

A Successful Failure

Examining the EU Human-rights Sanctions Against Cambodia

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ABSTRACT

Due to the emergence of serious human rights violations by the Cambodian government, the European Commission has decided to temporarily revoke Cambodia's current tariff preferences. It is undeniable that the EBA tariff preferential measures have promoted the rapid development of the Cambodian economy, but the EBA plan is not only an economic and trade method. It is tied to political conditions and contains the transmission of values such as human rights and democratic principles. With such a disparity between the two sides' forces, how the underdeveloped countries defend their democratic rights has become an urgent problem to be solved. In this regard, this article first gives a brief overview of Cambodia's political and economic background, briefly defines the EBA plan's conceptual content, and then further explains the evolution of the European Union's sanctions imposed on Cambodia. Finally, analyze the impact of these sanctions on Cambodia based on human rights issues. It is undeniable that the European Union's withdrawal of the EBA tariff preference program has a negative impact on Cambodia's economic development. Cambodia has not succumbed to the European Union but chose to safeguard national sovereignty. From a third-party perspective, sanctions can provide a certain degree of reference for improving human rights and labor rights in Cambodia, which is conducive to its positive development.

Keywords: European Union, Cambodia, Sanctions, Human Rights.

1. INTRODUCTION

In 2018, Human Rights Watch released a report that determined that the "dirty dozen" of 12 generals constituted the backbone of Hun Sen's abusive autocratic rule in Cambodia and made it possible through serious and systematic violations of human rights. In response, the parliamentarians called on the European Commission and the European External Action Service (EEAS) to review Cambodia's obligations under Article 19 of the Everything But Arms (EBA) Regulations. They emphasized, "If Cambodia acts in violation of its obligations under the EBA, it must temporarily revoke the tariff preferences it currently enjoys [1]." The EBA is a tariff preference measure under the European Union's Generalized System of Preferences (GSP). Cambodia has obtained unilateral tariff preferences and quotas for all products except weapons and military supplies due to its status as a least developed country. The rapid economic

development and the road to the world's factory have played an important role [2].

Based on the unequal power relation between the EU and Cambodia, we are curious about whether the economic sanctions imposed by the EU on Cambodia have achieved the results expected by the EU and whether they can truly achieve the goal of improving Cambodia's human rights. The EU prefers Cambodia's EBA, not only because of mutual economic profits but also contains the transmission of values such as human rights and democratic principles. Few scholarly works examine whether trade sanctions fulfill the initial purposes. In contrast, many works on the sanction by the EU against Cambodia, and our article is aimed to fill this gap. Additionally, we hold that relatively weaker Cambodia can shed light on the policy implications for developing countries to endure sanctions by economically advanced countries, explaining the legitimacy of trade sanctions.

Still, there is little information about Cambodia's response to EU trade sanctions and whether it is actively responding to it. In a practical sense, in the face of a powerful economy like the European Union, with such a disparity in power, how can underdeveloped countries speak out to defend their democratic rights and interests internationally, and how international organizations promote economic trade between countries and safeguard democracy and human rights have become issues that need to be resolved urgently.

The EU used economic and trade pressure to force Cambodia to improve human rights, but Prime Minister Hun Sen rejected the EU proposal. We believe that when a weak country faces strong economic and trade pressures when facing sanctions from a strong country, the weak country can stick to its principles and hear about trade sanctions through the Cambodian case. As long as the weak country's government has a firm stand and attitude, Put the autonomy and freedom of political power in the first place, and have a solid foundation of governance [3].

2. LITERATURE REVIEW

2.1. Sanction & Economic Sanction

The theory of sanctions has a long history, beginning with Ancient Rome. Sanctions have a wealth of research results in Western academic circles, especially economic sanctions. Among them, Hufbauer [4] and Oxenstierna [5] focused on the effectiveness of economic sanctions but lacked analysis and research on sanctions and economic sanctions themselves.

