

Labour rights

Angela Pfister, Austrian Federation of Trade Unions
Éva Dessewffy, Austrian Chamber of Labour

Labour rights, including the right to form trade unions and the right to collective bargaining, contribute positively to social and economic development through higher average wages, lower earnings inequality and lower unemployment.¹ The importance of labour rights to global prosperity and worker justice is reflected in the core labour standards of the International Labour Organization (ILO) of which 187 countries are members.

In a globalised market economy, protecting labour rights through international agreements like the ILO is necessary in order to prevent a regulatory 'race to the bottom'. Without international standards, countries may be pressured to weaken labour rights to compete with each other for foreign investment. Historically, competition for foreign investment has had precisely this negative effect.²

By setting the rules for trade and investment between parties, agreements like CETA could play a crucial role in the protection of labour rights. Trade agreements are especially important because they are often more enforceable than multi-lateral conventions like those developed and adopted by the ILO. To establish a



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common ground for fair trade between countries, new trade agreements must include strong and binding rules on minimum labour standards.

CETA's proponents claim the deal establishes strong labour standards for the EU and Canada, but the actual protections in the text are poor. Unlike past EU trade agreements, CETA does not contain a clause stating that respect for human rights is an essential element of the agreement.³ Moreover, CETA's labour chapter (Chapter 23) fails to introduce binding

¹ 'Unions and Collective Bargaining: Economic Effects in a Global Environment', World Bank, Washington, 2003 (<https://openknowledge.worldbank.org/handle/10986/15241>).

² Ronald B. Davies and Krishna Chaitanya Vadlamannati, 'A Race to the Bottom in Labour Standards? An Empirical Investigation', *Journal of Development Economics*, vol. 103 (July 2013): p. 1-14.

³ For comparison, see for example 'Chapter 1: Essential Elements' in the EU's 2012 FTA with Colombia and Peru (http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147704.pdf).



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and enforceable labour provisions that would ensure that core ILO labour standards are implemented and respected; it merely encourages the parties to strive for high labour standards. Indeed, in a revealing example of negotiators' priorities, the chapter on labour standards is exempt from the general dispute settlement mechanism governing the agreement.

Overall, CETA will not improve labour standards in the EU or Canada and may even put them at risk. By opening up trade between jurisdictions of varying labour standards without raising the bar to the highest common denominator, CETA may increase the downward pressure on labour conditions on both sides of the Atlantic.

Furthermore, CETA makes it easier for employers to shift investment to where labour standards are lowest or even to challenge new regulations that may negatively affect their investments in the EU or Canada.

KEY PROVISIONS

No obligation to ratify missing ILO standards

Eight of the ILO's 190 conventions are identified as fundamental labour conventions, and all ILO member states are encouraged to ratify, implement and respect them. However, Canada has not ratified the Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No. 98) or the Convention concerning Minimum Age for Admission to Employment (No. 138). While the minimum age convention is expected to be ratified soon, the discussion about the ratification of the collective bargaining convention has not been concluded.

The level of ambition on labour rights in CETA does not correspond to the level of development in Canada and the EU member states. At best, CETA Article 23.3(4) calls on the parties to *'make continued and sustained efforts to ratify the fundamental ILO Conventions if they have not yet done so.'*

Furthermore, CETA contains no suggestion to ratify, implement and adopt the ILO's Convention concerning Occupational Safety and Health and the Working Environment (No. 155), any of the ILO *'priority'* governance conventions (e.g. No. 81 and No. 129 on labour inspections, No. 122 on employment policy and No. 144 on international consultations), or the ILO conventions on labour mobility and the protection of migrant workers (No. 97 and No. 143). CETA will do little to advance the ratification of the many conventions that the EU member states and Canada have

JOINT STATEMENT by the Presidents of the Canadian Labour Congress (CLC), Hassan Yussuff, and the German Confederation of Trade Unions (DGB), Reiner Hoffmann, on the Final Text of the EU-Canada Comprehensive Economic and Trade Agreement (CETA), 22.06.2016

In the light of the legal scrubbing process of the CETA text being completed, we, the presidents of the CLC and DGB, want to again reinforce our firm believe that what people on both sides of the Atlantic need are fair trade agreements. Market access for foreign businesses must not be achieved at the detriment of workers!

