



Closing note on the Strategic Initiative concerning how the European Commission ensures respect for human rights in the context of international trade agreements (SI/5/2021/VS)

Correspondence - 15/07/2022

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

Background

- 1.** According to the EU Treaties, EU external action, including trade policy, should respect and seek to promote the values on which the EU is founded. [1]
- 2.** Trade outside the EU is the exclusive responsibility of the EU, rather than individual Member States. The European Commission is responsible for negotiating trade agreements on behalf of the EU. [2]
- 3.** In February 2021, the Commission adopted a new trade strategy for the coming years. [3] Among other things, this strategy includes the commitment for the EU to *“take a more assertive stance to defending its interests and values”* through its trade policy.
- 4.** In recent years, the European Ombudsman has dealt with complaints concerning EU trade policy, and the related negotiations and agreements. A focus of these complaints has been how the EU, through its external relations and trade policy, seeks to uphold and promote the EU's values around the world. [4]
- 5.** The resulting inquiries have led the Ombudsman to look into how the Commission assesses the human rights impact [5] and the sustainability impact [6] of EU trade agreements. The Ombudsman has also looked into reporting on the activities of export credit agencies. [7]
- 6.** Since the 1990s, EU bilateral trade agreements have included clauses explicitly detailing human rights obligations on the parties in the implementation of the agreement. The implementation of the agreement is conditional on the respect of these obligations. [8]
- 7.** Against this background, the Ombudsman opened a strategic initiative, following up on her recent inquiries in this area. The initiative aimed to assess how the Commission ensures respect for human rights in the context of international trade agreements. In particular, the initiative sought to examine how the Commission prepares the ‘human rights clauses’ contained in international trade agreements signed by the EU and how, once trade



agreements have entered into force, it monitors the application of these clauses.

8. In July 2021, the Ombudsman set out a series of questions to the Commission. [9] These questions aimed at getting a better understanding of: (i) the preparatory stage of human rights clauses, including how the content is decided on; and (ii) the implementation stage, including how the Commission monitors that human rights clauses are respected and how it seeks to ensure compliance, where it suspects they are not. The Ombudsman also sought to follow up on her previous inquiry into the failure to carry out a human rights impact assessment in the context of the EU-Vietnam free trade agreement [10], in particular, how the Commission has sought to ensure respect for human rights now that the agreement is in force.

Human rights clauses and follow up

9. The Commission stated that adding human rights aspects into trade agreements is not a way of imposing EU standards on non-EU countries but, rather, aims to promote compliance with international conventions and agreements on matters such as human rights and labour rights, as well as environmental protection and climate action [11].

10. The EU has committed to including trade and sustainable development (TSD) chapters in all its free trade agreements. [12] TSD chapters follow a specific template that is adapted depending on factors such as whether a country has ratified the 'fundamental' conventions of the International Labor Organization (ILO). 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. In cases where the ILO conventions have already been ratified the parties commit to effectively implement them.

The trade and sustainable development (TSD) approach

11. The Commission carried out a review of the trade and sustainability development (TSD) approach. The review was scheduled for 2023 but was brought forward to 2022 on the request of different stakeholders, including the European Parliament. Among other things, the review looked into how to link the current essential elements clauses with strengthening TSD enforcement. [13] The review included a comparative analysis [14] of TSD provisions, implementation and enforcement by other countries [15] and a public consultation. [16]

12. The TSD chapters in trade agreements open an additional avenue for monitoring the implementation of ILO conventions related to labour rights. This is facilitated by the institutional structures created under these chapters, notably the TSD Committees (which bring together officials from the EU and partner countries) but also the 'domestic advisory groups' [17] that advise on the implementation of the trade agreement or parts of it. The TSD chapters also include a dedicated enforcement/dispute settlement mechanism, which is activated only if an issue cannot be resolved through dialogue.

13. On 22 June 2022, the Commission published a Communication [18], which sets out the new approach to TSD. The new approach, among other things, will include the possibility to apply, as a last resort, trade sanctions for material breaches of the Paris Climate Agreement and fundamental principles of ILO conventions. The Commission will also work more closely



with Member States and the European Parliament to monitor TSD commitments.

Follow up and enforcement

14. The Commission states that it monitors respect for human rights by its trading partners based on the reporting of relevant international monitoring bodies. The monitoring of compliance with the commitments of political framework agreements and trade agreements is done collectively by the Commission's Directorate-General for Trade (DG TRADE) and the European External Action Service (EEAS) (including EU delegations). They do so on the basis of tools such as political and human rights 'dialogues' [19]. The results are published in the Annual Report on Human Rights and Democracy [20] and, for countries under the Generalized System of Preferences (GSP), the GSP monitoring process and a biennial report [21], which includes a detailed country assessment. The Commission also publishes an annual report on the overall implementation of trade agreements and enforcement activity [22], which can include information on the enforcement of TSD chapters in trade agreements, for example.

