

Report on the meeting of the European Ombudsman's strategic initiative team with representatives of the European Commission and the European External Action Service

Correspondence - 02/02/2022

Case SI/5/2021/VS - **Opened on** 07/07/2021 - **Decision on** 15/07/2022 - **Institution concerned** European Commission |

Case title : How the European Commission ensures respect for human rights in the context of international trade agreements

Date : Wednesday, 02 February 2022

Remote meeting, Strasbourg/Brussels

Present:

European Commission

- *Director, Africa, Caribbean and Pacific, Asia, Trade and Sustainable Development, Green Deal, DG TRADE*
- *Director, Enforcement, Market Access, SMEs, Legal Affairs, Technology and Security, DG TRADE*
- *Adviser, Trade and Sustainable Development, DG TRADE*
- *Senior Expert - South East Asia, DG TRADE*
- *Policy Officer, Bilateral relations in Trade and Sustainable Development, DG TRADE*
- *Policy Officer – Trade and Human Rights , DG TRADE*
- *Deputy Head of Unit, Single Entry Point for Enforcement, Market access and SMEs, DG TRADE*
- *Senior Expert, Single Entry Point for Enforcement, Market access and SMEs, DG TRADE*



- *Policy Officer. Single Entry Point for Enforcement, Market Access and SMEs, DG TRADE*
- *Team Leader - Legal aspects of trade and sustainable development and investment, DG TRADE*
- *Deputy Head of Unit, Inter-institutional Relations, DG TRADE*
- *Policy Officer, DG INTPA*
- *International Relations Officer, DG EMPL*
- *Senior Expert - Coordinator for inter-institutional Relations - relations with the European Ombudsman, SG*
- *International Relations Assistant, DG JUST*

European External Action Service

- *Adviser, Global Agenda and Multilateral Relations*
- *Policy Officer - Human Rights*
- *Policy Advisor Cooperation for Development*
- *Political Officer, Vietnam*
- *Trainee*

European Ombudsman

- *Marta Hirsch- Ziemińska, Senior Advisor on Charter Compliance*
- *Valentina Stoeva, Inquirers Officer*
- *Josef Nejedlý, Inquiries Officer*
- *Jennifer King, Legal Expert*
- *Louisa Jakobsson, Inquiries Trainee*

Introduction

The European Ombudsman's (EO) representatives opened the meeting by welcoming the participants and thanking the European Commission and the European External Action Service



for accepting the meeting invitation. The objective of the meeting was to discuss how the European Commission ensures respect for human rights in the context of international trade agreements. The EO's representatives underscored that the meeting was not held in the context of an inquiry, but a strategic initiative (SI) where the EO was seeking clarification on how the Commission promoted and protected human rights in the context of its trade agreements. The purpose of the meeting was also to obtain updates on issues that had been the focus of previous complaints to the EO (e.g. about the Free Trade Agreement with Vietnam [1]).

Representatives from various DGs of the European Commission attended the meeting, including DG TRADE, DG INTPA, DG EMPL, and DG JUST, as well as representatives from the EEAS.

The representatives from the European Commission made a general introduction whereby they clarified that with the exception of labour rights (which are also human rights), human rights as such were not covered in the Trade and Sustainable Development chapters of EU trade agreements. On the other hand, the Commission representatives indicated that human rights clauses had been systematically included in all political framework agreements concluded by the EU with partner countries since the entry into force of the Lisbon Treaty in 2009, establishing that EU international action shall be guided by the EU's shared values. In particular, provisions to respect human rights have been included as part of the "essential elements" of EU political framework agreements, to which trade agreements are normally linked. It was underlined that only in the absence of a political framework agreement essential elements clauses on human rights are included in the comprehensive free trade agreement itself; but this is rather an exceptional practice.

Representatives from the EEAS explained that the EU monitors the implementation of human rights commitments through a number of tools, such as: political and human rights dialogues with third countries [2] , application of thematic and geographical programmes under multiannual financial frameworks (EIDHR [3] , NDICI-Global Europe [4]), engagement in multilateral human rights fora (e.g. resolutions, statements, briefings at the Human Rights Council); publication of an EU Annual Report on Human Rights and Democracy, public diplomacy, awareness raising campaigns, public statements, declarations and *démarches* . When monitoring and promoting human rights, the EU primarily works through either its political mechanisms or the established international human rights instruments such as the human rights treaties and their monitoring bodies under the United Nations (UN). This includes the international human rights framework: the UN Charter, the Universal Declaration of Human Rights (UNDHR) and core international human rights instruments (e.g. the international covenants on civil and political rights and social, economic and cultural rights). The work of the UN Special Procedures is a further important input for the Commission and the EEAS assessment of the human rights situation in any given country. Responses to breaches based on the so-called "human rights clause" or "essential elements clause" are taken on a case-by-case basis. The EU's entire toolbox can be deployed from targeted assistance and capacity-building measures of last resort such as the termination or suspension of the political framework agreement or the trade agreement, in whole or in part, following the procedure set out in the relevant political framework agreement. Such decisions are always seen as a last



resort. The decision to suspend the operation of an agreement is taken unanimously by the Council based on a proposal from the Commission or the High Representative/Vice President pursuant to Article 218(9) TFEU. The Parliament is kept informed at all stages of this procedure.