Elliott believes that the motives behind the use of sanctions parallel the three basic purposes of national criminal law: to punish, deter, and rehabilitate. A sender country tries to inflict costs on its target in two main ways: (1) trade sanctions that limit the target country's exports or restrict its imports, and (2) financial sanctions that impede finance, including reducing aid. Governments that impose limits on target countries' exports intend to reduce their foreign sales and deprive them of foreign exchange. Governments impose limits on their exports to deny critical goods to the target country [6].

Klimova paid attention to the application of sanctions and their anti-sanction effects. Igor Leonidovich Vorotnikov and others started from the economic sanctions and analyzed their concepts, classifications, conditions, influencing factors, and consequences of economic sanctions. Sanctions are certain restrictive measures against certain states, separate companies, or individuals used to respond to any action. The obstacles for their activities created in this way can affect certain areas of development and the economy's sphere and be inclusive. Restrictions, obstacles, and difficulties to activities caused by sanctions are manifested at all levels of economic management. Their main goal is to create adverse conditions for the country's economy, its subjects

at the federal and regional levels, thereby calling them to change the chosen strategy [7].

Hufbauer believes that economic sanctions are deliberate, government-inspired withdrawal, or threat of withdrawal, of customary trade or financial relations with political goals.

At present, EU sanctions literature is shaped by a primary research interest in explaining the (effective) use of sanctions in the EU's Common Foreign and Security Policy, given the EU's preferences. Only when the EU wants to take action and decides to implement joint sanctions can it take sanctions as a foreign policy measure. States and regional organizations like the European Union (EU) now cooperate in various policy fields, including environment, trade, justice, and home affairs. Such policy cooperation provides external actors with a catalog of options for imposing sanctions, meaning that sanctioning is no longer restricted to violations of purely political or economic norms [8].

Many studies on EU sanctions are based on specific cases, such as EU sanctions on Russia [9], EU sanctions on Myanmar, and EU sanctions on Rwanda [10]. The sanctions on the EU and Cambodia are relatively blank. EU's and US's sanctions on Cambodia have negatively affected Cambodia's economy. The garments and footwear value-added loss potentially reduce Cambodia's GDP. This was due to the potential loss of Cambodia's export of textile, clothing, and footwear with full tax payments of the products imported to the EU and US.

2.2. Development Aid in Cambodia

It is undeniable that development aid has had a great positive impact on relatively backward countries under certain conditions and has greatly accelerated the development of third world countries. But blindly assisting rather than formulating plans to enable the aided countries to achieve self-sustainable development is often not conducive to the sustained and stable economic development of the third world countries and the self-realization of political interests. Therefore, what matters is not whether development assistance is needed but how it is provided.

Historically, Cambodia's rapid development in recent years has largely relied on EU assistance. This means that after the EU withdrew its aid measures, Cambodia did not gain the autonomy of its own development. The donor countries have signed preferential trade agreements with the least developed countries to give the least developed countries priority access to their markets by cutting tariffs on export products. However, the effectiveness of these agreements in promoting the economic and trade development of the least developed countries depends on the nature of the agreements. The following literature reviews summarize the relevant discourses on development assistance and explain Cambodia's position

in the EU in terms of dependence and the factors affecting Cambodia's response to EBA withdrawal.

Since 1993, Cambodia's development assistance program has been mainly led by donors in its planning, design, and implementation. Development plans supported by Official Development Assistance (ODA) usually have little to do with the governments of the recipient countries. As the implementation of aid projects becomes more complicated, the sustainability of the economy and trade after implementing the project is threatened [14]. Berg criticizes aid-led development Nature of assistance. He believes that excessive supply of aid leads to inefficient aid distribution and weak ownership of aided countries, which further promotes dependence on aid, weakens the autonomy of aided countries' political decision-making and economic development, and stifles economic growth [11].

