

# Labour rights in EU trade agreements

## Towards stronger enforcement

### SUMMARY

Since 2008, when the European Union introduced elaborate sustainable development provisions into its agreement with the Cariforum group of states, provisions on labour rights and the environment have become a central part of most of the EU's subsequent trade agreements, the one with South Korea (2011) being the first to contain a dedicated chapter. These provisions continue to evolve: for instance, recent agreements with some of the EU's developed partners, such as Canada and the United Kingdom, now include additional obligations on safety and health at work.

The enforcement of these provisions has, however, numerous weak points, as exposed through the extensive involvement of civil society in the monitoring of trade agreements. There have been isolated cases of weakened social protection, despite the provisions on sustainable development that seek to prevent this from happening. A more systematic and broader problem is that some countries have not ratified the relevant International Labour Organization (ILO) conventions and have failed to apply the ILO fundamental principles in their national legislation and practice. Whether the lack of recourse to withdrawal of trade preferences in cases of breaches contributes to the persistence of this problem, remains however disputed.

The recently concluded dispute settlement procedure with South Korea helps clarify the legal implications of the relevant provisions contained in this agreement, and possibly in others. The report drawn up by the panel handling the dispute highlights the obligations of the parties to apply the ILO fundamental principles irrespective of their impact on trade, but takes a soft approach towards the obligation to ratify outstanding ILO conventions.

Proposals by Member States and various stakeholders include more precise and effective mechanisms such as phased tariff reduction linked to compliance with sustainable development objectives. The possibility of trade sanctions has not gained traction, as it does not fit well with the EU's emphasis on consultations and dialogue with its trade partners.



### IN THIS BRIEFING

- Background
- General structure of labour provisions in EU FTAs
- Dispute settlement
- Assessment and proposed reforms of the system

## Background

The growth of international trade has had both a positive and a negative impact on labour rights. For example, the expansion of transnational supply chains has contributed to job creation on a large scale, but has also driven a 'race to the bottom' in social standards in labour-intensive sectors such as [textiles](#). Overall, it remains a matter of debate<sup>1</sup> whether increased involvement in global value chains leads to an increase or decrease in wages and to better or worse working conditions in the respective sectors, but there is enough evidence of a positive effect in certain cases. On the other hand, developed countries fear that trade liberalisation could lead to [job losses](#), particularly in low-skilled economic sectors, due, among other things, to unfair competition by producers from countries where core labour standards are not respected. To deal with these and other potential impacts, trade has been increasingly seen as an effective tool for promoting sustainable social development. To this end, labour rights commitments are increasingly promoted by free trade agreements (FTAs) negotiated notably by the [US](#), Canada, the European Union and other G7 countries. According to an International Labour Organization (ILO) [publication](#), as of mid-2019, there were 85 regional trade agreements with labour provisions, representing almost one-third of the 293 regional trade agreements (RTAs) registered with the World Trade Organization (WTO) and in force at the time. More than half of these agreements featuring labour provisions have been concluded by G7 members. The EU had concluded the biggest number of such agreements compared to the rest of the G7.

Linking trade and labour standards is not an easy task. The protection of labour rights and the promotion of international trade still remain dissociated at the international level, with distinct legal frameworks and international organisations (chiefly the WTO and the ILO) dealing with them. Fundamental labour rights enjoy almost universal recognition in the world. Some 187 UN member states (out of a total of [193](#)) are also [members](#) of the ILO. Membership implies the recognition of the [ILO Constitution](#), which enshrines several fundamental principles of rights at work. Because not all ILO members have [ratified](#) the ILO core conventions on fundamental labour rights (no reservations are possible), in 1998 the [International Labour Conference](#)<sup>2</sup> (ILO assembly bringing together once per year governments', employers' and workers' representatives) adopted the [ILO Declaration on Fundamental Principles and Rights at Work](#) and its follow-up. This declaration reaffirms that all ILO members 'have an obligation arising from the very fact of membership in the Organization' to respect, promote and realise the principles concerning the fundamental labour rights defined in the core ILO conventions, even if they have not ratified these conventions. These principles concern, in particular, the freedom of association; the elimination of all forms of forced labour; the effective abolition of child labour; and the elimination of discrimination in employment and occupation. The signatories commit to respecting these principles. Despite this nearly universal endorsement, numerous shortcomings exist in practice.