Human rights enforcement in trade agreements

15. In 2020, the role of Chief Trade Enforcement Officer (CTEO) [23] was created to oversee the enforcement of EU trade and investment agreements, including TSD commitments and GSP obligations [24]. This includes facilitating cooperation between the Commission, the EEAS and the EU delegations. [25] The CTEO also works closely with the domestic advisory groups established under the TSD chapters of trade agreements to ensure follow-up on the implementation of these chapters.

16. The CTEO's responsibilities include managing complaints from different stakeholders, including trade unions, labour rights organisations and other civil society organisations. The Commission states that any serious breaches of human rights that violate the essential elements clauses or substantive labour provisions in the agreement may, as a last resort, lead to the termination or suspension in whole or in part of the trade agreement.

Complaints mechanisms in EU trade agreements

17. In 2020, the Single Entry Point (SEP) [26] was established as a first point of contact for EU individuals or businesses that are facing market access issues or for individuals or organisations that are concerned about non-compliance with TSD or GSP commitments under trade agreements. The SEP is an online portal through which individuals can submit complaints. The SEP is managed by a team under the CTEO.

18. Individuals may contact the SEP, before formally submitting a complaint, to obtain further information on how to approach an issue or submit a complaint. This aims to make the SEP more accessible and efficient as a complaints mechanism. [27]

19. Only EU citizens or EU-based organisations can access the SEP. Individuals and organisations from non-EU countries do not have direct access to the SEP. However, they may contact EU-based organisations and ask them to bring an issue to the Commission's attention or do so jointly in the form of a complaint. The SEP can and does look into issues



on its own initiative, including on human rights or labour rights issues covered by trade agreements.

20. The SEP focuses on issues related to trade agreements. There is no distinct human rights complaints mechanism. Although the Commission states that it can also deal with complaints touching on human rights issues, so far, there have been no such complaints. 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.

21. The Commission has carried out training in the Member States to raise awareness about trade policy tools and mechanisms, including the SEP, with 5 000 organisations having received training so far. DG TRADE staff across the EU's network of delegations and EEAS staff covering trade issues have also received training on how to refer claims of non-compliance with commitments under trade agreements.

Follow up to the Ombudsman's inquiry concerning the EU-Vietnam free trade agreement

22. The Ombudsman's inquiry in 2016 found that the failure by the Commission to carry out a human rights impact assessment before signing the EU-Vietnam free trade agreement (FTA), constituted maladministration. Following the conclusion of the Ombudsman's inquiry, 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* [28].

23. The Commission informed the Ombudsman that, in its subsequent relations with Vietnam, the EU has been using several different channels to continuously follow up on the human rights situation in the country. These include: raising issues during high-level visits; contacts on the ground through the EU Delegation; and an annual 'human rights dialogue', which was set up under the pre-existing EU-Vietnam Partnership and Cooperation Agreement (PCA). The EU has intervened in individual cases of particular concern, including through confidential approaches, public statements, trial monitoring, prison visits, and legal support to detainees and their families. The EU also provides funding to projects that aim to strengthen the intervention capacity of civil society organisations, to improve access to justice by securing individual's legal rights, to support gender equality action, to tackle human trafficking and to support the implementation of anti-torture standards.

24. Four to five years after the trade agreement's entry into force, which was August 2020, the Commission intends to perform an *ex post* assessment that will also include human rights and sustainability aspects.

Conclusion

25. This initiative has enabled the Ombudsman to gain an insight into the provisions and procedures for safeguarding human rights in the context of EU trade policy and how the Commission approaches enforcement in this area.

26. It is clear that the **TSD approach is not primarily aimed at addressing human rights abuses**. It focuses on trade issues, environmental issues and labour rights issues. There



were no questions in the recent public consultation, conducted as part of the TSD review, which mentioned human rights. The SEP portal does not mention human rights. The role of the CTEO on the Commission website mentions workers' rights only. The SEP, which in theory can handle human rights complaints, does not seem to be suited to such complaint handling.