Cambodia's scarcest resource is educated, highly qualified people moving from local businesses to donor-owned enterprises or organizations for employment, and incentives for employees to be the driving force for donors, thereby helping donors implement foreign policies in their national interest [12]. Knack's case study found a negative correlation between aid dependency and the quality of governance, noted: "Aid dependence worsens quality of governance by weakening institutional capacity, siphoning off scarce talent from the bureaucracy, weakening accountability, encourages rent-seeking and corruption, stimulating conflict over control of aid funds, and alleviating pressures to reform inefficient policies and institutions [13]."

In response, the World Bank's report entitled "Cambodia at the Crossroads" included "Improving aid efficiency", which states, "There is much that donors can and should do to make their assistance to Cambodia more effective. There are numerous examples of how donors have behaved, individually and collectively, which result in inefficient and ineffective aid; or even make things worse by contributing to (or exacerbating) a culture of corruption and patronage in the use of public resources. Corruption is the result of Cambodia's past, and a high level of reliance on aid programs only exacerbates corruption. The deep-rooted integration of corruption into Cambodia's political system and social life not only fuels its dependence but also explains why the EU is deadlocked in withdrawing its EBA policy.

Trade depends on sustainable industries in the least developed countries. Gradeva and Martinez-Zarzoso point out that the GSP program does not necessarily cover all products. At the same time, countries tend to produce the most profitable products rather than the most productive ones. For industries with little unplanned growth potential, the industry could collapse if trade preferences are withdrawn from the country's main export markets. For Cambodia, the least developed country, it is difficult for large numbers of unemployed

people to move to other industries because of their low skill levels due to the low skill level of workers. For the time being, the export and national income of the least developed countries depend on these trade preference schemes, which give them an advantage in entering the EU market because of tariff preferences and preferential trade schemes for inefficient industries.

There are two points of contention regarding trade preference schemes as a means of development. On the one hand, the trade preference scheme is dominated by developed countries, which means that developed countries are free to design programs tailored to their interests. This has led to the least developed countries facing almost no security guarantees or institutional constraints in terms of the duration and content of the plan. On the other hand, these plans are usually subject to a range of conditions, including political issues not related to economic and trade, which can be temporarily withdrawn at any time. For example, the EBA program includes a sweet section that allows the EU to be in "serious and systematic violations of principles as laid down in certain international conventions concerning core human rights and labor rights, to promote the objectives of those conventions." The unequal of these agreements translate these plans into a bundled aid that binds trade preferences to political purposes. Cambodia's main problems in export markets are emerging, such as lack of supply capacity, high production, poor infrastructure, inefficient skills, lack of ownership, and threats to the political environment [14]. This makes it difficult for Cambodia to achieve its own sustainable development.

3. DATA SOURCE

Today is we better inform the research. We collect and integrate relevant evidence on the EU sanctions against Cambodia from various sources. In this section, we will clarify what sources this research includes.

On the official website of the European Commission, we found Trade Commissioner Phil Hogan's explanation of the positive effects of the EBA procedure and his expectations for the improvement of human rights in Cambodia. The data are listed to illustrate the importance of EBA to Cambodia's economic development [15].

On the WTO website, we found that the purpose of Aid for Trade is to help developing countries, especially the least developed countries, build the trade capacity and infrastructure they need by seeking additional resources for Aid for Trade [16].

According to the World Bank, we found that the Cambodian economy has maintained a relatively rapid growth rate in the past two decades, but last year was hit by the COVID-19 impact and the withdrawal of the EBA initiative, resulting in negative economic growth in Cambodia [17].

On the NIKKEI Asia, the withdrawal of the EBA plan will exacerbate the economic crisis caused by COVID-19 in Cambodia [18].

Deutsche Welle's website announced that although the EU is Cambodia's largest trading partner and Cambodia's rapid economic growth has benefited from the EU-led EBA preferential treatment, Cambodia opposes the official sanctions and claims that safeguarding independent sovereignty is more important [19].

From the Diplomat website, we can see that the source of the legitimacy of a country's ruling party is economic development. However, according to World Bank data, it is found that the source of the legitimacy of the ruling party in Cambodia is not only economic development but also factors such as the party's historical foundation and personality cult [20].

