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AK Position Paper

Communication of the Commission on Trade, Growth and World Affairs – Trade policy as a core component of the EU's 2020 Strategy

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.

Herbert Tumpel
President

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.

Werner Muhm
Director

Executive Summary

The AK is opposed to further liberalisations at bilateral level, which, since the „Global Europe strategy have strengthened bilateral trade policy and undermined the multilateral process.

- The AK is still critical of the present Communication of the Commission, which abides by its forced market access strategy within EU trade policy. A large number of reviews show and the Commission also points out that continued trade liberalisations may entail disadvantages for various industries and subsequently for workers within the EU and the partner countries. The AK is opposed to further liberalisations at bilateral level, which, since the „Global Europe strategy have strengthened bilateral trade policy and undermined the multilateral process.
- Notwithstanding our critical attitude concerning the large number of current trade negotiations, the AK welcomes the value that the Global Europe generation of bilateral FTA intends to place on labour standards, employment and environmental issues. The EU has to insist on the binding character of the provisions in FTA sustainability chapters.
- The AK believes that the European Union should not conclude investment protection agreements with countries that have a functioning rule of law system (e.g. Canada, Japan). Foreign investors should be given a level playing field, hence have the same rights as local investors. Provisions relating to investment protection in free trade agreements and separate investment protection agreements respectively should not be extended to the market access phase.
- The AK is opposed to extending the trade defence instruments to all distortions that arise from subsidising strategic economic sectors. We believe that each case has to be considered on its own merits. We are explicitly in favour of tackling social dumping by way of anti-dumping measures.
- If a committee of eminent persons from developed and developing countries will be set up to obtain independent recommendations to help shape our European view on the future agenda and functioning of the WTO post-Doha, the AK requests the participation of persons from trade unions and civil society associated with them.
- The AK is generally in favour of legislative initiatives, which increase symmetry in access to public procurement markets in developed countries and large emerging market economies. However, it has to be ensured that the relatively high European standard of labour, social and environmental legislation is not lowered in the global market place.
- With regard to the planned adoption of a Commission Communication on trade and development one should, for reasons of solidarity, desist from the principle of reciprocity and consider

In some industries, import competition squeezes out local products, leading to job losses because domestic production activities are no longer profitable.

the level of development of the trading partners with regard to the targeted tariff cuts.

- If the GSP are revised, one should strengthen those mechanisms that guarantee the withdrawal of preferences if the preconditions (human rights, environmental and minimum labour standards) are not complied with.
- The revision of the strategy on enforcing intellectual property rights in third countries should not undermine the existing *acquis communautaire* of the EU Member States. The negotiations should be transparent and involve stakeholders. Activities by private users should not be covered by the agreements.

The AK position in detail

1. Introduction

Austria's external trade is strongly oriented towards exports, which is reflected in the high export dependence of our jobs. In Austria, about a quarter of all workers is directly or indirectly involved in export trade. One should also mention that Austria's main trading partners are based within the EU. However, one should also bear in mind that it lies in the nature of trade liberalisations that they not only benefit one's own export economy. Trade liberalisation has a flipside, namely the opening of one's own markets. In some industries, import competition squeezes out local products, leading to job losses because domestic production activities are no longer profitable. This has also been confirmed on several occasions by empiric analyses.

Therefore, the AK doubts the positive effects on the labour market expected by the Commission. We think that the data on „consumer benefits“ should also be brought into question.

2. Continuation of the negotiation programme (Global Europe strategy)

*a. Rapid completion of the **Doha Round** by the end of 2011 at the latest:*

The AK prefers multilateral WTO negotiations to the current bilateral free trade negotiations by the EU. The World Trade Organisation (WTO) represents the currently only multilateral set of rules that can be enforced by its dispute settlement mechanism for the still different regional and national trade policies. We therefore believe that the increasingly integrated and globalised relations of the world regions and their states to each other, as well as the cooperation processes in the individual policy areas can only be improved at global level. The WTO has for many years attracted harsh criticism by non-governmental organisations, but also by developing countries. The democratisation of the WTO, the inclusion of minimum labour standards in the WTO and the lifting of EU import barriers for sustainable products would be relevant important objectives.

