rights infringed, and the duration, scale and impact of Cambodia’s actions and omissions, the Commission finds serious and systematic violations by Cambodia of the principles laid down in Articles 19, 21 22 and 25 of the ICCPR. The Commission therefore considers that the preferential arrangement granted to Cambodia should be temporarily withdrawn, in accordance with Article 19 of the GSP Regulation, until it is decided, pursuant to Article 20 of the GSP Regulation, that the reasons for justifying the withdrawal no longer apply.

In assessing which products originating in Cambodia should be covered by the temporary withdrawal of preferences, the Commission takes into account, in line with the objectives of the GSP Regulation, the economic development needs of Cambodia, including the need for Cambodia to diversify its export base and the socio-economic impact of the withdrawal, including on workers and industries. The Commission furthermore takes into account the progress by Cambodia since the initiation of the withdrawal procedure. In light of the above, the Commission concludes that tariff preferences under the GSP Regulation should be withdrawn only for certain products, in accordance with Article 19(1) of the GSP Regulation.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE DELEGATED REGULATION

In line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the Commission, appropriate and transparent consultations, including at expert level, have been carried out on this Delegated Regulation. The Commission's Expert Group on the Generalised Scheme of Preferences was consulted in meetings held on 2 December 2019 and on 20 January 2020.

3. LEGAL ELEMENTS OF THE DELEGATED REGULATION

Article 19(10) of the GSP Regulation empowers the Commission, in accordance with Article 36 of the GSP Regulation, to adopt delegated acts to amend Annexes II, III and IV, whichever is applicable, in order to temporarily withdraw the tariff preferences provided under the preferential arrangements referred to in Article 1(2) of the GSP Regulation.

Annexes II and IV of the GSP Regulation should be amended to reflect the temporary withdrawal of preferences from Cambodia in relation to certain products listed in the Delegated Regulation. In accordance with Article 19(12) of the GSP Regulation, this Delegated Regulation will take effect six months after its adoption.

COMMISSION DELEGATED REGULATION (EU) .../...

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amending Annexes II and IV to Regulation (EU) No 978/2012 as regards the temporary withdrawal of the arrangements referred to in Article 1(2) of Regulation (EU) No 978/2012 in respect of certain products originating in the Kingdom of Cambodia

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalized tariff preferences and repealing Council Regulation (EC) No 732/2008¹, and in particular Article 19(10) thereof,

Whereas:

1. PROCEDURE

- (1) The Kingdom of Cambodia (“Cambodia”) benefits from tariff preferences provided under the special arrangement for the least-developed countries – Everything But Arms (“EBA”) – referred to in Article 1(2)(c) of Regulation (EU) No 978/2012 (the “GSP Regulation”). It is also listed as a beneficiary country of the general arrangement under Article 1(2)(a) of the GSP Regulation. In accordance with Article 18(1) of the GSP Regulation, the special arrangement for the least-developed countries consists in the suspension of the Common Customs Tariff duties on all products listed in Chapters 1 to 97 of the Combined Nomenclature and originating in Cambodia, except those listed in Chapter 93, namely arms and ammunition.
- (2) Pursuant to Article 19(1)(a) of the GSP Regulation, the preferential arrangements referred to in Article 1(2) of the GSP Regulation may be withdrawn temporarily in respect of all or certain products originating in a beneficiary country, for reasons of serious and systematic violation of principles laid down in the conventions listed in Part A of Annex VIII to the GSP Regulation (the “core human and labour rights UN/ILO conventions”).
- (3) On 11 February 2019, the Commission adopted an Implementing Decision including an Annex (the “Notice of Initiation”)² initiating, in accordance with Article 19(3) of the GSP Regulation, the procedure for the temporary withdrawal of tariff preferences from Cambodia (the “temporary withdrawal procedure”). On the same day, the Commission informed the European Parliament and the Council of that Implementing Decision.
- (4) The elements available to the Commission at that time pointed to the existence of sufficient grounds justifying the initiation of the temporary withdrawal procedure. In particular, recital (3) of the Implementing Decision and point (5) of the Notice of Initiation referred to elements indicating the existence of serious and systematic violations by Cambodia of principles laid down in the following four core human and labour rights UN/ILO conventions:

¹ OJ L 303, 31.10.2012, p. 1.

² OJ C 55, 12.2.2019, p. 11.