4. BACKGROUND

4.1. Cambodia's economic and trade situation

Cambodia belongs to the middle and low-income economy newly classified by the World Bank [21]. According to the data of the World Bank, in current US dollars, Cambodia's GDP increased from \$11.24 billion in 2010 to \$27.09 billion in 2019, with an average annual growth rate of 10.3%, and per capita GDP increased from \$785.5 to \$1643.1, with an average annual growth rate of 8.5%. According to the chart set method, US dollars' current per capita GNI increased from \$750 to \$1,480. According to the World Economic Forum's Global Competitiveness Report 2019 and the World Bank's Business Environment Report 2020, Cambodia ranks 106th and 144th among 141 and 190 economies in the world.

According to the statistics of the Association of Southeast Asian Nations Secretariat, the total import and export volume of Cambodia's goods trade increased from \$8.60 billion in 2010 to \$34.58 billion in 2019, with an average annual growth rate of 16.7%, among which exports increased from \$3.83 billion to \$14.84 billion, with an average annual growth rate of 16.2%. Imports increased from \$4.78 billion to \$19.74 billion, with an average annual growth rate of 17.1%. The total import and export volume of service trade increased from \$3.11 billion to \$8.50 billion in 2018, with an average annual growth rate of 13.4%, among which exports increased from \$2.03 billion to \$5.45 billion, with an average annual growth rate of 13.1%, while imports increased from \$1.08 billion to \$3.04 billion, with an average annual growth rate of 13.8%. The Foreign direct investment absorbed increased from \$780 million to \$3.71 billion in 2019, with an average annual growth rate of 18.9% [22].

4.2. EBA's importance to Cambodia

The EU is Cambodia's largest trading partner due to the preferential treatment of EBA. Generally speaking, for Cambodia, the EBA has played a key role in Cambodia's unprecedented economic growth and has a positive trade impact on the whole. Since 2009, the EU has replaced the original Southeast Asian market and become the main export destination of Cambodia. Cambodia's exports to the EU have greatly increased, and now it has become the second-largest beneficiary of the EBA, accounting for about 45% of Cambodia's total exports. The main export of Cambodia to the EU is the clothing industry, which accounts for 20% of Cambodia's total exports to the EU market every year, with a value of about \$1 billion euros, of which 95.7% enjoy EBA treatment. Still, Cambodia accounts for less than 0.3% of EU trade imports.

Suppose the EU suddenly cancels EBA treatment in Cambodia. In that case, the increase in tariffs will weaken the competitiveness of Cambodian goods exported to Europe and affect Cambodia's pillar industries-clothing and footwear, which can accommodate about 700,000 people for employment and indirectly affect 3 million people [23]. If it is not properly handled, economic growth will slow down, and the unemployment rate will rise, which will definitely have a negative impact on Cambodia's social stability.

4.3. Conditions for the EU to impose sanctions

The "Enabling Clause" under the WTO rules system makes developed economies launch the GSP for developing countries or least developed countries, and the preferential trade arrangements of these GSP become an exception to the principle of "most favored nation treatment [24]." The United States and the European Union link the GSP with human rights conditions and use restrictive conditions to link business objectives with political interests [25]. The GSP has formed the topic of "trade-human rights" through its connection with respect for human rights and fundamental freedoms, making the GSP's preferential trade treatment conditional on human rights.

The GSP scheme was allowed for the first time in 1965 to allow developed countries to give unilateral and non-reciprocal tariff preferences to developing countries [26]. The EU Generalized System of Preferences comprises three different branches: standard GSP, GSP, and EBA. The standard GSP applies to all developing countries, which need to obtain 66% tax reduction or exemption of EU tariff details on the condition of complying with United Nations/International Labour Organization core human rights and labor rights conventions. The GPS is suitable for vulnerable developing countries, which need to meet the applicable conditions of standard GPS and abide by conventions

related to environmental and governance principles to obtain 66% tax exemption for EU tariff details. The EBA applies to the least developed countries, which need to obtain tax exemption and deduction for all exports except weapons and armaments on the condition of complying with the United Nations/International Labour Organization core human rights and labor rights conventions [27].