Questions and answers

On human rights enforcement in EU trade agreements

1. Could the Commission provide information about the mandate of the Chief Trade Enforcement Officer (CTEO) as it relates to human rights standards forming part of international trade agreements signed by the EU? What are the procedures according to which the CTEO operates in this context?

The CTEO has overall responsibility to oversee the enforcement of EU trade and investment agreements, including, market access issues, Trade and Sustainable Development (TSD) commitments, and compliance with the requirements of the EU unilateral trade tool – the Generalised Scheme of Preferences (GSP) [5] . The CTEO has a responsibility to steer the implementation and enforcement of the trade and investment agreements and the GSP through facilitating cooperation between the Commission [6] , the EEAS, and the EU Delegations. The CTEO also works closely with the domestic advisory groups (DAGs) established under Trade and Sustainable Development chapters of trade agreements to ensure follow-up on the implementation of these chapters.

The CTEO's responsibilities include having an overview of all issues relating to the implementation of the trade agreement, including managing complaints from different stakeholders, including trade unions, labour rights organisations, animal rights organisations and human rights groups. Any serious breaches of human rights that violate the essential elements clauses or substantive labour provisions in the agreement, which represent human rights, may lead to the termination or suspension in whole or in part of the trade agreement as a last resort.

2. More specifically, could the Commission provide details on the procedures in place for the examination and handling of complaints under the centralized complaints procedure introduced in 2020? We would be interested to hear about the Commission's experience with stakeholders regarding any relevant Trade and Sustainable Development (TSD) complaints and an update on any more recent complaints related to human rights, if available. Could the Commission also explain why, in its view, so few complaints have been made so far?

In 2020, the Single Entry Point (SEP) was established as a first point of contact for EU stakeholders who are facing market access issues or who are concerned about non-compliance with sustainability commitments (TSD/GSP). The SEP can be contacted via the new Access2Markets portal on DG TRADE's webpage. The SEP is managed by a team that under the leadership of the CTEO provides a 'one stop shop' for managing complaints relating to trade



agreements and ensuring follow-up. [7] The SEP published operating guidelines, explaining to stakeholders how it operates, how complaints can be brought and will be handled. These operating guidelines are currently being updated in the light of the first year's experience and will further clarify how to raise issues with the SEP, the type of information that is required, and guide people step by step through a complaint. It will also emphasise that people can reach out to the SEP before formalising any complaint to understand what may be needed. The purpose is to make the SEP complaints mechanism more accessible.

Since the start of implementation, over 100 contacts have been made with the SEP that have resulted in approximately 35 formal complaints which to date all have related to market access issues. When a complaint is formalised, a specific team is set up to make an initial assessment of its merits and possible courses of action. This team includes different experts within DG TRADE, as well as from different Commission departments as necessary, to follow-up and resolve the issue at hand. The team aims to complete this initial assessment within a six to eight week period and the assessment is shared with CTEO. He, together with the SEP, ensures the further follow up of the issues, while the responsible geographical or sectoral team will follow up the day to day management. This may involve coordination with DG TRADE colleagues across the EU's Delegations, or, for example, with other Commission services, with the EEAS, and with the DAGs.

The SEP has a strong EU focus and is available to EU citizens or organisations based in a Member State only. People and organisations from third countries do not have direct access to the SEP. However, they may contact EU-based organisations and ask them to bring their issue to the Commission's attention or do so jointly. The SEP can and does pursue *ex officio* actions, including on those human rights issues covered by the trade agreement, for example, in relation to labour rights.

The SEP focuses on issues related to trade agreements. There is no distinct human rights complaints mechanism as the Commission opted for an integrated approach covering any type of complaints related to its trade agreements. Although it can also deal with complaints touching on human rights issues linked to the substantive provisions of the agreement in question, so far none of the complaints received has related to non-compliance with the trade and sustainability chapters of its agreement, or corresponding human rights commitments. [8] The Commission believes that one reason why no such issues have been brought to the SEP may be a lack of awareness of the mechanism and its scope. As part of its roll out of the Access2Market platform, including the SEP, DG TRADE has pursued an extensive programme of training in Member States, including on the possibility to address trade related issues to the SEP. So far 5,000 organisations have been reached by such trainings, organised by the Commission as well as Member State actors. In parallel, DG TRADE staff across the EU's network of Delegations as well as EEAS staff covering trade issues, have also been trained so that they can refer issues when they hear of non-compliance with sustainability or human rights commitments within the context of a trade agreement.