- International Covenant on Civil and Political Rights (1966) (“ICCPR”);
 - Convention concerning Freedom of Association and Protection of the Right to Organise, No 87 (1948) (“ILO Convention 87”);
 - Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No 98 (1949) (“ILO Convention 98”); and
 - International Covenant on Economic Social and Cultural Rights (1966) (“ICESCR”).
- (5) In the Notice of Initiation, the Commission invited Cambodia and third parties to make their views known to the Commission. Thirteen third parties registered within the time limit set in the Notice of Initiation and submitted written observations to the Commission.
 - (6) Following the initiation of the temporary withdrawal procedure, the Commission monitored and evaluated the implementation by Cambodia of the four conventions listed in the Notice of Initiation. In accordance with Article 19(4)(b) of the GSP Regulation, the monitoring and evaluation period ended on 12 August 2019.
 - (7) The Commission sought all necessary information in accordance with Article 19(6) of the GSP Regulation, including the available assessments of the relevant monitoring bodies and the views of Cambodia. The Commission conducted a monitoring mission to Cambodia in June 2019.
 - (8) During the monitoring and evaluation period, the Commission provided Cambodia with every opportunity to cooperate, and submit views and comments, and be heard. For instance, on 24 July 2019, the Commission invited Cambodia to submit in writing its position on the findings that led to the launch of the temporary withdrawal procedure. Cambodia replied to the Commission on 12 August 2019, contesting the grounds for the Commission’s decision to open the temporary withdrawal procedure. In its reply, Cambodia also highlighted a number of remedial actions planned or undertaken, mostly before the initiation of the temporary withdrawal procedure.
 - (9) On 12 November 2019, the Commission submitted to Cambodia, in accordance with Article 19(7) of the GSP Regulation, a report on its finding and conclusions (the “Report”). The Report was based on the body of evidence gathered by the Commission up to 31 October 2019 concerning the respect of the principles laid down in the four core human and labour rights UN/ILO conventions, including evidence and information submitted by Cambodia and by the third parties to the procedure.
 - (10) Cambodia submitted its observations on the Report on 12 December 2019.
 - (11) This Delegated Regulation is based on the findings contained in the Report and its underlying evidence, subsequent evaluations and assessments in light of Cambodia’s Response and facts and developments occurring after 12 December 2019.
2. **SERIOUS AND SYSTEMATIC VIOLATIONS OF PRINCIPLES LAID DOWN IN THE ICCPR**
 - 2.1. **The Right to Political Participation (Article 25 of the ICCPR)**
 - (12) Article 25 of the ICCPR provides that every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 of the ICCPR and without unreasonable restrictions, to:

- (a) take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) have access, on general terms of equality, to public service in their country.

2.1.1. Findings

- (13) Cambodia has taken a series of repressive actions against the main opposition party, the Cambodian National Rescue Party (“CNRP”), curtailing political participation and electoral rights in the country. These actions included in particular amendments to the Law on Political Parties (“LPP”), the arrest of CNRP’s president Kem Sokha and the court-ordered dissolution of the CNRP.
- (14) In March and July 2017, the Cambodian National Assembly enacted several amendments to the LPP that made it illegal for anyone with a criminal conviction to lead a political party. The amended LPP also granted the Ministry of Interior broad discretion to suspend activities of political parties and to file motions of dissolution of a party, for decision by the Supreme Court. In October 2017, the National Assembly passed additional amendments to a range of electoral laws that set out the process for reallocating seat won by a dissolved party.
- (15) On 3 September 2017, CNRP leader Kem Sokha was arrested on charges of treason and conspiracy to topple the Cambodian government with the assistance of a foreign power³.
- (16) After more than a year in pre-trial detention, Kem Sokha was released on restricted bail on 10 September 2018 and put under judicial supervision. On 10 November 2019, Kem Sokha was released from judicial supervision. However, he remained banned from engaging in political activities pending the outcome of his trial⁴.
- (17) On 16 November 2017, the Supreme Court of Cambodia ordered the dissolution of the CNRP and banned 118 of its senior officials from political activity for five years. The Supreme Court's ruling was based in particular on the amended provisions of Article 44 of the LPP, which allows the Supreme Court to suspend for five years, or dissolve, a political party if it violates Articles 6(2) and 7 of the LPP. The dissolution of the CNRP by the Supreme Court was founded in part on the same allegations as those used by the investigating judge in respect of the pending case against Kem Sokha⁵.
- (18) The dissolution of the CNRP also led to the removal from their positions of 5,007 CNRP commune/local councillors elected in June 2017. The CNRP members of the National Assembly were replaced by unelected individuals. In the subsequent indirect elections of the Senate on 25 February 2018, the ruling party, the Cambodian People's Party (“CPP”), won all contested seats⁶. The dissolution of the CNRP left the country without any credible opposition ahead of the 29 July 2018 national elections in which

³ These charges were based on a 2013 video recording in which Kem Sokha discussed a strategy to win votes with the assistance of foreign experts. See UA KHM 5/2017, 8 September 2017. See also A/HRC/39/73/Add.1, 7 September 2018.

⁴ On 9 December 2019, a Cambodian Court announced the start of the trial of Kem Sokha on 15 January 2020.

⁵ A/HRC/39/73/Add.1, para. 20.

⁶ 58 out of 62 Senate seats are indirectly elected by members of the Commune Councils. An additional four Senate seats are subject to nomination by the King and the National Assembly.

the CPP won all 125 seats in the National Assembly, thereby *de facto* creating a one-party State with no parliamentary opposition.