27. The EU does publish an informative **Annual Report on Human Rights and Democracy in the World**, with country chapters [29]. This report details extensive human rights concerns in countries, which have free trade agreements with the EU. There are also currently approximately **60 human rights dialogues** and consultations with partner countries and regional groupings. **Some dialogues (for example, with Russia and Israel) are currently frozen.**

28. The information gathered through this initiative, coupled with the above reflections, lead the Ombudsman to make the following suggestions:

Suggestions

(i) As part of strengthening implementation and enforcement, the Commission should consider setting up a new and separate **complaint-handling portal for alleged human rights abuses**. Accessibility, citizen-friendliness and transparency are key principles when setting up and implementing complaints mechanisms.

(ii) The Commission should examine how it can **facilitate stakeholders based in the countries with which the EU has agreements who want to raise human rights issues** through this new portal. Given that stakeholders on the ground are often best placed to report problems and present evidence, especially concerning human right issues, this would help strengthen the effectiveness of the EU's trade enforcement mechanisms.

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Strasbourg, 15/07/2022

[1] Article 23 of the Treaty on European Union; Article 212 of the Treaty on the Functioning of the European Union.

[2] More on EU trade policy:

https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/making-trade-policy_en

[3] https://ec.europa.eu/commission/presscorner/detail/en/ip_21_644



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

<https://www.ombudsman.europa.eu/en/decision/en/107200>

<https://www.ombudsman.europa.eu/en/decision/en/111202>

<https://www.ombudsman.europa.eu/en/decision/en/139418>

[5] Case 1409/2014/MHZ on the European Commission's failure to carry out a human rights impact assessment prior to signing the EU-Vietnam Free Trade Agreement

<https://www.ombudsman.europa.eu/en/decision/en/64308> ; case 150/2017/JN on the European Commission's failure to carry out a human rights impact assessment before agreeing to new OECD provisions on export credits for coal-fired electricity generation projects <https://www.ombudsman.europa.eu/en/decision/en/111202>

[6] Case 1026/2020/MAS regarding the failure by the European Commission to finalise an updated 'sustainability impact assessment' before concluding the EU-Mercosur trade negotiations <https://www.ombudsman.europa.eu/en/case/en/57236>

[7] Case 212/2016/JN on the annual reviewing of Member States' export credit agencies.

[8] [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2019\)637975](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2019)637975)

[9] <https://www.ombudsman.europa.eu/en/doc/correspondence/en/144069>

[10] Case 1409/2014/MHZ <https://www.ombudsman.europa.eu/en/decision/en/64308>

[11] Note: 'Human rights clauses' usually take the form of 'essential elements' in the political framework agreements between the EU and a partner country, to which trade agreements are linked. In cases where there is no political framework agreement, essential elements clauses may be included directly in the trade agreement with countries concerned (as occurred, for example, in the EU-Columbia-Peru-Ecuador free trade agreement). Although there are standardised versions of essential elements clauses, the final wording is a product of negotiation between two partners. In free trade agreements (FTAs) with countries that already have established essential elements clauses with the EU through a political framework agreement, there is often a bridging clause in the agreement referring to the political framework agreement. Typically, this states that serious violations may also lead to the termination or suspension in part or in whole of the political framework agreement or trade agreement.

[12]

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

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

[14] The outcome was published in February 2022, along with the Commission's



Communication: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3921

[15] The details were published in an interim report in 2021:

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

[16] The results were published in January 2022:

<https://circabc.europa.eu/ui/group/e9d50ad8-e41f-4379-839a-fdfe08f0aa96/library/cc4162ad-910f-4099->

[17] Domestic advisory groups are established under the TSD chapters of trade agreements, bringing together representatives from civil society and business to monitor the implementation of the agreement.

[18] https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3921

[19] These dialogues take different formats, enabling the EU to engage and exchange with partner countries on human rights issues. See the EEAS guidelines on human rights dialogues: https://eeas.europa.eu/sites/default/files/human_rights_dialogue_guidelines.pdf.

[20] https://www.eeas.europa.eu/eeas/eu-annual-reports-human-rights-and-democracy_en

[21] See the 2019 biennial report:

https://trade.ec.europa.eu/doclib/docs/2020/february/tradoc_158618.pdf

[22] See the statement on the publication of the 2021 report on the implementation and enforcement of EU trade agreements:

https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5545

[23]

https://policy.trade.ec.europa.eu/enforcement-and-protection/chief-trade-enforcement-officer_en

[24]

<https://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferenc>

[25] A quarter of DG TRADE staff are deployed in the EU's delegations around the world.

[26] <https://trade.ec.europa.eu/access-to-markets/en/content/single-entry-point-0>

[27] The Commission has published guidelines on the SEP:

https://trade.ec.europa.eu/access-to-markets/en/form-assets/operational_guidelines.pdf.

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

[29]

https://www.eeas.europa.eu/eeas/2021-human-rights-and-democracy-world-country-reports_en