Integrating labour standards in the WTO framework has been a controversial issue, because governments and other stakeholders in developing countries fear that labour rights provisions in FTAs erode these countries' competitive advantage. Concerns about labour standards lowering the competitive advantage of developing countries appear however overblown, as practice has shown that respect for labour rights can increase trade.<sup>3</sup> At the 1996 WTO [Singapore Ministerial Conference](#), WTO members committed to respect core labour standards but insisted that these should not be used for protectionist purposes. They [emphasised](#) that the ILO remains the competent body for negotiating labour standards.

The Treaty of Lisbon (2009) [strengthened](#) the legal basis allowing the EU to conclude new-generation trade agreements that go beyond mere tariff reductions and include sustainability provisions. According to Article 207(1) of the Treaty on the Functioning of the EU ([TFEU](#)), 'the common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action'. These are defined notably by [Article 21 of the Treaty on European Union \(TEU\)](#), which states that the EU has the duty<sup>4</sup> to develop external policies aimed at fostering 'the

sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty', as well as to encourage 'the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade'. Moreover, Article 9 TFEU commits the EU to integrate the pursuit of adequate social protection in all its policies. Labour rights are an important component of sustainable [social development](#), and achieving full employment and decent work is a [key objective](#) for fulfilling a number of important [sustainable development goals](#) to which the EU has subscribed. The EU's obligation to take into account labour rights in its trade policy also follows on from their partial overlap with human rights.<sup>5</sup> The EU has to promote human rights in all its relations with the rest of the world, including when pursuing trade-related objectives.

The EU has been including labour rights provisions systematically in its bilateral FTAs for over a decade. One of the first mentions of labour standards was made in the EU-South Africa free trade agreement (FTA) signed in 1999.<sup>6</sup> The [Cotonou Agreement](#) with the African, Pacific and Caribbean countries signed in 2000 (which at the time also included transitional provisions for trade, which expired at the end of 2007) contained references to labour standards in its Article 50 on Trade and Labour Standards. This article reaffirmed the commitment of the parties to the core labour standards defined by the relevant ILO conventions. The EU's economic partnership agreement (EPA) with the Cariforum group of countries signed in 2008 contains a more elaborate chapter on social aspects, outlining the main principles related to labour rights, which would subsequently feature in distinct sustainable development chapters, as first seen in the EU's FTA with South Korea (2011).

## General structure of labour provisions in EU FTAs

This section identifies<sup>7</sup> 13 free trade agreements concluded by the European Union and currently in force or provisionally applied (see Table 1), which contain chapters or elaborate provisions on sustainable development.<sup>8</sup> The EU's cooperation and partnership agreements with Armenia and Kazakhstan also contain such chapters but do not liberalise trade and therefore are not included.

Table 1 – EU FTAs containing a sustainable development chapter (or elaborate provisions)

Partner	Type of free trade agreement	Status
CARIFORUM group of countries	Economic partnership agreement	Provisionally applied since 2008
Central America	Association agreement	Provisionally applied since 2013
Colombia, Ecuador and Peru	Trade agreement	Provisionally applied since 2013
South Korea	Free trade agreement	In force since 2015
Georgia	Association agreement	In force since 2016
Moldova	Association agreement	In force since 2016
SADC EPA Group	Economic partnership agreement	Provisionally applied since 2016
Ukraine	Deep and comprehensive free trade agreement	Provisionally applied since 2016
Canada	Comprehensive economic and trade agreement (CETA)	Provisionally applied since 2017
Japan	Global agreement	In force since 2019

Singapore	Free trade agreement	In force since 2019
Vietnam	Free trade agreement	In force since 2020
United Kingdom	Trade and cooperation agreement	In force since 2021

Source: EPRS, based on the [FTAs list](#) published by the European Commission's DG Trade.

## Obligations related to international standards

All 13 analysed EU trade agreements with trade and sustainable development (TSD) provisions make reference to the ILO's Decent Work Agenda and to international standards, particularly the ILO core labour standards. A basic provision that appears with some variations in these agreements is that the parties commit or oblige to respect, promote and realise in their laws, regulations and practices the four internationally recognised principles concerning the fundamental rights at work, listed in the section above.