Over the past years, the AK has repeatedly stressed how much bilateral free trade agreements interfere with the multilateral process. However, the current Communication still continues with this course, which **undermines multilateral negotiations.**

*b. Making significant progress with current **bilateral trade negotiations**, opening new trade negotiations with ASEAN countries and proposal for **separate investment negotiations** with main partners:*

The AK prefers multilateral WTO negotiations to the current bilateral free trade negotiations by the EU.

The liberalisation requests of the EU must be stronger than before and take the economic and socio-cultural particularities of the partner countries into account.

Right up to the economic crisis, Austria enjoyed very dynamic foreign trade relations, for example with Asia. Although above average export growth of more than 30 % had been achieved in this region, the export volumes with the trading partners of the Global Europe agenda are as low as their share in Austria's export total. **However, import growth from these regions can be considerable:** it lies between 20 and 30 % and can - as in case of Malaysia - be over 65 %. For some industries, such as textile and clothing production, excessive imports in the EU can lead to serious problems. Austria's trade relations with Columbia and Peru and the Central American States are marginal.

Notwithstanding our critical attitude concerning the large number of current trade negotiations, the AK welcomes the value that the Global Europe generation of bilateral FTA intends to place on **labour standards, employment and environmental issues**. However, the crucial point is how much **binding character** the provisions in FTA sustainability chapters will have.

Following elements¹ are the precondition for an effective sustainability chapter:

- The implementation and compliance with all eight **ILO core labour standards** in the partner countries;
- **Reporting duty on the implementation status** of labour standards in the partner countries,

- A **non-lowering of standards clause** to reduce social dumping

- **A forum for the exchange of information** between governments, social partners and NGOs,

- Ensure adequate **reaction of governments** to complaints of social partners;

- **Independent experts** shall assess complaints and prepare recommendations (incl. ILO);

- The **dispute resolutions procedure** must also apply to the sustainability chapter;

- Continuous breaches of minimum labour standards must be prevented by imposing **monetary fines** as a last resort;

- The compliance with the following **environmental agreements** must be guaranteed: Kyoto Protocol, 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;

- Apart from having rights, European **investors** must also be obliged to comply with social and ecological minimum standards. It must be ensured that these are adhered to by their subsidiaries and value-added chains.

¹ See also our **Statement** of 13.7.2010 on the Public Consultation on the Future of Trade policy and our **Position Paper** of 23.2.2010 „Yes to a binding sustainability chapter! New codecision competence of the European Parliament for Trade Policy should be actively used for social and environmental standards!“

The negative impact of foreign direct investments on the employment situation in Austria is very high.

Apart from forced access to new markets, the EU is also aiming at **regulatory harmonisation** in strategic sectors (e.g. financial services, telecommunication, postal services) and in respect of job qualifications, market access regulations, licensing procedures etc, whose reference framework is based on relevant EU regulations. At this point, we would like to repeat our criticism towards the view of the Commission concerning trade regulations for goods, services and investment. As before, the Commission regards regulations generally as barriers and therefore as especially harmful. This raises the question whether the rules favoured by the EU must inevitably correspond with the social and economic requirements of the partner countries. The regulatory approach favoured by the EU Commission fails to recognise that regulations always have to be adjusted to the economic and sociocultural situation. The liberalisation requests of the EU must be stronger than before and **take the economic and sociocultural particularities of the partner countries into account**.

