Commission Delegated Regulation (EU) 2020/550 of 12 February 2020 amending Annexes II and IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council 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

COMMISSION DELEGATED REGULATION (EU) 2020/550

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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 732/2008[(1)], 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19(1)(a) of the GSP Regulation, the preferential arrangements referred to in Article 1(2) of the GSP Regulation may be withdrawn temporarily in respect of all or certain products originating in a beneficiary country, for reasons of serious and systematic violation of principles laid down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

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/550. (See end of Document for details)*

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:

— 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 power[(3)].

(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 trial[(4)].

(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 Sokha[(5)].

(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 seats[(6)]. The dissolution of the CNRP left the country without any credible opposition ahead of the 29 July 2018 national elections in which 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 process[(8)].

(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 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 representative s* '[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 councillors[11].

(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 CNRP[12] 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 motivated[14] 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.