

Canada - EU Draft Agreement (under negotiation)

The EU has currently launched negotiations for a Free Trade Agreement with Canada. Canada's proposals¹⁶ on employees' rights go further than those of the EU. On the one hand, Canada provides for a broader range of rights (in addition to the core Labour Standards, provisions for minimum wage, working hours, health and safety in the workplace and non-discrimination of migrants). On the other hand, Canada proposes that in dispute resolution matters employees' rights are treated equally with trade issues. Sanctions can amount to an annual sum of 15 million dollars. The Canada Draft is an important reference to show what the options are with regard to standards and structures of implementation. This is probably a maximal variant, which is expected to be at least partly watered down during the course of the negotiation process.

4. Final remarks

Although there are still a number of states which do not want labour and social standards linked to trading agendas, the international trend at the level of bilateral agreements is moving towards a greater acceptance of such standards in trade agreements (Grandi 2009: 33, ILO 2009: 63). The publication of the ILO Declaration on Fundamental Principles and Rights at Work from 1998, which contains the Core Labour Standards, has also resulted in an increased reference to ILO Standards in trade agreements. Some agreements, for example the FTA Canada - Chile resp. USA - Jordan also refer to additional rights, namely minimum wage, working hours as well as health and safety in the workplace. A few contain references to the protection of migrant workers (see draft text Canada - EU). Some agreements also emphasize the compliance with fair, balanced and transparent procedural rules, for example the publication and distribution of labour legislation (see Agreement EU - Korea and USA - Chile).

Overall, however, there are still great differences in the contentual and structural composition of bilateral trade agreements. This also leads to the rather undesirable situation of unequal standards and levels of implementation. If a state is the contractual partner of several agreements with different standards and implementation levels, it has to deal with the implementation of different types of employees' rights (ILO 2009: 63). Thus, it is imperative to define and implement a minimum standard, which generally applies. The EU would be a central player to realize this minimum standard.

There are still great controversies concerning the means for effective implementation of ILO and national standards. In the opinion of the European Commission, sanctions for the non-compliance with labour standards, including the Core Labour Standards, should not be imposed. The reason is said to be the suggestion of protectionism provided by the opportunity to withdraw relevant trade benefits. Other states like the USA and Canada do not follow this argument and have had bilateral agreements for several years, which provide for sanctions for the non-compliance with labour standards (see for example the comments on the USA - Jordan Agreement). These agreements as well as the present proposal for two sample chapters, however, regard sanctions only as the last resort in case all other mechanisms of cooperation and mediation have been exhausted. Furthermore, sanctions are not the most important instrument for implementing labour standards; the increase in capacity of local players such as trade unions and labour inspectorates and the implementation of targeted programmes is central to promoting labour rights (Greven 2005). The sanction mechanism has to be seen as a disincentive not to comply with labour standards. The extent of the sanctions must therefore also orient itself on the (also human rights) principle of proportionality and react with a sense of proportion to the violation of standards (Polaski 2004). It is equally important to use

¹⁶ Consolidated Draft from 13th January 2010.