The commitment to respect these fundamental principles actually reaffirms the obligations related to ILO membership (as explained in the previous section) and applies irrespective of the ratification of the relevant ILO conventions.

### ILO Decent Work Agenda

Decent work has been enshrined in international human rights declarations, UN resolutions and declarations adopted by international conferences such as Article 23 of the Universal Declaration of Human Rights, the World Summit for Social Development (1995), the World Summit Outcome Document (2005), the Conference on Sustainable Development (2011) and the UN's 2030 Agenda for Sustainable Development (2015). The ILO promotes a [Decent Work Agenda](#) with four pillars – employment creation, social protection, rights at work, and social dialogue. These are also integral elements of the new 2030 Agenda for Sustainable Development.

### ILO fundamental conventions

Eight fundamental ILO conventions cover the four rights at work, listed in the ILO Declaration on Fundamental Principles and Rights at Work:

1. [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No 87\)](#)
2. [Right to Organise and Collective Bargaining Convention, 1949 \(No 98\)](#)
3. [Forced Labour Convention, 1930 \(No 29\)](#) (and its [2014 Protocol](#))
4. [Abolition of Forced Labour Convention, 1957 \(No 105\)](#)
5. [Minimum Age Convention, 1973 \(No 138\)](#)
6. [Worst Forms of Child Labour Convention, 1999 \(No 182\)](#)
7. [Equal Remuneration Convention, 1951 \(No 100\)](#)
8. [Discrimination \(Employment and Occupation\) Convention, 1958 \(No 111\)](#)

Most EU FTAs partners have already ratified all fundamental ILO conventions, but where this is not the case, the EU's FTAs commit the parties to making continued and sustained efforts to ratify the outstanding ILO fundamental conventions (see box above) and to effectively implement them in national laws, regulations and practices. The EU has not made their ratification a condition for the conclusion of agreements with its partners. FTA partners (see Table 2 below) which have not yet ratified all fundamental conventions include developed economies such as Japan, Singapore and South Korea. In this respect, FTAs do not impose the strong conditionality enshrined in the EU Generalised Scheme of Preferences (GSP) system, where ratification of the eight ILO fundamental

conventions (listed in the box above) is mandatory for getting access to the GSP+ strand. The conclusion of an FTA with the US (a project started under the Obama administration but stalled under Trump) would pose a particular [challenge](#) to the EU's ambition, since the US has only [ratified](#) two of the eight fundamental labour conventions.

The obligation to ratify ILO conventions has undeniably encouraged progress. For example, Vietnam ratified ILO Convention 98 on Collective Bargaining in June 2019 and adopted a revised Labour Code in November 2019; Vietnam further ratified ILO Convention on forced labour in July 2020. All these ratifications took place before or immediately after the [ratification](#) by the EU of this FTA, more precisely by the European Parliament in February 2020 and the Council of the EU in March 2020.

However, other partners are slow in ratifying the ILO conventions (see Table 2). In light of the existing case law (see box below on the dispute settlement between the EU and South Korea on obligations related to labour rights) the parties' commitment to ratifying ILO conventions appears open-ended (with no precise deadline), subject only to an obligation for making sustained efforts towards ratification. Consequently, this raises the question whether in future negotiations, ratification of all ILO fundamental conventions [before](#) the conclusion of the agreement should not become a condition for its conclusion, as advocated for example by [trade unions](#) or the [European Parliament](#). The effectiveness of the EU's recent [engagement](#) in the pre-ratification phase with Mexico (on ILO Convention 98), and, as explained above, with Vietnam, provides an argument in favour of this approach.