2.1.2. Position of Cambodia

- (19) Cambodia argues that the amended LPP applies indiscriminately to every political party, bears all the basic requirements that any democratic country should adhere to, and is aimed at preventing abuses that are not in accordance with fundamental democratic principles.
- (20) Cambodia justifies the arrest of Kem Sokha under Article 443 of the Criminal Code, which condemns the crime of conspiracy with a foreign power, and relies on alleged proof of Mr Kem Sokha's conspiracy to overthrow the government.⁷ It argues that, as president of the CNRP, Mr Sokha's act of treason implicated his party, leading to the forced dissolution.
- (21) Moreover, Cambodia argues that the decision of the Supreme Court of 16 November 2017 ordering the dissolution of the CNRP was the decision of a sovereign state, and that the enforcement of domestic judicial decisions is an internal affair of a sovereign state upholding the rule of law.
- (22) In relation to the 29 July 2018 elections, Cambodia stresses that the registration of 20 political parties and the participation of 6.956.900 voters is a clear evidence that the amendments to the LPP and the consequent redistribution of seats did not deprive Cambodians of their right to take part in the conduct of political affairs. Therefore, the notion of a breach of Article 25 of the ICCPR is not justified.

2.1.3. Assessment

Amendments to the Law on Political Parties (LPP)

- (23) The 2017 amendments to the LPP include provisions allowing for wide discretion as to the dissolution of political parties and the banning of party leaders from political activities indefinitely without due process⁸.
- (24) Under Article 38 of the LPP, the Ministry of Interior has extensive decision-making powers over political parties and *de facto* acts as their administrator. For instance, it can decide to suspend the activities of political parties and can file motions for their dissolution with the Supreme Court. As Article 38 of the LPP does not provide clear and transparent criteria for such motions, the Ministry of Interior enjoys broad discretion to propose the dissolution of a party.
- (25) According to the Office of the United Nations High Commissioner for Human Rights ("OHCHR") in Cambodia, the designation of the Ministry of Interior as the administrator of political parties is "*contrary to international standards that require regulatory bodies that are independent of the executive branch to ensure a level political playing field.*"⁹ Furthermore, as noted by the UN Special Rapporteur, the LPP amendments and the consequent redistribution of seats deprived "*millions of Cambodians of their right to political participation. For those who voted CNRP in constituencies which CNRP won, the candidates they voted for in the 2013 National Assembly elections and the 2017 commune elections have been replaced by different*

⁷ Cambodia argues that Kem Sokha's acts were demonstrated in a video in which he allegedly admitted that he had been acting under the order of a foreign power and that he has set an ultimate goal of changing the top Government leader.

⁸ See *Joint UNCT Cambodia Report in the context of Cambodia's third UPR cycle*, para. 11

⁹ OHCHR, *A human rights analysis of the amended law on political parties*, 28 March 2017.

*people representing different political parties, which in turn has had an effect on the election of senators. This constitutes a clear violation of the right for Cambodians to take part in the conduct of political affairs, which envisages the right to be represented through chosen representatives”*¹⁰.

- (26) In January 2019 Cambodia amended Article 45 of the LPP by introducing the possibility for individuals banned from political activities to seek the restoration of their political rights by the King, upon request to the Prime Minister. However, this amendment does not allow the full reinstatement of the political rights of the banned individuals, as they cannot effectively resume their political activities as long as the CNRP as a whole remains dissolved. In addition, the decision to restore their political rights rests with their political opponents rather than an independent body. Finally, the amendment of Article 45 of the LPP provides no solution to the removal of the 5,007 elected CNRP commune councillors¹¹.
- (27) In view of the above, the Commission finds that the LPP, as amended in 2017, contains provisions amounting to a violation of the principles set out in Article 25 of the ICCPR.

Dissolution of the CNRP and arrest of Kem Sokha

- (28) Cambodia argues that the reason for dissolving the CNRP was that its leader, Kem Sokha, committed the crime of conspiring with a foreign power. However, the Commission notes that the CNRP was dissolved before the trial of Kem Sokha had even started. It is noted that the UN Special Rapporteur has raised serious concerns about the evidentiary basis for the Supreme Court’s decision to dissolve the CNRP¹² and the severity of the accusation based on such evidence.¹³
- (29) According to the United Nations Working Group on Arbitrary Detention (“UNWGAD”), Kem Sokha’s deprivation of liberty was politically motivated¹⁴ and resulted from the exercise of his rights to freedom of opinion and expression, as well as the right to take part in the government of his country and the conduct of public affairs. Accordingly, it was contrary to *inter alia* Articles 19 and 25 of the ICCPR¹⁵. Equally, the UN Special Rapporteur expressed the concern that the arrest of Kem Sokha was politically motivated ahead of the scheduled 2018 general election.¹⁶
- (30) The dissolution of the CNRP had the effect of restricting the right to take part in the conduct of public affairs of 118 of its members, 55 CNRP members of the National Assembly and of 5,007 elected local and commune councillors who were removed from office. As noted by the UN Special Rapporteur, the CNRP dissolution and the ban from political activities of its members call into question the genuineness of the 29 July 2018 general election.¹⁷
- (31) UN monitoring bodies have unanimously expressed concerns about this situation, noting that the redistribution of CNRP seats to other parties, in particular, at the

¹⁰ Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Cambodia, A/HRC/39/73, para.76 (2018).

