



August 2009
AK Position Paper

Association Agreement between the EU and Central America as well as the EU and the Andean States

- Proposed elements for a trade and sus-
tainability chapter

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 Labor.

Werner Muhm
Director

Executive Summary

- The AK welcomes the inclusion of a separate sustainability chapter to promote the adherence to ILO Core Labour Standards. It is, however, thereby vital to insist on the explicit obligation to ratify, implement and effectively adhere to all eight ILO Core Labour Standards by the Central American States and the Andean States. To ensure that these minimum labour standards will be adhered to in a binding manner, the general dispute resolution mechanism should also apply to the sustainability chapter.
- We welcome the admission of the so-called “Non-lowering Standards” clause the responsibility of which it is to prevent a subversion of existing national social and environmental standards.
- The institutional integration of the social partners with respect to adhering to the provisions provided for in this chapter has to be ensured. Any complaints concerning the violation of labour laws in the partner countries have to be heard by the governments and any social injustices have to be solved. This should not only be enabled by the planned consultations of the contracting parties but also by a binding follow-up mechanism. Special attention should be turned to the independence of the members of the committee of experts; a certain degree of importance should also be attached to a possible social and ecopolitical background of the experts.
- The AK supports the expressive ban of export production zones within the agreements.

The AK position in detail

The AK would like to thank you for making available Document DS 296/09 on text proposals by the EU and **Central America (CA: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua)** for a sustainability chapter dated 29.04.2009. At the same time we would like to refer to the negotiations with the **Andean States (CAN: Bolivia, Columbia, Ecuador and Peru)**, where the violation of human rights and labour laws, in particular in Columbia are still endemic. The adherence to these rights and laws has to be ensured by the appropriate structure of a sustainability chapter in the Free Trade Agreements. Due to the severe human rights violations and Columbia's lack of readiness to accept a substantial sustainability chapter, AK supports the notion to suspend the negotiations with CAN.

On the sustainability chapter of the Free Trade Agreement of the EU and Central America in detail:

Article 1 Context and objectives

The AK welcomes the admission of a sustainability chapter in the Free Trade Agreements. Although the countries of Central America have ratified the eight ILO Core Labour Standards, according to reports of the International Trade Unions Confederation, however, all

CA countries have committed serious violations against these standards. To ensure that these minimum labour standards are adhered to in a binding manner, it is intended to apply the general **dispute resolution mechanism** also to the sustainability chapter. The common position of the European Trade Unions Confederation (ETUC) with the trade unions from Central America (Proposed Social Chapter for an Association Agreement by and between Central America and the European Union, CSACC¹ - CCT² - ETUC³, April 2008) requires sanctions in case of violations of the core labour standards - for example by the retraction of customs concessions.

Article 1 "Context and objectives" has to be adjusted accordingly and the phrase proposed by Central America **"No Party may have recourse to dispute settlement..."** must be deleted.

Article 2: Right to regulate and levels of protection

In our opinion it would be important to add the part suggested by CA **"and labour"** in the first paragraph to the

¹ Coordinadora Sindical de América Central y del Caribe (Trade Union Coordinating Committee of Central America and the Caribbean)

² Confederación Centroamericana de Trabajadores (Central American Workers' Confederation)

³ European Trade Union Congress

The AK welcomes the admission of a sustainability chapter in the Free Trade Agreements and asks furthermore to apply the general dispute resolution mechanism to the sustainability chapter.

The AK approves the admission of different environmental conventions as well as the admission of the clause that existing social and environmental standards may not be lowered to attract foreign investments.

EU proposal **“public health and social protection”**, so that the intention to regulate the law will be applied as comprehensively as possible.

Article 3

Multilateral labour standards and agreements

Paragraph 1: The settlement aspect should be added to the area of application of this chapter to create the following sentence: “The parties recognise full and productive employment and decent work for all as key elements for managing globalisation and its role in international trade and **establishment** and reaffirm their commitment...”.

Paragraph 2: The AK supports a binding phrase of the text: **“The Parties have to ratify and comply with the recognised core labour standards as expressed in the fundamental ILO conventions in their territory:”**

A **taxative register of ILO Core Labour Standards** (as suggested by CA) is AK’s preferred option.

Apart from that the EU should request **ILO Convention 155 on Health and Safety in the workplace** and the so-called **“ILO Priority Conventions”** (Convention 122 on Employment Policy, Conventions 81 and 129 on Work Inspections and Convention 144 on the Consultation of the Social Partners) as Conventions to be implemented. This would conform to one of the first proposals of the EU Commission for the Free Trade Agreement of the EU with South Korea.

Paragraph 3: The text in this paragraph shall be adapted to the current convention of speech of the **ILO Declaration „Social Justice Declaration for a Fair Globalisation”** dated 10th June 2008. The convention of speech concerns comparative advantages in relation to the violation of Core Labour Standards. The existing sentence should therefore be changed into **“...the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes”**.

Article 4

Multilateral environmental standards and agreements

The AK welcomes the admission of the environmental conventions stated: Montreal Protocol (Ozone), Basel Convention (Hazardous Waste), Stockholm Convention (Persistent Organic Pollutants), Convention on Trading with Endangered Species of Species of Wild Fauna and Flora, Convention on Biological Diversity, Rotterdam Convention (Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade) and the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

Article 6

Upholding levels of protection

Paragraphs 1 and 2: The AK welcomes the adoption of the so-called

The AK criticises that the private sector has been listed in addition to NGOs because, based on its advocacy groups, it is already represented in the NGOs.

“Non-lowering standards” clause. Its integration shall guarantee that existing social and environmental standards may not be lowered to attract foreign investments.

The clearer EU phrase of the EU should be retained.