Table 2 – States parties to EU trade agreements or trade liberalisation negotiations, which have not ratified all ILO fundamental conventions

State	Status of agreement	Not yet ratified ILO fundamental conventions	Provisions in EU FTA
Andorra	Customs union since 1991	not an ILO member	
<a href="#">Australia</a>	Negotiated	C138	
<a href="#">Brazil</a>	Text finalised, but not ratified	C087	Continued and sustained efforts towards ratifying ( <a href="#">draft text</a> )
<a href="#">China</a>	Investment agreement on hold	C087 C098 C029 C015	Continued and sustained efforts on its own initiative to pursue ratification of the fundamental ILO Conventions No 29 and 105 ( <a href="#">draft text</a> )
<a href="#">Guinea-Bissau</a>	Awaiting ratification by all parties	C087	
<a href="#">Japan</a>	In place	C105 C111	Continued and sustained efforts on its own initiative to pursue ratification of the fundamental ILO conventions
<a href="#">Jordan</a>	In place	C087	
<a href="#">Kenya</a>	Awaiting ratification by all parties	C087	
<a href="#">Lebanon</a>	In place	C087	

Liberia	Awaiting ratification by all parties	C100 C138	
Liechtenstein	European economic area agreement	not an ILO Member	
Morocco	In place	C087	
New Zealand	Negotiated	C087 C138	
Republic of Korea	In place	C105	Continued and sustained efforts towards ratifying the fundamental ILO conventions
Saint Lucia	In place	C138	
Singapore	In place	C087 C105 C111	Continued and sustained efforts towards ratifying and effectively implementing the fundamental ILO conventions
Vietnam	In place	C087	Continued and sustained efforts towards ratifying the fundamental ILO conventions

Data source: ILO, DG Trade, EU agreements (text adopted or text as published by the Commission if not yet ratified).

The focus on fundamental labour rights has led to [criticism](#) that EU FTAs risk neglecting other areas of labour protection such as 'rights regarding fixed-term employment contracts, redundancy and layoffs, retirement, and maternity'. That said, several EU FTAs with developed partners (Canada, Japan, South Korea) commit the parties to also ratify ILO priority conventions<sup>9</sup> and/or other '[up to date](#)' [conventions](#). These cover aspects such as weekly rest, maternity protection, social benefits, and protection against unemployment, hygiene, medical examinations and others. Ratification of these conventions remains [low](#), with only nine countries in the world having adopted all four priority (governance) conventions.

A further important aspect is the effective incorporation of the fundamental principles and the ratified conventions in national law and practice, which is also an explicit obligation under the trade agreements. The commitments assumed by the EU and its partners have made positive impacts in practice. The European [Commission 2019 FTAs implementation report](#) mentions, for instance, Georgia as a good example of a country having undertaken labour reforms through amendments to the national labour legislation that were adopted in 2019, which brought it closer to respecting ILO fundamental standards.

A further provision to be found in all analysed EU agreements prevents using labour norms as a form of trade protectionism (which would be a breach of WTO norms under GATT). According to this provision, the parties should not use their respective environmental or labour laws and regulations in a manner that would constitute a means of arbitrary or unjustifiable discrimination against the other party, or a disguised restriction on international trade.

## Obligations related to domestic legislation and practice

EU FTAs include several provisions seeking to guarantee the effective respect of fundamental labour norms. One of these is the obligation not to lower the level of protection provided by national environmental or labour laws and regulations and not to derogate from these in order to encourage trade (and investment). Moreover, the parties should not fail to effectively enforce their domestic legislation through a sustained or recurring course of action or inaction in a manner that encourages trade and investment. From a legal perspective, it is worth noting that in order for there to be a

breach of obligations, whatever led to this breach needs to have affected trade or investment between the parties. In practice, the economic impact on trade and investment of such measures or of a failure to act is not easy to [demonstrate](#).

The provision mentioned is not intended to limit the freedom of each party to develop its own approach to sustainable development and social protection. All agreements explicitly emphasise the right of each party to regulate its own level of environmental and social protection, and to adopt or modify its relevant laws and policies accordingly. Moreover, all agreements except the EU-Southern African Development Community (SADC) Group EPA commit the parties to ensuring a high level of social protection in line with international standards. Most of them (the agreement with Central America, and the agreement with Peru and Colombia being an exception) also contain a best endeavour clause providing that parties will continue making efforts to improve their level of social protection.

