



More effective provisions on workers' rights in future trade agreements

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Introduction

Over an extended period, LO has engaged in the debate on trade policy. We live in times of increasing awareness of globalisation and its significance on employment, working conditions and inequality, but also on environmental and climate conditions.

With the adoption of the UN's 17th development goal, it has become a key objective to promote decent work in future trade policies.

A considerable share of LO's efforts to find answers to the challenges coming from growing globalisation has to do with trade policy.

The negotiations between the EU and the US on the TTIP-agreement, not least, have moved trade policy significantly up the political agenda. The debate in the European and American trade union movements has been characterized by polarization. Together with the Nordic trade union movement, LO has emerged with the most positive assessment of what the TTIP-agreement could be used for - not least when it comes to strengthening the fight for decent working conditions.

Our own explanation for this is based on three conditions that make the North stand out:

1. A high rate of unionization and the influence of the social partners
2. The Nordic labour market model
3. Relatively small and open economies.

The generally positive Danish attitude towards trade policy can probably also be attributed to the fact that more than 700,000 workplaces depend on the ability of Danish companies' to export their products and services.

The TTIP-negotiations lie dormant following the election of Donald Trump as President of the United States.

Discussions on how the EU can use bilateral trade agreements as a tool for strengthening workers' rights, however, persist. Because even though there are no prospects of picking up the negotiations between the EU and the US anytime soon, the EU has signalled that

it wants to maintain that inter-state trade plays an important role to the economy, employment and the fight against poverty.

In the summer of 2017, the Commission launched a debate on which road the EU should take in the endeavours to use trade agreements for strengthening workers' rights.

With this paper, LO wants to present its proposals for what it would take to create more efficient provisions on workers' rights in future trade agreements.

In order to have the best basis for decisions, LO has asked Associate Professor, Jens Ladefoged Mortensen, to prepare a discussion paper that describes and analyses the different methods chosen by the EU and the US.

The report is entitled; "Towards more efficient sustainability provisions in future trade agreements; Can the EU learn from the USA?", and it is annexed to this paper.

A substantial part of the current debate on future trade policy is about which means to use and how to promote a trade policy that contributes to promoting sustainability, including workers' rights.

According to the report, you cannot, in practise, distinguish precisely between, on the one hand, the tough sanction-based approach used to describe the US and, on the other hand, the dialogue-based approach used to describe the EU. In reality, both the EU and the US use demands, threats and incentives as political influencing instruments.

The report also describes how the ILO points to cooperation-, promotion- and context-based initiatives as the most important tools to promote social conditions in the developing countries.

The aim of this paper is to break with the simplified conception of sanctions versus dialogue and, in stead, show how future trade agreements can be used effectively to promote workers' rights.

Background

A significant part of the challenges arising from globalisation can be attributed to trade policy and how it is exercised.

- The election of Donald Trump as President of the United States has, in likeness with Brexit, contributed to intensifying the debate on protectionism versus free trade.
- The size and dominance of the Chinese economy in a number of industries has created a pressure to make better protective measures for European companies in order to fight price dumping.
- In the area of price dumping, massive state subsidies and breach of basic trade union- and human rights in the countries on the Arabian Peninsula is presenting a serious threat to European airlines.

However, with the Lisbon treaty, the responsibility for the conclusion of trade agreements was placed in the EU, thereby creating growing awareness of how EU-trade policy can be used to mitigate some of the negative effects of globalisation.

It is important to LO to present some proposals on how to use the sustainability chapters in the trade agreements to strengthen workers' rights and thereby fight rising inequality in the world. We see this aspect of trade policy as a response to unfair globalisation. However, we want this to take place without coming across as protectionist.

A strengthening of workers' rights in the countries with which we have trade should, partly, contribute to creating social and economic progress in these countries and stop any erosion of our own standards. It is, basically, a question of creating more equal competitive conditions.