Only then will the EU be able to advocate that services of general interest are an integral part of the European social model, if it does not at the same time demand the forced liberalisation of these services from other states. Therefore, public services must be excluded from the negotiations. Similar to the WTO/GATS negotiations, bilateral negotiations entail the risk, that **public services** might be liberalised. These include in particular education, healthcare and social services, audiovisual and cultural services, water supply, mail

services and public transport. Excluding these sectors from the negotiations does not only prevent liberalisation demands being made to the EU, but also guarantees that the liberalisation proponents within the EU (in particular the business lobbies) cannot impose any demands on other states.

As to services, a liberalisation of the **free movement of workers (Presence of Natural Persons, Mode 4)**, which goes beyond the GATS level or the CARIFORUM Agreement must be excluded in bilateral negotiations. Apart from that, attention has to be paid to the fact that

- no liberalisation commitments may be entered into for **contractual service suppliers** and **independent professionals**, which go beyond the current level of GATS commitments,
- the AK is strictly opposed to liberalisation commitments for **low and medium qualified workers**,
- the AK is against the proposal to exempt posted workers from the **obligation to pay tax, duties** and national insurance contributions in Austria,
- in case of posted workers the **favourability resp. target country principle** must be fully complied with in respect of applicable labour and social legislation as well as income regulations resp. collective agreements,
- the AK supports **limited stays of persons from third countries for vocational and advanced educational purposes**, if these are taking place within

² Özlem Onaran; Effects of globalization on wages, employment, and the wage share in Austria; AK Publication, Vienna 2008

the scope of cooperation projects of development cooperation. Suitable measures must be provided for, which prevent the direct competition with local workers and guarantee that these persons return to their native country following the completion of their assignment.

In the chapter „Investment Barriers“, the European Commission deals with empirical findings, which underline the significance of **foreign direct investments**, in very general terms. An attempt is made on several occasions to prove that foreign direct investments have a positive effect on the employment situation in the country of residence. In this context, the AK refers to the results of a study carried out for Austria², which conclude the following negative effects for the workers in the country of residence for the period 1996 - 2005: **the negative impact of foreign direct investments on the employment situation in Austria is very high**. Compared to two jobs, which are created abroad through foreign direct investments by Austrian companies, one job is lost at home. As the Lisbon Treaty made direct investments a European agenda, the AK proposes a comprehensive discussion on advantages and disadvantages of foreign direct investments also in emerging markets and developing countries. This debate should not be based on particular interests and also give a voice to criticism and empirical findings. A future European investment policy must be based on a comprehensive analysis.

The Commission is making observations on those countries, with whom

negotiations should be opened with regard to future European investment policy. The AK believes that the European Union **should not conclude investment protection agreements with countries that have a functioning rule of law system (e.g. Canada, Japan). Foreign investors should be given a level playing field, hence have the same rights as local investors. Provisions relating to investment protection in free trade agreements and separate investment protection agreements respectively should not be extended to the market access phase.**

As to the discussion on future European investment policy, we refer to our detailed position on the Investment Package of the European Commission (COM(2010)343 final and COM(2010)344 final) from 2.9.2010. Apart from that, the AK urges the European Commission to develop a new generation of investment agreement, which **promotes socially and ecologically sustainable investments and which converts the complex European network of bilateral investment agreements into a more transparent, more predictable and more balanced system**. Inadequacies of the existing regime must be remedied. Furthermore, an international investment policy should be developed, which counterbalances investor rights with investor obligations and supports positive investment behaviour by promoting sustainable investment as well as the EU targets for development, social, ecological, human and women’s rights.

The AK supports using and extending existing trade defence instruments to unfair trading practices, which lead to social dumping.

Sustainability impact assessments should take all relevant aspects of the social and economic impact of the agreements into account.

*c. Extending **trade defence instruments** to distortions such as the subsidy of strategic economic sectors.*

The AK is sceptical of the general approach of the Commission against the subsidy of strategic economic sectors. We believe that each sector **has to be considered on its own merits** and should be solved by dialogue. In our opinion, it must be possible to promote environmentally friendly production methods or to help less developed countries (LDC) to establish so-called infant industries.