#### Peru: Is the EU FTA less effective than EU GSP?

According to [civil society](#), there have been several instances in which labour protection in Peru was weakened. A [study on the matter](#) pointed to three aspects of Peru's law and practice that were found to possibly violate the country's agreement with the EU: a) de facto weakening of labour inspection b) de facto continuation of special labour regimes c) de jure lowering of health and safety at work. In the case of a) and c) the study argues that it is difficult to 'ascertain whether this has (intended to) encourage trade or investment (with the EU). In the case of b) the special agricultural sector promotion law, it is clear that a flexible labour regime has been established in order to stimulate export competitiveness. However, this system predates the entry into force of the trade agreement with the EU'. The same study pointed to weaker monitoring of the core labour rights conventions implementation compared to the GSP+ system previously applicable to Peru. At the October 2020 [joint meeting](#) of the Trade and Sustainable Sub-Committee (established under the agreement and composed of representatives of both parties), Peru reported several improvements related to labour rights issues, such as an extension of the labour rights for agricultural labourers (which could refer to b) above), and health coverage since the beginning of the contractual relation (possibly related to c), as well as reinforcement of the inspection system at the national level.

In a similar vein, the EU-Japan EPA, provides, as do other agreements, that sustainable development provisions do not aim to harmonise the environmental or labour standards of the parties. The deep and comprehensive trade agreements (DCFTAs) concluded with the Eastern Neighbourhood countries Georgia and Ukraine on the other hand set an explicit objective of harmonisation between the parties. The broader association agreements in which they are embedded – this also being true for Moldova – set an obligation for these three countries to approximate their laws with EU legislation on employment among other areas.

The EU's Trade and Cooperation Agreement (TCA) with the UK is in many respects [similar](#) to the EU's new generation FTAs with regard to the trade and sustainable development provisions overall, but it contains stronger provisions on the level of protection. The agreement takes the end of the transition period (Article 6.2(2)) as its reference period for measuring the level of protection. The agreement is thus designed to maintain a level playing field to safeguard fair competition and to prevent divergence on social and environmental standards, while providing each party with the freedom to implement its own social norms.

## New additional provisions

While provisions on [cooperation](#) on safety and health at work were already present in the DCFTA with [Moldova](#) (full entry into force in 2016), the [agreement with Canada](#) (CETA, provisional application since 2017) was the first to impose explicit [obligations](#) on protecting safety and health at work, on minimum employment standards, and on non-discrimination. Moreover, CETA provides for the necessity to effectively enforce labour legislation by maintaining a system of inspection and providing access to justice and remedies. The TCA with the UK contains broadly similar provisions.

The '[agreement in principle](#)' reached between the EU and Mercosur also includes commitments on labour inspection and on health and safety at work. The Commission's proposals for the [EU-Indonesia FTA](#) and the [EU-Chile FTA](#) refer to such aspects as well.

Table 3 – Comparative overview of provisions on labour rights explained above

Main obligations with regard to labour rights		Inclusion in EU FTAs
Obligations related to ILO norms		present in all
Obligations related to WTO norms (labour standards should not constitute disguised restrictions on trade)		Present in all
Obligations related to domestic legislation and practice	No lowering of level of protection, and no derogation from domestic law	Present in all
	Right to regulate	Present in all, but complemented in DCFTAs with an obligation for the other party to approximate its laws to the EU acquis
	Commitment to strive to ensure a high level of protection	Present in all except SADC EPA (in EU-UK TCA only in a recital)
Safety and health at work	Consideration of scientific evidence and precautionary approach (in some cases only with respect to measures that affect trade such as in Canada CETA)	Present in all agreements except Cariforum and SADC EPAs
	Obligation to promote safety and health at work through law and practice	Only in CETA, TCA
Minimum employment standards, labour inspection, access to justice and remedies		Only in CETA, TCA
Cooperation on trade and labour		Present in all, but with considerable variation in scope (cooperation in multilateral forums, exchange of information, cooperation on specific areas including sustainable certification, corporate social responsibility, etc.)

Source: EPRS based on comparative analysis of the 13 FTAs included in Table 1

## Monitoring

Monitoring the implementation of sustainable development provisions takes place at inter-governmental level (usually in the trade and sustainable development sub-committee, composed of senior officials from both parties), as well as at civil society level. Civil society participation is institutionalised and takes place both at domestic and transnational level (with representatives from both parties), in a domestic advisory group and in a joint civil society dialogue forum, respectively.



The Cariforum EPA and the SADC EPAs are an exception in this respect, containing references only to the possibility of involving civil society in the monitoring.