Another reason why human rights issues have not been raised through the SEP may be the sensitive nature of most human rights complaints. For example, when raising human rights



issues within the context of the GSP, local stakeholders in beneficiary countries often prefer to do so in a discreet manner to protect the source of the information and/or through Brussels-based counterparts, or have a confidential contact with an EU Delegation with the necessary security precautions. Moreover, human rights issues brought within the context of GSP, are also in most cases already on the radar of the Commission and EEAS, and addressed by the EEAS or the EU Delegation in the country through political and diplomatic processes, engagement through GSP monitoring, as well as through development aid projects. The purpose of raising human rights issues with the EU is to use these diplomatic channels to put pressure on national counterparts to act on a specific topic. Suspending trade preferences under GSP on account of human rights breaches often comes with a deterioration of the situation for civil society in the beneficiary country, as well as a loss of political leverage to push for human rights improvements. Consequently, it is more effective to manage such questions through engagement and monitoring and bilateral dialogues including diplomatic channels.

With regard to bilateral trade agreements, as mentioned above, action has also been taken in the Trade area in a case, predating the appointment of the CTEO and the establishment of the Single Entry Point. This relates to the dispute with South Korea within the context of the EU Free Trade Agreement (FTA) with South Korea [9]. The TSD chapter in the EU-South Korea FTA includes provisions obliging Korea to ratify four outstanding fundamental International Labour Organization (ILO) conventions, as well as to effectively implement them. A Panel of Experts' report confirmed that South Korea was not in line with ILO standards on freedom of association. The report also confirmed the binding nature of the TSD clauses in the EU-Korea FTA. [10] The EU engaged in dialogue with Korea through the TSD Committee, and as a result South Korea has now completed the ratification process of three out of four pending conventions and revised its trade union law. The TSD Committee will continue monitoring compliance with the Panel of Experts' recommendations.

On human rights clauses and follow-up

3 . Could the Commission explain the administrative structures and procedures it has in place that allow it to (i) determine the human rights mechanisms to be included in a given trade agreement and to (ii) ensure adequate follow-up (monitoring, complaints)?

The Commission clarified that the primary purpose of an EU trade agreement is market access liberalisation and respect for trade-related rules. Adding human rights aspects into trade agreements is not a way of imposing EU standards on third countries, but promoting compliance with international conventions and agreements on matters such as human rights and labour rights as well protection of environment and climate. The EU includes 'human rights clauses' in the form of so called 'essential elements' in the political framework agreements with a partner country, to which trade agreements are linked. Exceptionally, essential elements clauses are included in the trade agreement with countries with which there is no political framework agreement (this has been the case in only one trade agreement so far – the EU-Columbia-Peru-Ecuador FTA). Although there are standardised versions of essential elements clauses (templates), the final wording is a product of negotiation between two



partners. The aim is to ensure that the core substance of the provisions is respected.

Human rights clauses

Primarily they are the essential elements clauses that are a part of the political framework agreements negotiated by the EEAS on behalf of the European Union. In FTAs with countries that already have established essential elements clauses with the EU through a political framework agreement, there is often a bridging clause referring to the political framework agreement and establishing that serious violations may also lead to a termination or suspension in part or in whole of the political framework agreement or trade agreement. In exceptional cases where the third country does not have a political framework agreement with the EU, the essential elements clause including reference to human rights is embedded in the trade agreement. The ongoing trade and sustainable development policy review will, among others, look into how to link the current essential elements clauses with strengthening the TSD enforcement. [11] This review will consider, for example, whether to include the Paris Agreement in the essential elements clause.

TSD clauses

The EU is committed to including trade and sustainable development (TSD) chapters in all its free trade agreements. [12] TSD chapters follow a specific template that is adaptable depending, among others, on whether a country has ratified the fundamental ILO conventions. In cases where the countries have not ratified these conventions, the TSD chapters commit the parties to make *continued and sustained efforts* to ratify them, and in cases where the ILO conventions have already been ratified the parties commit to effectively implement them.

A TSD review is currently taking place. This review was scheduled for 2023 but has been brought forward on the request of different stakeholders, including the European Parliament. An interim report on a comparative analysis of TSD provisions and best practices in terms of their implementation and enforcement by other countries [13] and an open public consultation (OPC) [14] were completed in November 2021. The results of the OPC were published on 14 January [15] and a final report of the comparative study on 10 February 2022 [16].

