

EP INTA hearing on sustainable development chapters in trade agreements

Judith Kirton-Darling, 27 November 2013

Thank you for the invitation to the ETUC to present our views on the EU's approach to labour and environmental criteria in trade and investment agreements. We are keen that the practical experience gained in recent years informs EU policy and that EU negotiators address the weaknesses found in practice.

Currently we have 4 main examples: Korea and Colombia-Peru as examples of new generation bilateral agreements (with Singapore to join once ratified), Central America Community as a new Association Agreement, and the Cariforum agreement as the only concluded EPA. Each agreement has created a different framework for monitoring and engagement with stakeholders. As more agreements are concluded the more complex for trade unions and others to act effectively.

Of these 4 agreements, the Korea agreement is by far the most developed. It is considered EU best practice, but this is largely because it is our only real practice to date. The provisions are included in article 13 of the agreement. We are represented in the EU Domestic Advisory Group (DAG) and the joint Civil Society Forum (CSF) which is composed of members of the EU and Korean DAGs. These provide mechanisms for monitoring the application of the Chapter - in addition to the official Committee on Trade and Sustainable Development (CTSD).

We welcome the inclusion of the EU social partners and of NGOs in these bodies, as well as the participation of the EESC – which provides the secretariat as well as some members of the DAG.

A number of problems have arisen on the Korean side: while the FTA insists that members should be independent and representative, there are issues about the non-inclusion of some representative trade union and other organisations in the Korean DAG, while there is a reliance on academic representation and some members linked to the government.

The respective DAGs provide reports at the request of the CTSD, as well as on their own initiative, and for the first substantive meeting of the CSF in Seoul last September the EU DAG tabled two reports: one on “Fundamental rights at work in the Republic of Korea, identification of areas for action”; and the other on “The green economy and trade in the context of sustainable development”.

The EU side was particularly critical of the Korean Government’s resistance to ratifying and fully implementing the relevant ILO conventions, and at its negative attitude towards the ILO generally. It was clear, however, that the Korean DAG –except for one or two members- was supportive of the Government.

The Korean Government refused to invite the CSF co-chairs to address a meeting of the CTSD -which was being held back-to-back with the CSF- despite a request from the EU officials. They did send representatives to the CSF meeting but, in the view of the EU delegation, their responses were evasive and not in keeping with the spirit and letter of Chapter 13, which stresses “commitment” and “cooperation”.

We are also concerned that meetings of the CTSD will be very infrequent: the next one isn’t planned before 2015. This doesn’t demonstrate the necessary commitment. We see no change in the Korean Government’s attitude, and the fact that it recently banned the teachers’ union shows that we are not having much

of a restraining effect at the moment.

The EU DAG at their next meeting, in December, will discuss how to pursue the matter further.

While there is a welcome procedure involving an independent group of experts to examine complaints that Chapter 13 isn't being applied, the chapter is delinked to the dispute settlement procedures of the FTA. That means that while the experts can provide a report, there are no means to ensure enforcement of any recommendations. Here the expertise of the ILO should always be included.

In CETA, whilst the negotiations are continuing, the Canadian government have reported that the chapter will include "dispute-settlement provisions up to the level of a review panel, which can issue recommendations". Once again not a word about what happens once the recommendations are tabled. Certainly no hint of enforcement. Because nothing is envisaged. That is the "EU approach", according to leaked Commission internal appraisal of CETA.

This is a critical flaw in the process. The EU insists that it will not include "sanctions" in relation to the Sustainable Development provisions and that it will only work through "incentives". This is a naïve approach which will not overcome obstructionist attitudes.

Just 2 weeks ago visitors from the official Vietnamese unions were clearly baffled at the naivety of the EU at not pressing for concrete measures to guarantee that undertakings on labour rights are met – unlike the proposals in the TTP talks in which they are also involved.

We are particularly concerned that, if this policy is maintained –

notably in any investment treaty with China- the good intentions of including labour and environmental dimensions to such agreements will have no effect. We urge that in current discussions in the TTIP –and indeed CETA, which we understand is still possibly open to review on this subject- the EU should adapt its approach to ensure that we have a “gold standard” chapter on enforceable labour rights and environmental protections that can then be extended to other agreements and, perhaps, in the multilateral sphere. A ‘belt and braces’ approach with the carrot of dialogue and the stick of sanctions and enforcement.

Labour rights should not be limited to the ‘sustainable development’ chapter, e.g. if EU agreements increasingly include investment protection, we believe they should also include an investor responsibility to respect the OECD multinational guidelines as a precondition for protection of investments. ETUC is opposed to ISDS – and where it exists, social, labour, public health and environmental protection amongst others, should be excluded.

Together with the ITUC, we have prepared joint Principles for Labour Chapters in Trade Agreements which should be included, as a minimum, in labour chapters in all free trade agreements, including recommendations on commitment levels, labour dispute settlement systems and the Institutions for Cooperation on Labour. These are available.