The role of civil society in enforcement and monitoring has been assessed as positive. For example, in the case of Singapore, a [study](#) on the agreement with this country found that 'Singaporean stakeholders assessed the role of the civil society as being very effective, fast and less costly than the court proceedings'. In countries where trade unions face certain restrictions, these meetings can provide [valuable opportunities](#) for them to express their concerns.

Strengthening enforcement of sustainable development provisions is among the main objectives of the current Commission's [trade policy](#). To achieve it, the Commission has established a Chief Enforcement Office and created a digital platform, [Access2Markets](#), which, among other things, allow stakeholders to submit complaints about potential violations of these provisions under bilateral agreements.

## Dispute settlement

Trade and sustainable development provisions are not subject to the regular dispute settlement mechanism of the agreement, with the exception of the Cariforum EPA (here regular arbitration applies but only when the specific mechanism described further fails to produce results).

A specific two-step mechanism applies to labour provisions; under this mechanism, consultations are held and a panel of experts arbitrates on the dispute (that said, the SADC agreement only provides for consultations among the parties). The main difference from a regular dispute settlement here consists in enforcement of arbitration findings, which is less robust (the UK TCA agreement being an exception<sup>10</sup>). More specifically, the two steps include the following:

- one party can request consultations with the other party with a view to reaching a mutually satisfactory solution.
- if consultations fail to deliver a satisfactory solution, a party can request that a panel of experts convene. The panel, after seeking input from various sources, issues a report with its findings and recommendations. The party concerned must inform the other party of the measures it intends to undertake to address the panel's findings, but there are no sanctions or remedies foreseen should it fail to undertake the needed actions. The complaining party cannot impose tariff increases or any other economic penalties. For this reason, some [experts](#) consider that this kind of TSD provisions are basically non-enforceable.

Compliance by South Korea with the conclusions of the arbitration panel on the EU-South Korea dispute (see box below on EU-South Korea labour dispute) will provide a first indication in this respect. According to [Steve Peers, professor of law](#), while the panel report constitutes a victory for the EU endorsing some of its fundamental positions, it remains to be seen how the lack of remedies will affect the implementation of the report: 'It might be possible that the process has some effect on domestic political opinion in the other party, perhaps helping to persuade the government to move faster on the relevant issues. However, considerations like these are only relevant where there is a form of democracy in the other party – so they are hardly relevant in the context of the EU/China investment agreement'. According to the same expert, the panel conclusion that the obligation to ratify ILO conventions is weaker than the EU contends risks sending a signal to partners that they can significantly delay ratification.

## EU-South Korea labour dispute

Early 2021 saw the settlement of the first EU dispute under the TSD chapters with South Korea, which helped draw some important conclusions. The EU initiated consultations with South Korea at the request of the EU Domestic Advisory Group (DAG). According to a [DAG letter of 2017](#) to the Commission, it is 'incumbent on the Commission to use the FTA to raise these issues on a formal basis with the Korean government' and 'failure of the EU to act in this case, in light of the overwhelming evidence of the breach of Article 13, would undermine the effectiveness of Sustainable Development chapters in EU's trade agreements, and of the EU trade policy in general'.

In its [request for the establishment of a panel of experts](#) of 4 July 2019, the EU raised two claims against South Korea, namely that:

- four provisions of Korea's [Trade Union and Labour Relations Act 1997](#) were not in line with the principles of freedom of association and were thus in breach of Article 13.4.3 of the EU-South Korea FTA, first sentence,
- South Korea had made insufficient efforts to ratify the fundamental ILO conventions and was thus in breach of Article 13.4.3 of the EU-South Korea FTA, last sentence.

### [Panel findings:](#)

The panel's findings were mixed as regards the EU's first complaint that measures in South Korean law are inconsistent with the obligations assumed under the FTA.

Responding to South Korea's counterclaims, the panel concluded that violations of core labour standards do not need to be connected to trade to be considered unlawful, [suggesting](#) EU FTAs may be in a better position in this respect than US FTAs.<sup>1</sup> This is considered a landmark judgement. Moreover, the panel reaffirmed the conclusions of ILO and OECD research showing that the application of core labour standards and fundamental principles and rights does not influence negatively countries' competitive positioning in the context of trade liberalisation.