Instead, the AK supports using and extending existing trade defence instruments to unfair trading practices, which lead to **social dumping**. A situation, which requires the use of antidumping and protective measures could in future be treated as a disregard of ILO minimum labour standards. Therefore, violations of ILO minimum labour standards, which have come to the attention of the Commission, have to be part of the investigations for the introduction of protective measures. An improvement in accordance with workers' wishes would be the involvement of trade unions in the decision on the use of trade defence instruments. In the same way as enterprises, they too should have the opportunity to act as complainant. The application of protective commercial policy measures should be individually reviewed and take the respective level of development into account. Based on development policy considerations, anti-subsidy measures cannot be forced in respect of developing countries.

Consultations: the AK is amazed about the Commission's enthusiasm concerning dialogues with civil society. It is true that these events are taking place regularly in structured form; however, the „integrative participation of civil society in shaping our trade policy“ is not as we see it. The chosen format resembles more a „debriefing“, where at best the opportunity exists to present points of view to civil society. If the intention really was to involve civil society, trade policy would focus on different issues.

With regard to **impact assessments**, we think that it is time that the Commission considers to embed these in future trade policy decisions. The AK is amazed that the Commission admits not to have done so until now. The intention to carry out ex post evaluation on a more systematic basis to help monitor the impacts of existing EU trade agreements is generally to be welcomed. However, the AK considers ex ante-impact analyses, which should already flow into the decision-making process for an agreement, to be more target-oriented. Sustainability impact assessments should take **all relevant aspects of the social and economic impact of the agreements into account**. This includes among others access opportunities to high-quality public services. Worker and employer representations as well as non-governmental organisations have to be involved in the ex post evaluation of the sustainability impact assessment on the impact of the agreement.

The AK is in favour of excluding public services from the scope of various agreements on public procurement.

*d. Setting up a **committee of eminent persons from developed and developing countries** to obtain independent recommendations to help shape our European view on the future agenda and functioning of the WTO post-Doha.*

We welcome the vision of the Commission and assume that persons will be invited who also represent the interests of workers in the EU and the partner states. The perspective of civil society should also be heard in this committee.

e. Pursuing negotiations with the EU's neighbours towards the ultimate aim of concluding Deep and Comprehensive FTAs bringing all neighbours gradually closer to the Single Market.

The relations to the EU's neighbours should be used to strengthen the EU in a global environment. In this context, European neighbourhood initiatives, such as the European neighbourhood policy, the Mediterranean Union as well as the East Partnership are gaining increasingly in significance. In agreement with the other social partners in Austria, the AK proposes **long-term support of these neighbourhood initiatives**. From a political and economic point of view, the European perspective is very important for the Western Balkan countries. Then rapprochement process of the Western Balkan countries to the EU should strengthen both economic and political stability.

3. Taking trade policy forward - The objectives of the Commission for 2011

*a. Legislative proposal for an EU instrument to help secure and increase symmetry in access to **public procurement markets** in developed countries and large emerging market economies:*

The AK generally supports this proposal as the degree of liberalisation in the EU compared to the other Member States of the Government Procurement Agreement is high in respect of public procurement. However, the AK is sceptical about opening procurement markets any further. For once, there is a danger that the **relatively high European level of labour, social and environmental regulation** would disadvantage European, in particular Austrian providers compared to their global competitors. Furthermore, relevant agreements without accompanying protective measures will hardly improve the worldwide level of labour, social and environmental standards. In this context, we would also remind of the social role model function of the state for sustainable development. Against this background, it would be unacceptable if the Republic of Austria would be forced - for example due to international obligations - to have her police uniforms produced in so-called sweat shops. The AK is also cautious in its approach towards liberalising particularly sensible services, in particular **public services**. We are therefore in favour of excluding public services from the scope of various agreements on public procurement.

The EU should make funds available to developing countries, which on the one hand should serve to compensate for reduced tariff revenues and or modernising the tax systems in the partner countries.