¹¹ A/HRC/42/60, para. 7.

¹² A/HRC/39/73/Add.1, para. 20.

¹³ UA KHM 5/2017, 8 September 2017.

¹⁴ United Nations Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018, A/HRC/WGAD/2018/9, point 57.

¹⁵ A/HRC/WGAD/2018/9, points 47 and 61.

¹⁶ UA KHM 5/2017, 8 September 2018.

¹⁷ A/HRC/39/73/Add.1, 15 August 2018, para 87.

communal level, deprives Cambodians of their rights of political participation.¹⁸ The 2018 report of the UN Special Rapporteur also concludes that the regression of political rights in Cambodia, including the amendments to the Constitution to introduce a *lèse-majesté law*, constitute grave developments, aimed at repressing dissenting voices and curtailing fundamental freedoms.¹⁹

- (32) Since the launch of the temporary withdrawal procedure in February 2019, there has been little progress on the situation of political rights in Cambodia. Cambodia's political landscape remains dominated by the repression of political rights. The CNRP remains banned, the political rights of supporters and members of CNRP continue to be denied and the CPP has consolidated its overwhelming dominance over State institutions.²⁰ The positions of CNRP's commune chiefs and commune councillors were almost entirely transferred to unelected members of the CPP²¹. Although the opposition leader Kem Sokha was released from judicial supervision on 10 November 2019, his case has not been closed and he still faces criminal charges. In addition, he is banned from engaging in any political activities.

2.1.4. Conclusions on Article 25 of the ICCPR

- (33) In the light of all the above considerations, the Commission finds that the actions taken by Cambodia since 2017, notably the amendments of the LPP, the dissolution of the CNRP and the subsequent redistribution of CNRP's seats in the National Assembly and in local councils, have a strong negative impact on democracy, political participation and pluralism in Cambodia. These actions point to a politically motivated scheme consisting of legislative, judicial and administrative actions designed to curtail political participation and electoral rights, in particular ahead of the July 2018 general election. These actions have impeded the full enjoyment of political rights by Cambodians, including the right to take part in the conduct of public affairs, to vote and to be elected at genuine periodical elections and to have access, on general terms of equality, to public service in their country, as provided for in Article 25 of the ICCPR.
- (34) The Commission concludes that the nature of the rights infringed, the duration, the scale and the impact of the violations found establish the existence of serious and systematic violations by Cambodia of the principles laid down in Article 25 of the ICCPR, within the meaning of Article 19(1)(a) of the GSP Regulation.

2.2. The Right to Freedom of Expression (Article 19 of the ICCPR)

- (35) Article 19 of the ICCPR provides that:

“1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and necessary:

¹⁸ Id., para. 23 and para. 87.

¹⁹ A/HRC/39/73, para 89.

²⁰ See also A/HRC/42/60, 27 August 2019, para. 71.

²¹ Id., para. 5.

- (a) for the respect of the rights or reputations of others,
 - (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.”
- (36) In its general comment No. 34 to the ICCPR, the Human Rights Committee (HRC) held that freedom of opinion and expression are closely interrelated rights, they are essential to any society and constitute the fundamentals of a democratic and free society²². They also imply the existence of a free press and that other media are able to comment on public issues without censorship or restraint, and to inform the public opinion.

2.2.1. Findings

- (37) Cambodia's laws contain a number of provisions that contravene Cambodia's obligations under Article 19 of the ICCPR, notably through broadly and vaguely worded provisions which allow the Cambodian authorities to exercise a wide margin of discretion in implementing those laws and regulations and to bring charges for offences related to the exercise of the freedom of expression. These laws include: the 2018 amendments to the Cambodian Constitution, the lèse-majesté clause in the Criminal Code, the Law on the Press, the Electoral Law, the Telecommunications Law, the Law on Associations and Non-Governmental Organizations (LANGO), the Law on Political Parties, the Law on Trade Unions and Prakas No. 170 on Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia.
- (38) In addition, the Commission notes the situation of journalists facing arrests, detention, charges and conviction, the closure of the Cambodia Daily newspaper following a tax audit, the closure of the local operations of Radio Free Asia and Voice of America, as well as the closure of other radio frequencies. Journalists have been charged or detained for no apparent reason other than that they had reportedly spoken out against the Cambodian government or engaged in advocacy activities.
- (39) This situation was also noted with concern by several international monitoring bodies. The UN Special Rapporteur in her End of Mission Statement of 5 May 2019 on the situation of human rights in Cambodia, called on Cambodia "*to increase the space for a free press, including space for independent journalists to operate*". The 2019 report of the UN Working Group on the Universal Periodic Review (UPR) urged Cambodia to: release immediately from custody any individual detained for the peaceful exercise of expression and assembly; protect journalists, human rights defenders, members of the political opposition, and trade union members from harassment, arbitrary arrest and physical attacks; guarantee a free civic space, both online and offline, for free expression without fear of prosecution under the Criminal Code and the Law on Telecommunications.²³ On 18 April 2019, Cambodia accepted most of those recommendations..
- (40) The 2019 surge in legal actions against former CNRP members illustrates the serious and systematic use and misuse of laws to target, intimidate and harass individuals for exercising their fundamental freedoms, notably the right to hold opinions without

²² UN Human Rights Committee (HRC), *General Comment No. 34, Article 19, Freedoms of opinion and expression*, CCPR/C/GC/34, 11 (12 September 2011).