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Commitments

1. Parties commit to adopting and maintaining in their national laws and regulations, including those issued by sub-national structures, the following fundamental labour rights

conventions developed by the International Labour Organisation:

- No. 87, on Freedom of Association and Protection of the Right to Organise
- No. 98, on the Right to Organise and Collective Bargaining
- No. 100, on Equal Remuneration
- No. 111, on Discrimination (Employment and Occupation)
- No. 138, the Minimum Age Convention
- No. 182, on the Worst Forms of Child Labour
- No. 29, the Forced Labour Convention
- No. 105, the Abolition of Forced Labour

2. In order to effectively maintain and guarantee the fundamental labour rights, parties commit to maintain in their national laws and regulations, including those issued by sub-national structures, adherence with the following governance conventions developed by the International Labour Organisation:

- No. 81 Labour Inspection Convention
- No. 122 Employment Policy Convention
- No. 129 Labour Inspection (Agriculture) Convention
- No 144 Tripartite Consultation (International Labour Standards) Convention

Parties commit to acceptable conditions of work with respect to wages (including minimum wages, overtime, and legally or contractually required bonuses), hours of work, occupational safety and health, workers representatives, termination of employment, compensation in cases of occupational injuries and illnesses, and social security and retirement.

Commitments on acceptable conditions of work have regard

to ILO Conventions and Recommendations.

4. The chapter includes non-derogation provisions which prevent parties from weakening or waiving core labour standards and acceptable conditions of work from labour laws.

5. The chapter establishes a system of identifying and preventing the importation of products made with forced labour and child labour in its worst forms.

Labour Dispute Settlement

6. Labour disputes are pursued through the agreement's general dispute settlement mechanism, taking into account the following principles:

- Clearly defined stages of procedure including time frames
- A submission process open to any person of any party to the agreement, including foreign governments, against a government or sub-national entities that violate the labour standards outlined in the agreement
- Established review and investigation procedures with the participation of trade unions that include public hearings and fact finding missions
- Cooperative consultations to develop action plans to address violations but in case of failure, arbitration with binding decisions
- Suspension of benefits, not monetary assessments

7. Sanctions must cause an effective suspension of trade benefits in the form of countervailing duties. In addition to sanctions, a decision may require an action plan that could include legislative and/or regulatory reform.

- Sanctions must be sufficiently stringent and commensurate to those duties prescribed for commercial abuses.
 - To this end, a sanction floor must be agreed in the form of a pre-agreed minimum countervailing tariff that increases with the severity of the violation:
 - Factors of aggravation (non-exhaustive) to be considered should include:
 - the nature and extent of the conduct which led to the breaches;
 - the nature and extent of loss or damage sustained as a result of the breaches;
 - whether the breaches were deliberate;
 - whether the breaches formed part of a sustained or recurring course of action or inaction on the part of the State;
 - any measures undertaken by the non-compliant party to address the violation.
 - Benefits suspension should first be targeted at the tariffs lines corresponding to the sector in which the violation(s) occurred, if any. In the case that the initial sanctions against the relevant tariff lines are not effective, sanctions should be broadened to include the tariff lines of a related sector or sectors. In case sanctions against related sectors are still not dissuasive (e.g., due to small trade volume, or for violations in the public sector), sanctions should target other sectors of the economy in addition to the sector where the violation occurred.
 - The violating party must refrain from all industrial subsidies and other measures aiming at nullifying the countermeasures.
 - The sanction should increase by 50% for every year of non-compliance.
8. Labour violations are actionable down the supply chain.

Institutions for Cooperation on Labour

9. The chapter includes institutions that guarantee government cooperation and continuous improvement of labour standards, including:

- A Labour Affairs Council consisting of cabinet-level officials from each country that meets regularly to oversee the implementation of the chapter and discuss regional labour issues
- A forum for the social partners that produces research and regular, independent reports on compliance with labour standards and identifies patterns of labour violations and recommendations for priority areas of cooperation
- Transnational Labour Councils where employers and workers of the same enterprise with a supply chain across trading parties address labour relations
- Labour Cooperation and Capacity Building framework that identifies and supports the implementation of technical assistance programs, officials' meetings, exchange of information on standards and regulations, joint development of research, joint conferences, exchanges on technology issues on – among others - fundamental rights at work and their effective application, labour administration and inspectorates, occupational safety and health
- In identifying areas for labour cooperation and capacity building and in carrying out cooperative activities, each Party shall consider the views of its worker and employer representatives, as well as the views of other members of the public.

10. In general the labour institutions should:

- Be appropriately resourced with regard to international

benchmarks

- Include genuinely tripartite governance and consultation structures
- Coordinate, where appropriate, with the ILO