



April 2010
AK Position Paper

EU-Canada Comprehensive Economic and Trade Agreement (CETA)

– Sustainability Chapter MD 20b

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 – amongst others unemployed, persons on maternity (paternity) leave, community- and military service – of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Herbert Tumpel
President

Werner Muhm
Director

Executive Summary

In some respects, Canada's proposals for a Sustainability Chapter are closer to our requirements than the EU Proposal. This is in particular the case with regard to the integration of ministers, the more developed dispute resolution procedure and above all the approach that violations against the agreed labour standards will finally be punished with significant fines. The Austrian Chamber of Labour (AK) regards it as particularly positive that the Canadian Proposal makes the integration of elements that go beyond core labour standards in the Free Trade Agreement mandatory (minimum wages, overtime payments, occupational health and safety and the equal treatment of migrants concerning working conditions).

It has to be insisted upon, however, that Canada ratifies Convention 29 (Forced Labour), Convention 98 (Right to Organize and Collective Bargaining) and Convention 138 (Minimum Age) of ILO, even if she has already made the Conventions national law and is effectively using them.

From the point of view of the AK, the Canadian Proposal should be fundamentally discussed in a meeting with the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK) and the Federal Ministry of Economy, Family and Youth (BMWFJ) to reach a final verdict.

The AK position in detail

1. Assessment of the Canadian Proposal

The present text version of the Free Trade Agreement EU-Canada MD 20b contains two proposals on a Sustainability Chapter, which are equally significant. An actual consolidation in this area has obviously not yet taken place: since our last review in December 2009, the EU Proposal for a Sustainability Chapter has remained unchanged; therefore, our opinion on this part from 11th December 2009 is maintained. What is new is the Canadian text proposal. The two proposals do not only have different contents, but their structure also differs, what makes a comparison more difficult.

The introduction in the Chapter (Chapter XX: Labour, Art X. Shared Commitments and Objectives) should basically be supported, in particular the reference to the commitments from the ILO Membership with regard to the ILO Declaration on Fundamental Principles and Rights at Work. Very positive is also the reference to the **ILO Declaration on Social Justice for a Fair Globalization from 2008**, as it makes clear that comparative cost advantages cannot be justified by violating ILO Core Labour standards.

Although at this point and subsequently, references are made to the obligation and application of the CLS, it

has to be made unambiguously clear that the **ratification of all eight CLS** is mandatory. As already detailed with regard to the EU Proposal, Canada has only ratified five of the eight conventions of the ILO. Not ratified have been Convention 29 (Forced Labour), Convention 98 (Right to Organize and Collective Bargaining) and Convention 138 (Minimum Age).

The Proposal focuses on the implementation of various labour law standards in national law. Positive is the fact that beyond the eight **Core Labour Standards, minimum wages, overtime payments, occupational health and safety and the equal treatment of migrants** with regard to working conditions are also specified (Art 1/e-g, General Commitments).

The promotion of productive employment through qualification, social security (old-age provision, unemployment insurance, maternity protection) included in the **Decent Work Agenda** remains unmentioned. The promotion of social dialogue has already been mentioned under Shared Commitments and Objectives.

Should the contractual partners determine standards in this Agreement, which are lower than those of one of the contractual partners, a **non-regression clause** will ensure that the respective contractual partners have

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to maintain their current higher standards.

Positive is the reference to the effective assignment of **labour inspectors** (Government action, Art 3/Paragraph 1/a and b), but also the reference to the assignment of worker-management committees (Paragraph 1/d). The following has to be taken into account with regard to young workers: the Labour Constitution Act (§§ 123 ff ArbVG) regards among others the Youth Reliance Board as an organ of youth representation. This committee is elected by a company's young workers (apprentices) (active right to vote up to 18 years, passive right to vote up to 21 years) to especially represent the economic, social, health-related and cultural interests of their young workers. In view of the fact that the interests of young workers, in particular with regard to training (in particular concerning apprentices - www.apprentice-trades.ca) or occupational health and safety provisions, are different from the interests of adult workers, it would be necessary and sensible to consider young workers and apprentices with regard to promoting worker-management committees. The aim is that young people are able to represent themselves and that their interests are not "only co-represented" by adults. Therefore, setting up a committee for young workers and apprentices should be promoted and a relevant formulation should be included in Article 3 Paragraph 1/d. From our point of view, the actual assignment of labour inspectors to check the observance of protective provisions and relevant

sanctions in case of confirmed violations are regarded as necessary to make sure that the protective provisions - in particular in respect to youth employment - are adhered to.