²³ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Cambodia*, A/HRC/41/17, pp. 11 et seq. inter alia recommendations 110.12, 110.27, 110.29, 110.81, 110.83, 110.85, 110.87, 110.91, 110.93, 110.94, 110.96, 110.98 and 110.99 (5 April 2019).

interference and the right to freedom of expression. Cambodian citizens raising dissenting voices are being silenced and deprived of their right to free expression, increasingly so on social media and online platforms. They are threatened, intimidated or face criminal charges for any dissent expressed, including through the use of the lèse-majesté provision of the Criminal Code introduced over one year ago.²⁴

2.2.2. Position of Cambodia

- (41) Cambodia takes the view that the above-described actions against journalists and media are justified by the application of its domestic laws and regulations on taxation and broadcasting licenses. It emphasizes the large number of media organizations currently registered and operating in Cambodia. It also notes that it has authorized several radio stations to resume operations and granted permissions to radio broadcasters to provide air time.
- (42) In addition, Cambodia refers to recent legislative developments, including the establishment of a commission to assess possible amendments to the Law on the Press and ongoing work at inter-ministerial level on a draft Law on Access to Information.

2.2.3. Assessment

- (43) The use of laws to restrict the right to freedom of expression is a matter of grave concern. On 19 June 2019, UN experts including the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, raised concerns about the use of criminal law to target free speech, both offline and online, and reminded Cambodia that the right to freedom of expression is one of the essential foundations for a democratic and just society and that restrictions on freedom of expression must be limited and strictly defined. Moreover, legal actions by the Cambodian authorities against individuals for having merely issued statements of support for political leaders are not permitted under Article 19(3) of the ICCPR and therefore constitute unjustified restrictions. The position of Cambodia, in particular its description of the media landscape in the country, stands in stark contrast to its ranking at position 143 on the World Press Freedom Index. On 8 November 2019, the UN Special Rapporteur on the situation of human rights in Cambodia reminded Cambodia that arrests based on the exercise of the freedoms of opinion and expression through political discourse and commenting on public affairs, are not permitted.
- (44) Consistent with numerous available reports of civil society and international human rights bodies, the Commission also finds that Cambodia has curtailed the right to freedom of expression through the use of laws and judicial and administrative actions, in particular actions against journalists, press and other media, NGOs and individuals including human rights defenders. Cambodian actions to remedy these shortcomings have not materialised, nor has Cambodia taken steps to effectively implement the UPR recommendations – despite having accepted them – concerning the independence of the media and the freedom of expression of journalists²⁵.
- (45) The fact that Cambodia committed to review and/or amend a number of its laws, including at the occasion of the 2019 UPR, and has taken a number of administrative steps towards such review and/or amendments since the initiation of the temporary withdrawal procedure, has so far not resulted in tangible progress to bring Cambodia's laws into compliance with its international human rights obligations, in particular Article 19 of the ICCPR.

²⁴ See in this regard statement by the UN Special Rapporteur of 8 November 2019.
²⁵ A/HRC/41/17/Add. 1.

(46) The Commission recalls that, whilst the right to freedom of expression may be subject to certain restrictions, such restrictions have to satisfy the conditions set out in Article 19(3) of the ICCPR, including the condition that any restriction be necessary in a democratic society and proportionate. However, the Commission finds that Cambodia has not sufficiently demonstrated that the restrictions on the right of freedom of expression set out in its legal framework and its implementation meet the conditions set out in Article 19 of the ICCPR.

2.2.4. Conclusions on Article 19 of the ICCPR

(47) Having regard to the nature of the rights infringed, the duration, the scale and the impact of the violations, the Commission finds that Cambodia's use of its law and its judicial and administrative actions to restrict the right to freedom of expression and its failure to take the necessary steps to ensure a free civic space, amount to a serious and systemic violation of the principles laid down in Article 19 of the ICCPR, within the meaning of Article 19(1)(a) of the GSP Regulation.

2.3. The Right to Freedom of Association and of Peaceful Assembly (Articles 21 and 22 of the ICCPR)

(48) Article 21 of the ICCPR provides that the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

(49) Article 22 of the ICCPR provides that:

“1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this Article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning freedom of association and protection of the right to organize, to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.”

2.3.1. Findings

(50) Cambodia has in force a Law on Non-Governmental Organizations (the “LANGO”), which imposes a number of restrictions on the registration of associations and on their activities, as well as extensive reporting obligations. More specifically, Article 8 of the LANGO contains broad grounds for restricting the registration of civil society organisations (“CSO”). Article 9 of the LANGO requires them to register in order to be allowed to conduct any activity. Article 25 of the LANGO, combined with its Article 30, imposes reporting requirements, some of which are unclear, placing on CSO restrictions that go beyond those permissible under Article 22(2) of the ICCPR.