Follow-up and enforcement

The respect for human rights is monitored by the EU based on the reporting of relevant international monitoring bodies. Monitoring of compliance with the commitments of political framework agreements and trade agreements is done collegially by DG TRADE and the EEAS (including EU Delegations), through an array of tools. Examples of tools used to monitor compliance with human rights include political and human rights dialogues, Annual Report on Human Rights and Democracy, and for GSP countries the GSP monitoring process and a biennial report which includes a detailed country assessment. The Commission also reports annually on its overall implementation of trade agreements and enforcement activity.

The TSD chapters in free trade agreements open an additional avenue to monitor effective implementation of the fundamental ILO conventions related to labour rights. The institutional structures created under these chapters i.e. the TSD Committees (bringing together officials from the EU and partner country/countries) as well as the independent domestic advisory



groups representing civil society are used as compliance monitoring platforms. The TSD chapters include also a dedicated enforcement/ dispute settlement mechanism, which is activated only if an issue cannot be resolved through dialogue. [17] The Single Entry Point helps to streamline and facilitate contacts between the Commission's DG TRADE and the stakeholders.

Follow up on the EU-Vietnam FTA

4. In the context of the EU-Vietnam free trade agreement, could the Commission provide information on how it ensures the promotion of and respect for human rights, other than labour rights?

The trade negotiations with Vietnam took place against the background of a political framework agreement i.e. the EU-Vietnam Partnership and Cooperation Agreement (PCA). The FTA includes an institutional and legal link to the essential elements clause of the EU-Vietnam PCA allowing appropriate action in the case of serious breaches of human rights. In 2016, following the conclusion of the inquiry conducted by the EO, the Commission, in consultation with the EEAS, reviewed key policies relating to human rights, especially the general approach on how to evaluate the impact of free trade agreements on human rights. To this end, a Staff Working Document was published on “ *Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement* ” [18] .

In its relations with Vietnam the EU has been using several different channels to continuously follow up on the human rights situation in the country, including raising issues during high level visits, EU Delegations' contacts, an annual Human Rights Dialogue under EU-Vietnam PCA, intervening in individual cases of particular concern, including through confidential approaches, public statements or trial monitoring, prison visits, legal support to detainees and their families, etc. The EU also supports NGOs through development cooperation programmes and grants promoting human rights. Projects aim at strengthening the intervention capacity of civil society organisations, to improve people's access to justice by securing their legal rights, as well as assistance in support of gender equality action, tackling human trafficking and implementation of anti-torture standards.

To sum up, any human rights issue that arises ends up on the table of the most competent authority; it is integrated work between different EU actors where DG Trade works closely notably with the EEAS, DG INTPA and DG EMPL.

After a period of four to five years from the trade agreement's entry into force, the Commission intends to perform an *ex post* assessment that will also include human rights and sustainability aspects.

Conclusion of the meeting



The meeting ended with the Commission and the EEAS thanking the European Ombudsman for this opportunity to meet and discuss the role of the EU in trade and human rights and further the ongoing discussion on how the system operates. The Commission is moving towards fine-tuning structured mechanisms to handle issues and complaints, including human rights issues where relevant, and aims to address the needs of all stakeholders.

The EO representatives thanked the Commission and EEAS representatives for the meeting and for the information shared.

Brussels/Strasbourg, 2 February 2022

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[1] <https://www.ombudsman.europa.eu/en/decision/en/64308> [Link]

[2] For example the EU currently conducts approximately 60 human rights dialogues and consultations between the EU and partner countries, and regional groups – these dialogues are about ‘engagement’ and progress over time on human rights issues, including monitoring. When gathering information on human rights implementation the EU relies mostly on reports from relevant international monitoring bodies such as UN special procedures, including from UN special rapporteurs.

[3] European Instrument for Democracy and Human Rights:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0235> [Link]

[4] Neighbourhood, Development and International Cooperation Instrument:
https://ec.europa.eu/international-partnerships/global-europe_en [Link]

[5]
<https://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/>
[Link]

[6] A quarter of DG Trade staff are deployed in the EU Delegations.

[7] <https://trade.ec.europa.eu/access-to-markets/en/glossary/single-entry-point> [Link]

[8] One contact has touched on an issue under the Trade and Sustainable Development chapter of trade agreements, but this has not yet led to a formal complaint.



[9] <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2044> [Link]

[10] <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2238> [Link]

[11] https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf

[12]

<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/trade-and-sustainable-development->
[Link]

[13] https://trade.ec.europa.eu/doclib/docs/2021/november/tradoc_159899.pdf

[14] https://trade.ec.europa.eu/consultations/index.cfm?consul_id=301

[15]

<https://circabc.europa.eu/ui/group/e9d50ad8-e41f-4379-839a-fdfe08f0aa96/library/cc4162ad-910f-4099-b961-6c04b>
[Link]

[16] <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2360> [Link]

[17] In case of compliance with the international labour standards this is preceded by intensive monitoring work done by DG TRADE, DG EMPL, the EEAS and the EU Delegations.

[18] http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154236.pdf