Evidently, EBA belongs to a branch of the GSP, which was implemented globally by the EU in 2001. There are three important differences between the EBA and other branches of the GSP: first, it provides the least developed countries with wider market access to almost all products, Second, it gives all least developed countries duty-free and quota-free access to the EU market equally, Third, it has no time limit, while the implementation period of other GSP schemes is 10 years [28]. As far as the benefits and conditions of the three branches of the GSP are concerned, the EBA is the most preferential and obtains the highest double exemption preferential treatment with the most basic applicable conditions.

At the same time, it should be noted that trade preference, as a contributing factor to promoting human rights, social justice, environmental protection, and other values, is a necessary component of the European Commission's "shared trade" strategy [29]. The GSP has formed the topic of "trade-human rights" through its connection with respect for human rights and fundamental freedoms, making the EBA's preferential trade treatment conditional on human rights. The applicable conditions of the EBA are political conditions. When there is a "serious and systematic violation" of these rights conventions, the EU can withdraw EBA preferential treatment.

4.4. EU Sanctions against Cambodia

Facing the unsynchronized development of Cambodia's trade and human rights, the EU responded based on the EBA human rights conditions, mainly on the dual track of contact and dialogue and launching sanctions mechanism. Facing the deterioration of Cambodia's human rights norms, to promote Cambodia to take concrete improvement actions and sustainable solutions, the EU first adopted enhanced contacts in the form of constructive dialogue. In the enhanced contact period, in December 2017, the European Parliament passed a "resolution" calling on the European Commission to temporarily withdraw Cambodia's EBA trade preferential treatment [30]. In February 2018, the Foreign Affairs Council of the European Union adopted a "conclusion" on Cambodia, urging Cambodia to take some improvement measures, otherwise targeted sanctions will be imposed [31].

The Council of the European Union also requested the European Commission to enhance its supervision of

Cambodia's human rights normative development obligations. From July 5 to 11, 2018, an EU investigation team from the European Commission and the European External Action Agency visited Cambodia to assess Cambodia's compliance with human rights obligations and then held a series of bilateral meetings at the highest level. In the face of EU pressure, the Cambodian government made some concessions, such as the release of opposition leader Gensoka in September 2018. In January 2019, the Article of the Political Parties Law was amended so that more than 100 senior members of the Cambodian National Salvation Party were allowed to apply to the authorities to resume political activities; remove certain restrictions on civil society activities and trade union activities; lift the ban on Voice of America and other radio stations [32]. Obviously, Cambodia's concessions are not enough to bring about sustainable improvement or solve the core human rights concerns of the EU.

After investigation, dialogue, and contact, the European Commission concluded that there is serious and systematic evidence of a violation of Cambodia's core human rights and labor rights. The reform of the EBA in 2012 improved the EU's monitoring mechanism for the beneficiary countries' compliance and effective implementation of relevant international conventions, especially in the case of serious and systematic human rights violations. The EU can withdraw its trade preferences. Therefore, under the situation that the effect of enhanced contact dialogue is not ideal, EU Trade Commissioner Malmstrom and EU High Representative for Foreign Affairs Mogherini agreed that Cambodia's "human rights and labor rights have obviously deteriorated, and there is no obvious and credible improvement [33]." In October 2018, the European Union started the internal process of withdrawing Cambodia's EBA trade preference. In January 2019, the Council of the European Union agreed to the proposal of the European Commission to open the withdrawal procedure. On 11th February 2019, the European Union stated that EBA was in danger, and the European Commission started the procedure of temporarily suspending the preferential treatment of EBA in Cambodia [34]. Of course, during this process, the EU still maintains enhanced contacts with Cambodia because the EBA preferential suspension procedure has a long cycle, and the EU hopes that Cambodia can effectively improve the human rights violations after pressure.