Moreover, the neutrality requirement²⁶ set out in Article 24 of the LANGO is not defined and its application is unclear. Finally, the LANGO allows for the suspension or delisting of a CSO for failure to abide by its own statute even when such failure does not constitute a crime under Cambodian law.

- (51) In addition to the vagueness and lack of clarity of its legal framework under the LANGO, Cambodia has been taking a number of actions to repress the exercise of the freedom of association. In particular, arrests and detention of key civil society, land right and environmental activists have, despite suspended sentences or royal pardon, resulted in civil society space shrinking²⁷. Notwithstanding the fact that the three-day advance notice for civil society events was repealed in November 2018, the Commission received accounts from CSOs, including during a June 2019 mission to Cambodia, that they continue to experience intrusive monitoring and harassment by the local police, the military and the judiciary. Some CSOs reported government monitoring of their family members.
- (52) This situation is confirmed by the conclusions and recommendations of the July 2019 report on the role and achievement of the OHCHR in Cambodia²⁸, where the OHCHR confirms reports of close monitoring of CSO activities by the police and calls upon Cambodia to broaden the space for CSOs. Concerns are also reflected in the 2019 Universal Periodic Review (“UPR”) report. Cambodia accepted the UPR recommendations encouraging the country to cease all kinds of harassment, intimidation, use of force and arbitrary interference with the rights to freedom of association and peaceful assembly.²⁹

2.3.2. Position of Cambodia

- (53) Cambodia justifies its actions on the grounds that local authorities need to ensure security and public order, and that the CSOs in question were undertaking ultra vires activities or conveying messages that violated the law.
- (54) Cambodia confirms its commitment to review the LANGO and states that consultations with CSOs are underway and that in any democratic country such a process requires time.
- (55) Cambodia adds that the preparatory work on a draft Access to Information Law is taking place in full cooperation with UN organizations such as the OHCHR and UNESCO office in Phnom Penh. Cambodia has furthermore extended deadlines for tax registration and tax obligations for CSOs.

2.3.3. Assessment

²⁶ Article 24 of the LANGO provides that CSOs shall maintain their neutrality toward political parties in the Kingdom of Cambodia.

²⁷ A/HRC/39/73/Add.1, page 9.

²⁸ OHCHR (31 July 2019) – The annual report of OHCHR on its work in Cambodia

²⁹ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Cambodia*, A/HRC/41/17, acronyms added. In particular the UPR recommends to: amend the LANGO to bring it into line with the States' obligations under ICCPR and establish a safe and enabling environment for civil society and trade unions. (*inter alia*: Recommendations 110.12, 110.25 and 110.102); protect NGOs and ensure that administrative provisions of the LANGO are not used to close down, suspend or otherwise negatively affect NGO's (recommendation 110.28); take all measures to protect and support journalists, human rights defenders, trade union workers, land and environmental activists and other civil society workers (recommendation 110.85); and take the measures necessary to ensure that the right to freedom of assembly and association is not hindered by arbitrary restrictions and/or excessive use of force (recommendation 110.107).

- (56) Concerns about the LANGO and its implications on the ability of CSOs and individuals to act in defence of human rights and to promote transparency and accountability were expressed by the OHCHR already in 2015, and by the OHCHR spokesperson in August 2017. The shortcomings of the LANGO were raised by the Commission and the European External Action Service (EEAS), including during the 2018 monitoring mission, and by the international community, e.g. in the 2019 UPR and by the UN Secretary General and UN Special Rapporteur.
- (57) Despite the fact that Cambodia has taken certain positive steps, such as initiating a process to review the LANGO, holding dialogues with CSOs, and repealing the requirement of a three-day advance notice for civil society events, the Commission considers, based on its findings, that those steps are insufficient to overcome the existing shortcomings. In particular, Cambodia's legal framework remains unchanged and there is no concrete implementation of policies and statements regarding the promotion and protection of civil society space. Moreover, reports about monitoring, surveillance, harassment, arrests and detention of civil society representatives and activists continue³⁰.
- (58) On 3 December 2018, Cambodia issued a statement committing itself to promoting genuine partnership with CSOs. Yet in July 2019, the UN Secretary General continued to urge Cambodia to strengthen guarantees with respect to the unhindered work of CSOs and by consolidating and broadening the space for these organizations to operate. The UN Secretary General also highlighted the importance of the review of LANGO in this regard³¹.
- (59) Based on international human rights law and Human Rights Committee (HRC) jurisprudence, the Commission finds that Articles 8 and Article 25 together with Article 30 of the LANGO violate Article 22(2) of the ICCPR. Articles 9, 20 and 24 of the LANGO also violate Article 22(2) of the ICCPR due the serious concerns regarding their application.³²
- (60) More specifically, the Commission finds that the grounds for restricting the registration of associations under Article 8 of the LANGO go beyond what is permitted under Article 22(2) of the ICCPR. The Commission also finds that Article 25 of the LANGO combined with its Article 30, imposes reporting requirements on CSOs going beyond those permissible under Article 22(2) of the ICCPR. In addition the vague formulation and unclear application of the neutrality requirement set out in Article 24 of the LANGO do not meet the requirements of Article 22(2) of the ICCPR.

