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The EU's toothless trade policy

The EU Commission fails to enforce trade agreements' social and environmental norms. Just look at the case of South Korea

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Workers' rights and environmental standards still play second fiddle in the European Commission's trade policy – rather, a 'nice-to-have' mentality clearly still prevails. That is the obvious conclusion from the trade agreements of the past decade – despite all the talk of a new generation of agreements since the Treaty of Lisbon. This is particularly apparent from the inadequately binding nature of the corresponding clauses in trade agreements.

The case of the agreement between the European Union and South Korea lays bare the inefficient, hesitant way in which the European Commission addresses breaches of workers' rights in partner countries. Its approach of dispute resolution without any possibility of sanctions doesn't work – as the progressive forces in the European Parliament have been criticising for years.

South Korea is one of the world's most important producers of electronic products. Given Europe's appetite for technology, it is hardly surprising that the Commission concluded a free-trade agreement with the republic back in 2011. The then trade commissioner Karel de Gucht hailed the agreement as the most ambitious ever concluded by the EU, citing aspects such as the adopted clauses on workers' rights and environmental standards. In doing so, he followed the Commission's narrative claiming that the economic trade aspects are on a par with social and environment sustainability.

In the relevant clauses of the agreement, the Korean government committed to respect, promote and implement the hitherto unratified core labour standards of the International Labour Organisation (ILO). As is well known, these core standards also include freedom of association. A dispute resolution mechanism was agreed in the event that either party should breach the mutual commitments on workers' rights

and environmental standards. It provides for government consultations and expert discussions and ends with the publication of an expert report. However, in reality, the example of South Korea shows how ineffective this mechanism is.

The European Commission's sluggishness

In mid- December 2015, trade union leader Han Sang-gyun had been arrested following a public protest against the weakening of workers' rights in the context of reforms by the government of Park Gyun-hye. Trade union general secretary Lee Young-joo escaped detention for a while by seeking sanctuary in the premises of the trade union KCTU. On finally leaving her self-imposed house arrest in December 2017, she, too, was arrested.

The reason given for the pursuit of the trade unionists was that they had organised a supposedly violent protest. In actual fact, arguably the worst that the 100,000 or so demonstrators did was impede the traffic and defy the police's orders. So the Korean government rode roughshod over its commitment to the core labour standards that, to date, have still not been ratified.

Yet it never occurred to the European Commission to hold its own contracting partner in breach of agreement. Instead, in May 2017, via the formal channel of an implementation report, Members of European Parliament called on the Commission to fulfil its duty and use the dispute resolution mechanism set out in the agreement. The Commission dragged its feet until the end of 2018 before announcing that, with this case, it will demonstrate perfectly the effectiveness of the dispute resolution mechanism – despite all the criticism from the parliament.

There is an obvious solution to this problem: most of the European Union's negotiating partners regard the bloc as an important trading partner, so it can wield this power to improve workers' rights and

The government consultations held as a first step with the newly elected government now headed by President Moon Jae-in – a former human rights lawyer, by the way – proved fruitless and went on much longer than the three months stipulated in the agreement.

environmental standards.

In July 2019, in the Trade Committee of the European Parliament, the Commission announced its intention to take steps towards the second escalation stage of the dispute resolution procedure. This stage provides for the creation of a bilateral expert committee. According to the text of the agreement, the contracting parties had two months to do this, i.e. until September 2019 at the latest. The committee was actually set up on 30 December 2019.

Commission representatives argued that they faced difficulties with the nomination of experts on the Korean side. The committee will now advise on the workers' rights situation in South Korea and ultimately prepare a joint report with recommendations. The report is scheduled for March 2020. If the recommendations are not implemented, the dispute resolution mechanism foresees no further steps.

A system of checks and balances is needed

The Commission's highly ambitious announcement that the Korean example illustrates the effectiveness of the dispute resolution mechanism has finally been exposed as hot air. The process simply provides the opportunity for dialogue. However, it is wholly inadequate if serious breaches of jointly established labour and environmental standards occur. What makes the failure in this specific case particularly disappointing is that Moon Jae-in's cabinet are actually ministers of a social-liberal president.

Above and beyond the dysfunctional process, the European Commission has shown that it has precious little interest in using trade agreements as a basis for improving workers' rights. The late start to consultations and the multiple delays speak volumes. If there had been breaches of the agreed tariff reductions, it would surely have been a different story, for the obvious reason that sanctions are allowed in these cases. So it cannot be said that trade is on a par with social and environmental sustainability. Double standards are clearly being applied.

There is an obvious solution to this problem: most of the European Union's negotiating partners regard the bloc as an important trading partner, so it can wield this power to improve workers' rights and environmental standards. It could fully expect its negotiating partners to ratify the ILO's core labour standards before agreements are concluded. And if EU negotiators insist that there will ultimately be penalties for breaches of joint sustainability agreements, these agreements could

assume another level of importance.

Of course, this isn't just a matter of selling European standards as a benchmark. Rather, it's about creating a system of checks and balances that also allows trading partners to hold the EU to account as well if, for instance, environmental rules are breached.



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