The description of workers' rights is based on the 8 ILO core conventions and aims for an efficient implementation of these and other ILO-Conventions. The whole idea of countries committing to not lowering their standards (but rather raising them) creates fairer competitive conditions in the longer term.

Meanwhile, there are many weaknesses in the current system. The fine words in the agreements are not sufficiently translated into noticeable improvements for workers.

Even though it is a relatively new phenomenon that the EU has included sustainability in the trade agreements, there has been criticism regarding its effectiveness. And that is what this proposal first and foremost aims to correct.

LO's proposal for more effective provisions in future trade agreements

As can be seen from Mr Ladefoged's report, it is difficult to demonstrate any effects of the workers' provisions in trade agreements.

It is therefore highly significant that bilateral trade agreements continue to further develop the tools that are already available in order to contribute to a fairer and more just globalisation.

The sustainability chapters in the EU's bilateral trade agreements are important, and LO supports the fact that they contain issues such as environmental protection and climate change as well as workers' rights.

LO believes that they should be further developed to create a more effective partnership with a broad approach and with a clear reference to the ILO's conventions, protocols and declarations. We have to challenge the employers and governments in this area - for example by referring back to the ILO's Constitution which states that "*... the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve conditions in their own country.*"

In order to further strengthen the implementation, a systematic follow-up and reporting on progress must be carried out.

The report clearly shows a great need for more effective provisions and a more consistent enforcement.

In so far as labour market conditions (including workers' rights) are concerned, it is crucial that the social partners are involved in the implementation-, monitoring- and reporting efforts.

In this paper, we will not discuss free trade because the debate is not really about free trade as such but rather about how fair and regulated trade provides some ground rules that can contribute to creating more equal competitive conditions.

LO will not rule out that sanctions may have an effect. However, it is important to avoid a limitation of trade agreements so that they only include workers' rights in export-related industries as has been the case in other US-trade agreements.

We also believe that it is important to take note of the report's assessment that the growing use of economic sanctions can lead to a marked risk of increasing the political backlash. The developing countries, in particular, could view a change in the EU's approach as pure protectionism.

Eleven specific proposals

1. Strengthening of the multilateral track

Even though 80 pct. of the trade agreements contain references to ILO standards on workers' rights, there is still a need for the ILO and the WTO to join forces in supporting fairer conditions for trade.

There is a risk that the WTO remains incapable of action and the ILO is challenged by the many attacks of the employers on the organisations' foundation.

In other words, the multilateral track needs reviving.

This would require a renewed effort from the countries that are members of the ILO and the WTO, respectively, and, here, the EU and its member states must take the lead. This would be fully in line with the EU Commission's initiative, "Harnessing Globalisation" from May 2017, which states that there is a need to reform and strengthen the multilateral organisations.

2. Establishing pre-ratification instruments

It is important that the EU, during the negotiation of bilateral trade agreements, places more emphasis on raising awareness of the commitments that ensue from entering into a trade-related partnership with the EU.

Already during the negotiations between the EU and the country in question, a thorough analysis must be carried out to establish the areas in which the country fails to meet the requirements of the sustainability chapter.

This analysis is to lead to a more effective implementation which also contains a realistic time table stating when individual outstanding amounts should be settled. In order to carry out a more efficient implementation it will also be necessary to identify the need for support and assistance in the process.

It is therefore important to establish a process that contains pre-ratification instruments. In practise, this would mean that the EU can define a number of requirements that must be met before an agreement can be ratified and come into force. There must be requirements that are connected to the ratification of ILO-

Conventions or requirements regarding the improvement of the national implementation and improvements to national enforcement instruments.

The crucial thing is that the negotiations between the EU and a future trading partner is a process which creates a common understanding of where improvements are needed.

We know from experience that this is very necessary. Five years into the EU-Korea agreement, not much progress was made in terms of workers' rights.

3. Technical assistance and expertise

Demands from EU-trade partners to meet international standards - not least ILO-conventions - is not a matter of European protectionism, but rather a tangible contribution to strengthening workers in the countries with which the EU does trade. Nevertheless, the EU can easily be conceived as protectionist.