2.3.4. Conclusions on Articles 21 and 22 of the ICCPR

- (61) Having regard to the nature of the rights infringed, the duration, the scale and the impact of the violations, the Commission finds that Cambodia's use of its laws and its judicial and administrative actions to restrict the right to freedom of association and

³⁰ See in this regard the statement by the UN Special Rapporteur of 8 November 2019 calling on the government to respect the rights to freedom of opinion, expression and assembly. See also the joint civil society letter to the Prime Minister of Cambodia of 8 December 2019 expressing alarm at the repression that results in silencing independent and critical opinions and at the current environment for labour rights advocates, trade union leaders and civil society activists.

³¹ A/HRC/42/31 of 31 July 2019.

³² An analysis of the LANGO with respect to human rights standards is available on the Website of the Cambodia Office of the OHCHR since 2015. See for instance the OHCHR's conclusions on pages 17 and 18 that Article 24 infringes on freedom of expression and other human rights and that Article 25, combined with Article 30, place limitations on the right of freedom of association beyond what is permissible under Article 22(2) ICCPR.

peaceful assembly and its failure to take effective steps to ensure a free civic space, constitutes a serious and systemic violation of the principles laid down in Articles 21 and 22 of the ICCPR, within the meaning of Article 19(1)(a) of the GSP Regulation.

- (62) The Commission recalls that whilst the right to freedom of association and peaceful assembly may be subject to certain restrictions, such restrictions have to satisfy the conditions set out in Article 22(2) of the ICCPR, including the condition that any restriction be necessary in a democratic society and proportionate. However, the Commission finds that Cambodia has not sufficiently demonstrated that the restrictions on the right to freedom of association and peaceful assembly provided under its laws or imposed meet the conditions set out in Article 22 of the ICCPR³³.
3. REMAINING ISSUES UNDER ILO CONVENTIONS 87 AND 98 AS WELL AS THE ICESCR
- 3.1. Labour rights - freedom of association, right to organise and collective bargaining (Articles 2, 3, 4 and 7 of ILO Convention 87; Articles 1 and 3 of ILO Convention 98; Articles 19, 21 and 22 ICCPR; Articles 7 and 8 ICESCR)
- (63) The Commission takes note of the information and update provided by Cambodia regarding the labour right issues set out in the Notice of Initiation.
- (64) The Commission notes that the actions taken by Cambodia since the launch of the temporary withdrawal procedure in February 2019 show that some improvements have been made on labour right issues. However, serious shortcomings and violations remain on two issues, namely the conclusion of the civil and criminal cases against trade union leaders and the investigations of the murders of trade union leaders, as recommended by the ILO.
- (65) The Commission finds that irrespective of considerable progress in the settlement of the numerous criminal, civil and un-resolved labour dispute cases concerning trade union leaders, activists and workers, all the remaining open cases should be resolved without delay. The settlement of many cases, while commendable, does not negate the prior occurrence of arbitrary arrests, even if their duration was brief.
- (66) The Commission notes the lack of concrete results in the investigations of the murders of trade union leaders committed in 2004 and 2007. Moreover, despite Cambodia's commitment to bring the perpetrators to justice as quickly as possible, and the organisation of the *ad hoc* tripartite meeting convened by the National Commission on Reviewing the Application of International Labour Conventions Ratified by Cambodia in January 2019 and the inter-ministerial meeting on February 2019, those investigations are still open.
- (67) The Commission finds that the unresolved civil and criminal cases against trade union leaders, and failure to conclude the independent investigations of the murders of trade union leaders, are in serious violation of the principles of the right to freedom of association enshrined in the fundamental ILO Conventions 87 and 98, and also of Articles 19, 21 and 22 of the ICCPR.
- (68) The Commission also considers that a new round of negotiations with the social partners to continue the revision of the Law on Trade Unions (LTU) should be launched without delay. The revision should prioritise the opening of the scope of the LTU to all workers and civil servants, the additional provisions to facilitate the registration of trade unions and employer associations, and the protection against all

³³

Id.

acts of anti-union discrimination with the objective of ensuring full compliance of the LTU with ILO Conventions 87 and 98.

3.2. Non-discrimination, land and housing rights (Articles 2(2) and 11(1) of the ICESCR)

(69) The Commission takes note of the information and update provided by Cambodia regarding land titles, including recognising the situation of the indigenous peoples in the country. The Commission notes that tangible progress has been made by Cambodia in resolving land disputes concerning economic land concessions in the sugar sector since the launch of the temporary withdrawal procedure. However, shortcomings still exist in the areas of land registration, titling provisions and the lack of appropriate and impartial review as well as addressing issues regarding the rights of the indigenous communities. Further efforts are needed in order to establish an appropriate legal framework to ensure transparent and inclusive mechanisms for the resolution of land disputes.