The panel recommended that South Korea bring its labour legislation into conformity with the principles of freedom of association, so that all workers, including the self-employed, dismissed and unemployed are included in the definition of 'worker'. When drawing its conclusions, the panel found that certain judgements of the relevant ILO bodies could be taken as a reference even if South Korea had not ratified the respective convention.

**The EU's second claim**, that South Korea's efforts to ratify the four outstanding conventions had fallen short of the standard of 'continued and sustained efforts', was not supported by the panel; this had wide-ranging implications for this aspect of TSD provisions. The panel found that this is an obligation of 'best endeavours': the party should make efforts that go beyond a minimal threshold, but not necessarily mobilise all means available. In the absence of explicit targets, the parties are free to select specific ways to make continued and sustained efforts. Taking account of South Korea's efforts in this regard, the panel found that it had not acted inconsistently with its obligations towards ratification of the core ILO conventions.

## Assessment and proposed reforms of the system

More than one decade after the EU started including labour provisions in chapters on trade and sustainable development, the system has become an essential part of the new trade and investment agreements the EU negotiates. Overall, the EU system relies on monitoring, dialogue and consultations as a first step. Monitoring relies to a large extent on the involvement of civil society, which has played an important role including in exposing breaches such as in Peru or South Korea.

While in some cases as highlighted, for instance, in the Commission FTAs implementation reports, the system has been effective in encouraging the ratification of the fundamental ILO conventions and the application of core labour standards in national legislation, some trade partners continue

to exhibit serious implementation gaps with regard to labour rights. Against this background, there is growing awareness at EU level, spurred by labour unions and civil society, about the importance of enforcing sustainable development provisions and establishing new mechanisms. At his [hearing](#) in October 2020, the EU Trade Commissioner, Valdis Dombrovskis, stated that he was ready to explore the possibility of having a 'more... enforceable or gradually enforceable TSD chapter' in future trade agreements, as well as how to link certain labour rights conditionalities with specific tariff reductions.

The absence of economic countermeasures has [appeared](#) at times as a weak spot. The implementation of the panel report in the case of South Korea will show how effective the dispute settlement mechanism is. South Korea is a democracy where labour unions and civil society have played an [important role](#) in pushing the government to ratify and implement ILO conventions, and in triggering the dispute settlement mechanism. In the case of less democratic trade partners, such internal pressure is however weaker or even absent.

In a 2018 non-paper on [15 point action plan](#), the Commission dismissed the option of including economic and trade sanctions in response to non-compliance with the TSD chapters. While the negative incentive system did not gain traction, new proposals go in the direction of providing specific tariff reductions based on achieving established benchmarks related to the TSD objective. In May 2020, France and the Netherlands made a [proposal](#) in this sense, while also mentioning the possibility of withdrawing those tariff preferences in the event of a breach of those provisions. The think-tank [Centre for European Reform](#) defends the view that such a proposal should be accommodated in the existing model: 'Dialogue and consultation should remain the primary tool for engaging with FTA partners on TSD issues, but supplementary unilateral removal of trade preferences could be linked to specific areas of concern. Dispute settlement could then exist solely as a fall back, allowing the partner country to challenge the EU's decision if it disagrees'.

#### **European Parliament position**

The European Parliament has been a strong proponent of introducing sustainable development obligations, including on labour rights, in EU trade agreements, and of an effective enforcement. During the current term, it has addressed the issue in several resolutions. In a [July 2021 resolution](#) on the trade-related aspects and implications of Covid-19, it stresses that ratification of the ILO core conventions and respect for human rights are requirements for concluding free trade agreements; it furthermore calls for the EU to engage with future and existing trading partners to ratify and effectively implement outstanding ILO conventions when reviewing and negotiating agreements. In an [October 2020 resolution](#) on the Commission's 2018 FTAs implementation report, the Parliament called on the Commission to develop a 'precise and specific methodology for monitoring and evaluating the implementation' of TSD chapters, as well as to make proposals for strengthening their enforcement.

## MAIN REFERENCES

EU-Korea Panel of Experts, [Panel of Experts proceeding constituted under Article 13.15 of the EU-Korea Free Trade Agreement: Report of the Panel of Experts](#), January 2021.