Article 8 Transparency

Paragraph 1: The EU proposal on modern communication and consultation with non-governmental organisations can basically be supported. The AK, however, does not understand why the **private sector** has been listed in addition to non-governmental organisations. In accordance with our knowledge, the private sector, based on its advocacy groups, is already represented in non-governmental organisations.

Article 9 Review of Sustainability Impacts

The **Sustainability Impact Assessment** and the monitoring, the review and the assessment of the impact through the participation of social partner institutions in a participative process have been welcomed. A **follow up process**, which takes the findings from the Sustainability Impact Assessment into account, should, in our opinion, be provided for if this instrument is supposed to have a sustainable impact.

Article 10 – 14 Institutional framework

In this context, we would like to refer to our statements on the EU - South Korea Free Trade Agreements from 2007 and 2009. From our point of view, it should be aimed at to **integrate the ILO in the panel as an independent expert**. This would also take the ILO Declaration from 2008 above quote into account. (See ILO Declaration from 2008, Section II, A, iv: „...upon request, provide assistance to Members who wish to promote the strategic objectives jointly within the framework of bilateral or multilateral agreements, subject to their compatibility with ILO obligations.”).

Annex:

Annual overview on the violation of trade union rights 2008 by the International Trade Unions Confederation

(<http://survey08.ituc-csi.org/survey.php?IDContent=2&IDCountry=SLV&Lang=EN>)

Central America (CA)

El Salvador

In a judgment of the Constitutional Chamber, Agreements 87 and 98, which concern the freedom of association and Collective negotiations and which had been ratified in 2006, were declared unconstitutional. National and international trade union leaders denounced this judgment as a new interference from the judiciary, which is aimed at obstructing the free exercise of the freedom of association. A new terrorism act is applied to unionists to make social protests a criminal offence. One trade union leader was murdered. Various trade union leaders were sacked because they set up trade unions. The Ministry of Labour refused to register trade unions.

Costa Rica

The government of Oscar Arias reacts to the growing political opposition, the defence of public institutions and the international campaign to protect workers' rights with the persecution of unionists. Two trade union leaders received dismissal notices, administrative and court procedures have been initiated against three others and criminal complaints against 18. The

Costa Rica: persecution of unionists.

Ministry of Labour does not protect the right of trade unions, but commits offences by violating the law.

Guatemala

In Guatemala, there is no end to the violence against trade unions and their members in sight: murders, kidnappings, assaults and searches of trade union offices and the homes of members are all used tactics. Pedro Zamora, General secretary of the trade union STEPQ was murdered on 15th January and Marco Tulio Ramírez of the trade union SITRABI in September. There were many death threats and attempts at intimidation. Due to the establishment of new trade unions, both private as well as public employers resort to dismissals and transfers of trade union leaders. No stone was untouched at the Olga María banana plantation to break up the trade union.

Honduras

It is still impossible in the free export zones to set up or develop trade unions. Five companies used the same strategy and sacked functionaries and members of new trade unions. A strike at a banana plantation confirmed the value of this instrument to defend workers' rights and the freedom of association. Bang Sang sacked one of their trade union leaders at gunpoint.

Nicaragua

The number of trade unions has significantly increased and the Ministry of Labour does promote trade unions. Nevertheless, the violations against the freedom of association are not

getting less. Most violations of trade union rights are still taking place in the free export zones. Several teacher strikes took place and some strikes were declared illegal.

Andean Pact (CAN)

Bolivia

Stoppages and strikes were taking place almost during all of 2007. Several trade union leaders were sacked, which led to direct action by their colleagues. The increasing informalisation of work in the mines undermines the organisational work of the trade unions. There are mines, where workers are not paid in cash but in kind, i.e. with parts of mine's products, so that the miners use part of their working day to produce the amount of raw material which corresponds to their wage.

Columbia

With 39 murders in 2007, Columbia is still the world's most dangerous country for unionists. Although there were fewer murders, there was a trend to other forms of violence: the number of attempted murders has doubled; the number of violent evictions, illegal raids and indiscriminate arrests has increased, whilst the extent of threats remained constant. It has to be pointed out that often family members are the target of murders and death threats, not only to obstruct the work by the trade unions but also as a means to reduce the number of registered assaults on unionists. 76 % of violations

Columbia: violence against unionists and murders.

of trade union rights were carried out on persons working for local authorities and in the services sector as well as in subsectors such as the education and health system. Although in the past three years, within the scope of a controversial government programme, 30,000 paramilitaries were „demobilised“ there is solid evidence for the fact that they continue to threaten, murder and kidnap unionists, sometimes even with the approval of the security services. In spite of changes to the Justice and Peace Law, in the scope of which the „Demobilisation“ was carried out, the worry continues that it will just extent the exemption from punishment.

Ecuador

In spite of the efforts of the Ministry of Labours and the repeated complaints of the trade unions, the violation of trade union rights in temporary employment agencies and mines is still the order of the day in Ecuador. The convening of a constituent assembly and its presentation of concrete proposals raises the hope of social institutions and trade unions that the recognition of human and workers' rights will be better ensured in future.

Peru

The worsening of workers' rights in Peru has systematically exacerbated. Violations of the right to freedom of association and to collective negotiations are the order of the day, which express themselves in the hostility towards workers organised in trade unions, selective dismissals as well

Peru: worsening of workers' rights and violence against demonstrators.

as collective dismissals. Lately, the criminalisation of social protest and the authorization of the police to use weapons against demonstrators have been added to this. The brutal suppression of a demonstration against the dismissal of 1,950 workers by the police ended with the death of two minors and an 18-month old toddler. Textile companies resort to anti-union measures.



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