4. CONCLUSIONS

(70) Pursuant to Article 19(1)(a) of the GSP Regulation, tariff preferences under the preferential arrangements referred to in Article 1(2) of that Regulation may be withdrawn temporarily for reason of serious and systematic violation of principles laid down in the core human and labour rights UN/ILO conventions.

(71) Given the facts and considerations described under sections 2.1, 2.2 and 2.3, the nature of the rights infringed, and the duration, scale and the impact of Cambodia's actions and omissions, the Commission finds serious and systematic violations by Cambodia of the principles laid down in Articles 19, 21, 22 and 25 of the ICCPR.

(72) Consequently, and having considered Cambodia's comments and views, the Commission considers that the preferential arrangement granted to Cambodia should be withdrawn temporarily until it is decided that the reasons for justifying the withdrawal no longer apply.

(73) In assessing which products should be affected, the Commission takes into account the economic development needs of Cambodia and the objectives of the GSP Regulation, including the need for Cambodia to diversify its export base. The Commission furthermore takes into account the socio-economic impact of the withdrawal, including the impact on workers and industries.

(74) The Commission also takes into account the progress made by Cambodia since the initiation of the temporary withdrawal procedure. Finally, the Commission notes the positive cooperation with Cambodia throughout the process.

(75) Therefore, the Commission concludes that tariff preferences under the GSP Regulation should be withdrawn in respect of certain products originating in Cambodia. These products fall under the following Harmonized System ("HS") codes: 1212 93, 4201 00, 4202, 4203, 4205 00, 4206 00, 6103 41, 6103 43, 6103 49, 6105, 6107, 6109, 6115 10, 6115 21, 6115 22, 6115 29, 6115 95, 6115 96, 6115 99, 6203 41, 6203 43, 6203 49, 6205, 6207, 6211 32, 6211 33, 6211 39, 6211 42, 6211 43, 6211 49, 6212, 6403 19, 6403 20, 6403 40, 6403 51, 6403 59, 6403 91, 6403 99, 6405 and 6406.

(76) The Commission will continue to monitor the situation in Cambodia, including on the issues of civil and political rights, labour rights, and land and housing rights. The Commission may amend the withdrawal of tariff preferences. Should Cambodia fully address the issues raised in this delegated regulation, the Commission may reinstate the tariff preferences in accordance with Article 20 of the GSP Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 978/2012 is amended as follows:

- (1) In Annex II, under the heading “Beneficiary countries of the general arrangement referred to in point (a) of Article 1(2) which have been temporarily withdrawn from that arrangement, in respect of all or of certain products originating in these countries” the text and table are replaced by the following:

“Column A: alphabetical code, in accordance with the nomenclature of countries and territories for the Union external trade statistics

Column B: name

Column C: HS Codes of the products in respect of which the tariff preferences referred to in point (a) of Article 1(2) have been temporarily withdrawn

A	B	C
KH	Cambodia	4201 00, 4202, 4203, 4205 00, 4206 00, 6103 41, 6103 43, 6103 49, 6105, 6107, 6109, 6115 10, 6115 21, 6115 22, 6115 29, 6115 95, 6115 96, 6115 99, 6203 41, 6203 43, 6203 49, 6205, 6207, 6211 32, 6211 33, 6211 39, 6211 42, 6211 43, 6211 49, 6212, 6403 19, 6403 20, 6403 40, 6403 51, 6403 59, 6403 91, 6403 99, 6405, 6406”

- (2) In Annex IV, after the first table under the heading “Beneficiary countries of the special arrangement for the least-developed countries referred to in point (c) of Article 1(2)”, the text and table are replaced by the following:

“Beneficiary countries of the special arrangement for the least-developed countries referred to in point (c) of Article 1(2) which have been temporarily withdrawn from that arrangement, in respect of all or of certain products originating in these countries

Column A: alphabetical code, in accordance with the nomenclature of countries and territories for the Union external trade statistics

Column B: name

Column C: HS Codes of the products in respect of which the tariff preferences referred to in point (c) of Article 1(2) have been temporarily withdrawn:

A	B	C
KH	Cambodia	1212 93, 4201 00, 4202, 4203, 4205 00, 4206 00, 6103 41, 6103 43, 6103 49, 6105, 6107, 6109, 6115 10, 6115 21, 6115 22, 6115 29, 6115 95, 6115 96, 6115 99, 6203 41, 6203 43, 6203 49, 6205, 6207, 6211 32, 6211 33, 6211 39, 6211 42, 6211 43, 6211 49, 6212, 6403 19, 6403 20, 6403 40, 6403 51, 6403 59, 6403 91, 6403 99, 6405, 6406”

Article 2

The temporary withdrawal referred to in points (1) and (2) of Article 1 does not apply with respect to imports of products that are already on the way to the Union on [*Publications Office, please insert the date of application of this Delegated Regulation in accordance with Article 3(2)*], provided that the destination of such products cannot be changed. In this case, a valid supporting document under the form of a bill of lading will be required.

Article 3

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [*Publications Office, please insert the date when this Delegated Regulation applies, namely six months after its adoption*].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12.2.2020

For the Commission
The President
 Ursula VON DER LEYEN