European Commission, [Trade Policy Review - An Open, Sustainable and Assertive Trade Policy](#), Communication, 2021.

Harrison J., Barbu M., Campling I., Ebert F., Martens A., Marx, A., Smith A., '[Labour Standards Provisions in EU Free Trade Agreements: Reflections on the European Commission's Reform Agenda](#)', *World Trade Review*, 18(4), 635-657, 2019.

## ENDNOTES

- <sup>1</sup> See e.g. D. Nikulin, J. Wolszczak-Derlacz, A. Parteka, [Working Conditions in Global Value Chains: Evidence for European Employees](#), March 19, 2021; UNCTAD, [Multinational Enterprises and the International Transmission of Gender Policies and Practices](#), 2021; O. Lamotte, A. Colovic, O. Escobar, P. Meschi, [Human rights: the indirect impact of multinationals in emerging countries](#), October, 2019.
- <sup>2</sup> Each member state is represented at the conference by a delegation consisting of two government delegates, an employer delegate and a worker delegate.
- <sup>3</sup> See K Hradilová, O. Svoboda, [Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness](#), 2018: Exports of low-income countries benefit economically from the introduction of labour clauses in North-South trade agreements. This can be related to the fact that concerned consumers in the North are demanding that the products were made in adequate working conditions.
- <sup>4</sup> See [CJEU Opinion 2/15 of 16 May 2017](#) providing clarification on the EU's obligations and competences in this respect.
- <sup>5</sup> See, for instance, the [UN Guiding Principles on Business and Human Rights](#): human rights are understood to refer 'to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work'.
- <sup>6</sup> Article 86.2: 'The Parties consider that economic development must be accompanied by social progress. They recognise the responsibility to guarantee basic social rights, which specifically aim at the freedom of association of workers, the right to collective bargaining, the abolition of forced labour, the elimination of discrimination in respect of employment and occupation and the effective abolition of child labour. The pertinent standards of the ILO shall be the point of reference for the development of these rights'.
- <sup>7</sup> Of the FTAs concluded by the EU since 2008, the stabilisation and association agreements with Western Balkan countries and the 'provisional' EPAs (with Eastern and Southern Africa (ESA), West Africa, Central Africa, and the Pacific) do not include such TSD chapters (see also this [study](#) on EPAs). Some of these (e.g. EU-ESA, EPA) however include a rendez-vous clause committing the parties to negotiate future agreements with such chapters.
- <sup>8</sup> Other FTAs concluded before 2008 can also include some provisions relevant to labour rights, but since they are not based on the approach applied by the EU since the Cariforum EPA, they are not included here. Such is the case of the association agreements with Mediterranean countries and territories: Algeria, Morocco, Israel, Palestinian Territories (see this [ILO publication](#)). They do not contain any reference to ILO instruments.
- <sup>9</sup> The four ILO priority (governance) conventions are:
  1. [Labour Inspection Convention, 1947 \(No 81\)](#)
  2. [Employment Policy Convention, 1964 \(No 122\)](#)
  3. [Labour Inspection \(Agriculture\) Convention, 1969 \(No 129\)](#)
  4. [Tripartite Consultation \(International Labour Standards\) Convention, 1976 \(No 144\)](#)
- <sup>10</sup> As in other EU agreements, the dispute settlement procedure for sustainable development provisions in the TCA (Articles 9.1 to 9.3) is distinct from the general dispute settlement. However, non-compliance with the findings and recommendations of the panel of experts enables the other party to suspend obligations. Also in case of stronger divergences between the parties including on labour protection, appropriate measures can be taken by the other party. This is called rebalancing (Article 9.4). The affected party can request that an arbitration tribunal decide on the conformity of these measures.

## DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

© European Union, 2022.

Photo credits: © davit85 / Adobe Stock.

[eprs@ep.europa.eu](mailto:eprs@ep.europa.eu) (contact)

[www.eprs.ep.parl.union.eu](http://www.eprs.ep.parl.union.eu) (intranet)

[www.europarl.europa.eu/thinktank](http://www.europarl.europa.eu/thinktank) (internet)

<http://epthinktank.eu> (blog)