Apart from that, from a development policy point of view, it should be considered to grant **less developed countries** - subject to certain conditions - a national reservation for the benefit of their local economy. One idea how this could be achieved is that companies of a developing country could be awarded a contract, provided their offer - within the scope of public procurement in their native country - would only be slightly above the best international offer.

*b. Adopting a Commission Communication on **trade and development** and a legislative proposal to reform the **Generalised System of Preferences** for developing countries:*

From the point of view of the AK, the aimed at abolition of all export restrictions (quantitative export restrictions, export duties, export taxes etc) should be scrutinised. In particular in developing countries, especially in less developed countries, this often concerns important **regulatory instruments**, which serve the establishment of important industries or the safeguarding of the local supply situation. With regard to developing countries, the EU should forego full **reciprocity** concerning its demands for tariff reductions and lowering quantitative import restrictions. As already mentioned, concerning the aimed at tariff reductions, the **level of development of the trading partners has to be taken into account**. In certain industries, tariff protection makes a vital contribution to the development of young industries. The demands of

the EU concerning market access, non-discrimination or regulatory harmonisation in its known form threaten to undermine development potentials.

The EU should make funds available to developing countries, which on the one hand should serve to compensate for reduced tariff revenues and or modernising the tax systems in the partner countries. On the other hand, **funds** are required to promote organisational-technical know-how in developing countries in order to make better use of existing trade policy preferences of the EU. Furthermore, FTAs should provide for institutionalised **monitoring and control mechanisms** to identify negative impacts on the economy and employment structure as well as on the labour conditions caused by trade opening. Embedding **safeguard and revision mechanisms** should guarantee that negative developments can be corrected.

Within the scope of its existing **Generalised System of Preferences (GSP)** for developing countries, the EU promotes the compliance with certain human rights and environmental conventions as well as with core labour standards. Based on this incentive system, selected developing countries are exempt from duty for over 7,000 products. In respect of revising the GSP, those mechanisms should be strengthened, which guarantee the withdrawal of preferences in case the preconditions (human rights, environmental and minimum labour standards) are not complied with.

Large-scale illegal, commercial trading must be prevented. Activities by private users should not be covered by the agreements.

4. Enforce our rights

Review our strategy on the enforcement of intellectual property rights in third countries as well as our customs regulation on IPR enforcement at the EU border:

The Commission addresses the necessity of harmonising the protection rules of intellectual property and effective protection as well as the effective enforcement of intellectual property rights in all foreign markets. The Anti-Counterfeiting Trade Agreement (ACTA), which is according to the Commission „a catalogue of trusted procedures“, should thereby be used as a central international framework.

Currently, the protection of intellectual property rights is negotiated at multilateral level within the scope of the ACTA Agreement and bilateral free trade agreements. The AK has no doubts that the compliance with intellectual property rights is less than adequate in certain states and that there is a justified interest of the right holders concerning the compliance with and the enforcement of their rights. However, based on the following reasons, the AK is very critical of the negotiations addressed by the Commission, in particular those concerning ACTA:

- **Danger of change in the existing EU *acquis communautaire*** on the right to intellectual property by concluding agreements as top-down regulations: this could result in assuming obligati-

ons even before there is a harmonised, consolidated *acquis communautaire* and a completed opinion forming process for the affected regulations within the EU; at the same time, the opinion forming process is shifted towards the level of a multinational agreement (e.g. adoption of criminal sanctions, even though not harmonised and controversial within the EU).

- Lack of **transparency** of negotiations: the necessary involvement of the affected stakeholders does not take place and important interests are not considered (danger of a one-sided imbalanced legal framework).

- No adequate differentiation in the enforcement measures between major commercial rights violations on the one hand and rights violations by private persons (excessive regulations) on the other. Large-scale illegal, commercial trading must be prevented. **Activities by private users should not be covered by the agreements.**

Should you have any further questions
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