Paragraph 1/f proposes to introduce **sanctions** or fines if the labour law provisions are not adhered to; Annex 3 (Monetary assessments) specifies a maximum amount of 15 Mio US\$. An **appropriation** should be included in Annex 3, whereby it would be sensible to use the funds where violations took place.

The **Non Lowering Standards Clause** (Upholding level of protection) is included in both proposals and should definitely be maintained.

In contrast to the EU Proposal, the **minister level** appears to be the highest decision-making committee (Art 7) in the Canadian Proposal. The AK welcomes this upgrading of social and environmental concerns in trade agreements. Who will fill this position at EU level (Commissioner for Employment Issues or Social Minister) has to be examined.

Dispute settlement (Art 12, 13, 14): here, the ministers are the first to be consulted when the obligations are reviewed (presumably restricted to the Sustainability Chapter). The establishment of a review panel depends on the decisions of the ministers and has a dispute settlement function. If the obligations are not adhered to, the fine mentioned will be imposed as a last resort in accordance with the

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Canadian Proposal following relevant reports and the development of an action programme.

A positive approach is that the Canadian Proposal intends to deal with complaints within different **deadlines** (response to complaints within 60 days, minister consultations should be completed after 180 days, the review panel has 30 days to assess whether the case is trade-related, after 120 days at the latest it has to present a report and after another 60 days a final report). Apart from that, a permanent **post processing and review process** should be provided for to ensure that governments make a sustainable attempt to adhere to the obligations. Similar to the EU Proposal, the Canadian Proposal also states that complaints on social problems are to be evaluated by independent experts. **ILO Experts** should also be involved.

In addition, it should be considered how in case of violations against the respective national labour law with regard to cross-border services by employees (e.g. remuneration according to Collective Agreement) the cross-border law enforcement (e.g. option of **enforcing administrative fines**) could be ensured.

2. Basic remarks on the Sustainability Chapter

In the following, you find the central elements for a Sustainability Chapter in bilateral Free Trade Agreements as requested by the Austrian Chamber of Labour:

- Compliance with all eight Core Labour Standards of the International Labour Organisation (ILO):**
The contracting parties must ratify, implement as national law and effectively apply the agreements, which are determined by the ILO declaration on fundamental principles and rights at work (Core Labour Standards, see Annex). 183 states, which are ILO members, are already obliged to do so in any case. The Core Labour Standards concern the freedom of association and the right to negotiate collective agreements, the elimination of forced labour, the abolition of child labour and the ban of discrimination in employment or occupation. We also demand a ban of export processing zones, as these zones normally do not even comply with the most fundamental national labour rights. Apart from that, the current official version of the ILO Declaration "Social Justice Declaration for a Fair Globalisation" from 2008 has to be adopted, according to which it has been explicitly clarified that a breach of Core Labour Standards may not legitimate comparative advantages.
- Additional ILO Conventions:**
Depending on the partner states' level of development, the EU should also demand the implementation of ILO Convention 155 on Occupational Health and Safety and the Working Environment, the so-called "ILO Priority Conventions" (Convention 122 on Employment

The governments of both contracting parties should regularly report on the progress of implementing all obligations included in the Agreement.

Policy, Conventions 81 and 129 on Labour Inspections and Convention 144 on the Consultation of the Social Partners) respectively the Conventions on Decent Work Agenda¹.

- **Reporting commitment on the implementation status of the labour standards:** The governments of both contracting parties should regularly report on the progress of the implementation of all obligations assumed in the Agreement. Apart from the obligations, which are contained in the ILO Declaration on fundamental principles and rights at work, these include, other agreements mentioned above.
- **Non-Lowering of Standards clause (Upholding levels of protection clause):** The objective of this provision is to guarantee that existing social and environmental standards will not be lowered to attract foreign investors. Apart from that, this obligation should bear reference to the fact that it applies to all regions of the country to prevent the Agreement resulting in an increase of production in export processing zones.
- **Sustainability impact assessments: content, participation of the social partners and follow up:** Provisions on sustainability impact assessments should be included as well as measures, which are taken due to the result of these assessments. Sustainability impact assessments should consider all relevant aspects of the agreements' social and economic impact. These include access opportunities to high quality public services and the use of different strategies, including trade-related strategies to achieve industrial progress. Labour and employers' representatives as well as non-governmental organisations must be involved in the evaluation of the sustainability impact assessment on the effects of the Agreement. A follow up process has to be determined following the sustainability impact assessment.
- **Forum for the exchange of information between governments and social partners:** A forum for trade and sustainable development should be set up, which enables the exchange of information on the implementation of the Agreement between government representatives of the partner states on the one hand, and labour and employers' organisations and NGOs on the other. A clearly defined balance between these three member groups should be present in this forum. The forum should meet at

¹ The concept decent work (Decent Work Agenda) includes four main elements: 1. Fundamental principles and rights at work (ILO-Core Labour Standards); 2. Productive, freely chosen employment; 3. Social protection and security as well as 4. Social dialogue. This also includes taking the gender dimension in these four elements into account. International standards of IAO and UNO do already exist for each of these areas.