Therefore, the EU's credibility must be ensured by means of commitments to provide market access, aid and technical expertise. This will typically be possible through development aid which can increase the capacity of the country in question to live up to the agreement, for example by means of training and education or via support for the building of institutions such as a well-functioning working environment authority.

It's necessary to take stock of the actual situation in the country with which you trade. Experiences from the building collapse of the Rana Plaza textile factory in Bangladesh in 2013 show that it is important to be specific and make demands on both legislation and sufficiently effective institutions.

4. Systematic monitoring

The current system of observing and monitoring the development is far from adequate. There is a need for substantial improvements which can increase the visibility and dissemination of the development.

The civil society is an important part of the monitoring by the established advisory forums (Domestic Advisory Group), but in order for it to become effective, considerably more resources must

be allocated, not least in light of the growing number of trade agreements that the EU concludes.

5. Enforcement and dispute settlement

The sustainability chapter is binding on the partners and there is a built-in complaints procedure and a dispute settlement system which involve the possibility of introduction of formal consultations and the appointment of a panel of experts who can prepare a number of recommendations which can be implemented.

Meanwhile, the weakness is that the EU has hesitated to use this procedure.

Therefore, it is also necessary to examine how to create a procedure for enforcement and complaints as well as dispute settlement. This must be done in the context of establishing the pre-ratification instruments recommended by LO in item 2.

The current provisions do not state that it is compulsory to observe the recommendations from the Expert Committee, and the EU must therefore remove all doubts as to what will happen if the recommendations of the experts are not observed.

6. Economic incentives

LO recommends using economic incentives to strengthen conditions for workers in stead of opening to the use of sanctions. The logical course would be to incorporate these incentives into the proposed preratification instruments.

What is crucial is that there are economic consequences if the agreed terms are not met.

Restricting favourable market conditions if agreements to improve workers' rights are not observed would be a strong incentive to take the provisions on workers' rights seriously.

The current experiences from GSP- and GSP+ schemes must be included in the decisions on how to restrict market conditions if ILO-standards are not observed.

7. Tailor-made solutions

It is important to consider the EU's negotiations on the conclusion of bilateral trade agreements as something that requires tailor-made solutions.

When it comes to workers' rights, it is necessary to look at the opportunities to create improvements which also respect the political sovereignty of the individual country while supporting the multilateral cooperation.

It is crucial that the EU's requirements are not conceived as attempts to let protectionism in by the back door.

8. Strengthening CSR

Successful implementation and enforcement of provisions on workers' rights is, when it comes down to it, also a matter of how companies act. Therefore, a strengthened CSR-chapter would also be an important tool for EU-based companies to actually take responsibility for improved conditions for workers in the countries where they operate.

If the sustainability chapter is to be taken seriously, production must also be adapted to its conditions.

With the adoption of the UN's 2030 Sustainable Development Goals, greater emphasis must be placed on the UN's own Guiding Principles on Business and Human Rights¹.

9. Labelling scheme

Establishing labelling schemes to draw attention to responsible behaviour when it comes to workers' rights, similar to the fair trade stamp, should be considered. Instead of targeting this labelling to consumers, it should be considered to focus instead on targeting it to companies that trade with one another. To begin with, such a labelling scheme must be established by the companies themselves at industry-level.

¹ UN Guiding principles on Business and Human Rights.

10. More visibility

LO finds that it is important to ensure more visibility in connection with the trade agreements. Greater openness when it comes to the effects of the trade agreements would help reduce mistrust and support a more constructive debate on globalisation.

More knowledge about the effects of the trade agreements on employment and workers' rights is necessary.

11. Continuous evaluation

LO believes that there is a need for a continuous evaluation of the effects of the EU's trade policy. The fact that it is difficult to demonstrate specific effects of trade policy on workers' rights makes it necessary to examine whether future changes and new tools lead to actual improvements of workers' rights.



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