We therefore call on the federal governments of our respective countries, Canada and Germany:

- to repeal the EU-Canada Comprehensive Economic and Trade Agreement (CETA) as it currently stands;
- work for the resumption of negotiations between Canada and the EU, aiming at transforming CETA into a fair trade agreement that fully respects and promotes the rights of workers and their aspirations to decent work and decent lives; protecting the environment and the global climate, and which puts the interests of consumers before those of corporations.

In its current scope, CETA does not comply with any of the above, on the contrary. CETA is all the more important since it serves as a blueprint for the Transatlantic Trade and Investment Partnership (TTIP) between the US and the EU.

We trade union leaders are particularly concerned that:

- CETA does not adequately protect public services. Our demands for including a comprehensive exemption that excludes public services also from investment protection rules have not been met. What is more, in the liberalization of services, CETA pursues a negative list approach and contains a 'ratchet clause', that both pave the way for more sectors to be liberalized without an option to return them to the public hand. This must be rejected and replaced by a positive list that clearly defines areas and sectors which are open to liberalization;
- CETA contains a problematical chapter on investment protection as well as special rights for investors to sue states (Investment Court System - ICS), which must be scrapped;
- the right to regulate provision in CETA has not much substance. It does not sufficiently guarantee for regulations in the public interest to be protected from investors' complaints;
- CETA does not include effectively enforceable rules to protect and improve the rights of workers and employees, the chapter on Trade and Labor containing no sanctions against violations of workers' rights;
- CETA does not include any rules on making cross-border public procurement conditional on collective bargaining agreements or performance standards such as the requirement for local job creation: such allowances should be included.



Canadian Labour Congress
Congrès du travail du Canada





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not yet ratified. Notably, twelve EU member states as well as Canada have not yet ratified the important convention on occupational safety and health.⁴

CETA is a 'toothless tiger' on enforcement

The provisions in CETA's labour rights chapter cannot be effectively enforced. In contrast to CETA's binding investment court system designed to protect foreign investors, the labour chapter's compliance mechanism relies on a non-binding process of cooperation, dialog and recommendations to address labour rights violations.

The compliance mechanism has two main stages. First, one party may request consultations with another regarding an alleged violation of the labour chapter (Article 23.9). The parties may seek advice at this stage from CETA's joint Committee on Trade and Sustainable Development as well as from trade unions, industry

associations, international organisations such as the ILO and other relevant stakeholders.

If the outcome of the consultations is not satisfactory to either party, a panel of experts may then be assembled to examine the matter (Article 23.10). The panel can issue a report and make recommendations to resolve the violation. However, in contrast to CETA's general dispute settlement provisions (Chapter 29) or CETA's investor-state dispute settlement mechanism (Chapter 8), the expert panel procedure ends at this stage.

In short, beyond triggering consultations, the chapter's commitments are empty and its enforcement mechanism lacks teeth. There are no fines, no penalties and no possibility of trade retaliation. Ultimately, even where an expert panel has ruled that a party violated its labour rights obligations under CETA, parties (and employers) are free to ignore the panel's recommendations.

Especially when contrasted with the powerful investor-state dispute settlement mechanism, CETA's labour chapter is a sad testament to the second-rate status of labour rights and protections. For fair trade to occur, labour rights in trade agreements should be fully enforceable and non-compliance met with sanctions. Unfortunately, CETA fails to meet these minimum requirements.

⁴ Austria, Bulgaria, Estonia, France, Germany, Greece, Italy, Lithuania, Malta, Poland, Romania and the United Kingdom have not ratified ILO Convention No. 155.