5. THE OUTCOMES

5.1. The Impact of the Sanctions

It is undeniable that the EBA program has enabled Cambodia to gain a competitive advantage, promote economic development, and create employment opportunities. Therefore, most people believe that if the "EBA" is canceled, Cambodia will experience a serious

economic crisis in many industries. The first is Cambodia's clothing industry and tourism products. The rapid decline in purchase orders from Europe has led to the closure of hundreds of factories and many workers. Unemployment has exposed thousands of Cambodian families to unprecedented risks and has dealt an even harder blow to industries that have been paralyzed by the COVID-19 pandemic [35].

But at the same time, some people believe that due to Cambodia's cheap labor advantages, most prospective buyers have little choice in changing alternative directions. And even if there is no human rights dispute, Cambodia will no longer enjoy the "EBA" treatment in the future because it is expected that Cambodia's status as a least developed country will change by 2025. The EBA tariff preferential treatment obtained based on this will eventually be canceled.

5.2. The failure of EU sanctions

The human rights conditionality of EBA makes EU hope to use trade tools to promote the development of human rights norms in Cambodia. Still, the reality is that the EU confirmed three main problems in Cambodia's human rights situation: First, in terms of political rights, the space between the opposition and civil society has shrunk. Hun Sen and his "Cambodian People's Party" (CPP) have been in power since 1985, suppressing the opposition and the media, and using their ruling status and influence, banned the opposition party, the National Salvation Party, arrested the leader of the party, and banned the party chairman Shen Liangxi from returning home, and prohibited other major members of the party from participating in political activities. Secondly, in terms of labor rights, the use of strike rights by independent trade unions and employees is systematically harassed. The Cambodian government has failed to protect the garment workers who produce garments for international brands from serious human rights violations. Clothing workers, whose majority are women, face problems such as forced overtime, pregnancy discrimination, and obstruction of trade unions. Still, the government and major brands have not properly dealt with them [36]. Finally, "Economic Land Concessions" leads to "land-grabbing", especially in the sugar sector. With the development of the sugar industry, forced migration such as land grabbing constitutes a wide range of human rights violations [37]. In 2012, the United Nations Special Rapporteur on human rights in Cambodia concluded that Cambodia "has well-recorded, serious and extensive human rights violations related to specific franchise rights [38]."

Facing the deterioration of Cambodia's human rights norms, to promote Cambodia to take concrete improvement actions and sustainable solutions, the EU first adopted enhanced contacts in the form of constructive dialogue. After investigation, dialogue, and

contact, the European Commission concluded that there is serious and systematic evidence of a violation of Cambodia's core human rights and labor rights. It can be seen that Cambodia's human rights issues really deserve attention, and it is reasonable for the EU to cancel the EBA policy on this ground. The sanctions imposed by the European Union did have an impact on Cambodia's economy. Still, this behavior of linking the GSP with human rights conditions and combining commercial objectives with political interests by using restrictive conditions did not make the development of Cambodia's human rights situation as expected by the European Union.

6. CONCLUSION

We mainly discuss whether the sanctions imposed by the EU to improve Cambodia's human rights problems can meet the expectations of the EU. At the same time, whether the revocation of EBA has a great impact on Cambodia's development, especially on the economic and trade fields. If it is a positive impact, what opportunities will it bring to Cambodia's development? Based on the relevant evidence collected and integrated from different sources about the EU sanctions against Cambodia, we think that the EU sanctions have failed. It has not achieved its goal of improving Cambodia's human rights problems, at the same time, it has brought greater pressure and unfavorable situation to Cambodia's economic and trade development. However, EU sanctions also have positive effects. With the increasing proportion of Cambodia's national autonomy and the existence of effective external incentive substitution, Cambodia has a bargaining chip for the EU, which may threaten the EU's decision-making; At the same time, Cambodia, as an important part of Southeast Asia's economy, can turn its attention from a single EU to a wider Asia, to make the domestic market flourish while increasing foreign trade selectivity, and continuously consolidate Cambodia's importance in geopolitics.

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