It is important that governments are obliged to react to officially submitted communications of their social partners.

least twice a year and provide its members with the opportunity of publicly discussing social issues and problems.

- **Ensure reaction of governments to complaints of social partners:** It is important to commit governments to react to officially submitted complaints of the social partners. This should become a mandatory mechanism, which provides recognised labour and employers' organisations as well as NGOs on both sides of an FTA with the opportunity of submitting such requests for action. Such complaints should be processed within a determined period (e.g. two months). They should also be part of a permanent follow up and revision processes to make sure that governments do effectively deal with complaints.
- **Independent experts shall assess complaints and prepare recommendations:** If the other party does not satisfactorily answer complaints by a government, the social partners or NGOs, independent and qualified experts should assess these. Appropriate recommendations must be part of a determined speedy process, so that these assessments are not only used for reports and recommendations, but result in provisions on follow up and reviews. The intention is to maintain the pressure on governments to prevent any breaches of labour rights in their territories. At least one independent expert should be an ILO representative.
- **The dispute settlement procedures must also apply to the Sustainability Chapter:** It should be made clear that the same implementation rules applied to the Sustainability Chapter as for all other provisions of the Agreement. The agreements of this Chapter are therefore in particular subject to the same dispute resolution treatment as all other elements of the Agreement.
- **Avoiding the continuous breach of minimum labour standards by imposing monetary fines:** In case that the consultation proceedings between governments and social partners as well as NGOs and even the recommendations of the independent experts do not produce any positive changes with regard to labour obligations within an reasonable period of time, monetary fines must be provided at the end of the dispute resolution procedures. These should be high enough to have a deterrent effect. These means should be used to improve social standards and working conditions in those sectors and areas, which show relevant problems. In this connection, technical and administrative support in cooperation with international organisations, in particular the ILO, should be provided for the elimination of injustices.

In order to meet the requirements embedded in the name of the Sustainable Development Chapter strong clauses to adhere to multilateral environmental agreements have to be implemented.

- **Guaranteeing compliance with environmental agreements:** In order to do justice to the name of this Sustainability Chapter, it is necessary to implement strong clauses for the compliance with multilateral environmental agreements, including the Kyoto Protocol. In accordance with the Generalized System of Preferences of the EU (APS+) all environmental agreements included in it have to be ratified and implemented. These concern the following agreements: Montreal Protocol (ozone depletion), Basel Convention (hazardous waste), Stockholm Agreement (persistent organic pollutants), Convention on International Trade in Endangered Species of Wild Fauna and Flora, Convention on Biological Diversity and Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides.
- A Sustainability Chapter with relevant agreement on the protection of **human rights** (in particular joining the International Covenant on Economic, Social and Cultural Rights of UNO) should be tied to other agreements.

Annex 1: **ILO-Core Labour Standards**

The ILO “Declaration on Fundamental Principles and Rights at Work” refer to the eight conventions that are also called Labour Standards:

Right to Organize and Collective Bargaining

No. 87: Freedom of Association and Protection of the Right to Organize (1948)

No. 98: Right to Organize and Collective Bargaining (1949)

Abolition of Forced Labour

No. 29: Forced Labour Convention (1930)

No. 105: Abolition of Forced Labour Convention (1957)

Equal Remuneration and Non-Discrimination in Employment and Occupation

No. 100: Equal Remuneration Convention (1951)

No. 111: Discrimination (Employment and Occupation) Convention (1958)

Ban on Child Labour

No. 138: Minimum Age Convention (1973)

Nr. 182: Worst Forms of Child Labour Convention (1999)

The “Declaration on Fundamental Principles and Rights at Work” of June 1998 is a consequence of the World Summit for Social Development, Copenhagen

1995, where the international community of states demanded universal social rights in a globalized world. A regular follow up mechanism reviews the progress made by the Member States with respect to fulfilling their duties.



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