



INSIGHT

EU-VIETNAM FREE TRADE AGREEMENT: INSIGHTS ON THE SUBSTANTIAL AND PROCEDURAL GUARANTEES FOR LABOUR PROTECTION IN VIETNAM

AREG NAVASARTIAN*

ABSTRACT: On 12 February 2020, the European Parliament gave its green light for a free trade agreement between the EU and Vietnam. After its conclusion by the Council and ratification by the Vietnamese General Assembly, it is likely to enter into force in early Summer 2020. During the long negotiation period, the project attracted criticism and heightened scrutiny by NGOs and official instances alike, pinpointing, among other issues, the poor track record of Vietnam in terms of human rights and workers' rights. For the latter concern, the European Commission considered that the chapter on sustainable development included in the agreement offered strong and legally binding guarantees. This *Insight* explores the guarantees for labour protection in Vietnam, provided for by the Trade and Sustainable Development Chapter, and assesses their legal force. This chapter contains substantial guarantees, such as upholding and ratifying standards of the International Labour Organization, as well as procedural guarantees. The latter allow a Party to initiate a conflict resolution procedure if it deems that the other Party does not uphold its commitments to safeguard high labour standards. The *Insight* concludes that both the substantial and procedural guarantees are rather weak, and that the success of the chapter on sustainable development will ultimately depend on the good will of the Parties.

KEYWORDS: Free Trade Agreement – Vietnam – sustainable development – labour protection – external relations – ILO.

I. INTRODUCTION

The EU has become the world's largest economy and the world's largest trading block thanks to the suppression of internal barriers between Member States and the introduction of uniform market rules in its internal market. Over the years, the EU has adapted to and embraced globalisation by concluding free trade agreements (FTAs) with third countries, in order to favour external trade and to position itself on the world scene. FTAs have been concluded with developed and developing countries alike; espe-

* Teaching assistant, Centre for European Law, Université libre de Bruxelles, areg.navasartian.havani@ulb.be.



cially for the latter, the guarantee of free trade is paired with the promise of economic development and poverty reduction.

In parallel to the regional approach followed with the Mercosur countries, the EU had initially been mapped out the conclusion of such FTA for a regional grouping of seven Member States of the Association of Southeast Asian Nations (“ASEAN”): Singapore, Vietnam, Thailand, Malaysia, Indonesia, Philippines and Myanmar. Negotiations started in 2007, however it was decided quickly after to halt these region-to-region negotiations in favour of bilateral trade agreements between the EU and the ASEAN Member States individually. The EU-ASEAN negotiating directives, previously agreed upon, became the basis for negotiations with individual ASEAN Member States. The EU-Singapore FTA was the first to be finalised, and entered into force on 21 November 2019.¹ An FTA has also been negotiated with Vietnam. As its conclusion and ratification are now pending, it would be the second FTA to enter into force. This agreement will be the focus of this *Insight*.

The EU-Vietnam FTA is a culminating point in the 30-year relationship between the two entities. After an initial Cooperation Agreement signed in 1995,² bilateral cooperation was significantly expanded in the Partnership and Cooperation Agreement (“PCA”), which was signed in 2012 and entered into force in 2016.³ Immediately after the signing of the PCA, negotiations started for an EU-Vietnam FTA. The European Commission considered this FTA as “the most ambitious and comprehensive one ever concluded with a middle-income country”.⁴

However, the negotiations have been fraught with tension and have not failed to attract criticism and heightened scrutiny. The Socialist Republic of Vietnam is an authoritarian state, and political dissent is violently repressed. The issue of workers’ rights is particularly sensitive in the country. Working conditions are very poor, access to social protection is limited to inexistent and especially migrant workers often find themselves in situations of forced labour.⁵ Furthermore, independent trade unions are forbidden, and strikes are violently repressed. According to Amnesty International, the numbers of prisoners of conscience had risen sharply in 2019, with detention conditions being appalling and prisoners being subject to torture.⁶ Many of these political activists are la-

¹ Free Trade Agreement between the European Union and the Republic of Singapore.

² Cooperation Agreement between the European Community and the Socialist Republic of Vietnam.

³ Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Vietnam, of the other part.

⁴ European Commission, *Guide to the EU-Vietnam Trade and Investment Agreements*, 2016, www.trade.ec.europa.eu, p. 6.

⁵ International Trade Union Confederation, *2019 Global Rights Index. The World's Worst Countries for Workers*, www.ituc-csi.org. See also European Commission, *Trade Sustainability Impact Assessment for the FTA between the EU and ASEAN*, 1 September 2008, www.trade.ec.europa.eu, pp. 89 and 99.

⁶ Amnesty International, *Viet Nam 2019*, www.amnesty.org.

bour rights activists, and their situation has worsened in 2019, with a surge of arbitrary and mass arrests of workers.⁷

Criticism on the Vietnamese regime and the prospect of an FTA came from both official instances and NGO's alike. In February 2016, the European Ombudsman concluded that the refusal for the European Commission to carry out an *a priori* human rights impact assessment of the envisaged EU-Vietnam FTA constituted maladministration, given the specific human rights situation in Vietnam.⁸ On no less than three occasions (first in June 2016⁹ and then again in December 2017¹⁰ and November 2018¹¹), the European Parliament adopted separate resolutions on Vietnam, voicing its concerns on the wide range of human rights violations perpetrated by its government. Finally, several Vietnamese and international NGO's have written open letters to the European Parliament to urge it to postpone its consent for the FTA until human rights benchmarks are met by the Vietnamese government.¹²

Confronted with these concerns, the Commission argued that the provisions of the FTA are "strong, legally binding and enforceable" regarding labour rights, and that both Parties will guarantee their protection.¹³ Despite its previous positions, the European Parliament gave on 12 February 2020 its consent for the conclusion of the FTA, clearing the way for its impending entry into force.¹⁴ While criticising certain aspects of it, the European Parliament emphasised that the FTA is an "instrument for development and social progress in Vietnam, supporting the country in its efforts to improve labour rights and enhance protection at work".¹⁵

Against this backdrop, our *Insight* will assess the safeguards for labour standards protection contained in the Sustainable Development Chapter of the FTA and appraise whether they comply with the EU's objective of promoting high levels of labour standards in its external relations. While other mechanisms such as conditionality clauses for human rights violations and EU primary law (namely the Charter of Fundamental Rights

⁷ International Trade Union Confederation, *2019 Global Rights Index*, cit.

⁸ Decision of the European Ombudsman of 26 February 2016 in case 1409/2014/MHZ on the Commission's failure to carry out a human rights impact assessment of the envisaged EU-Vietnam Free Trade Agreement, www.ombudsman.europa.eu.

⁹ European Parliament Resolution P8_TA(2016)0276 of 9 June 2016 on Vietnam.

¹⁰ European Parliament Resolution P8_TA(2017)0496 of 14 December 2017 on freedom of expression in Vietnam.

¹¹ European Parliament Resolution P8_TA(2018)0459 of 15 November 2018 on Vietnam.

¹² Human Rights Watch, *Joint NGO Letter on EU-Vietnam Free Trade Agreement*, 4 November 2019, www.hrw.org.

¹³ European Commission, *Commission Welcomes European Parliament's Approval of EU-Vietnam Trade and Investment Agreements*, 12 February 2020, www.ec.europa.eu.

¹⁴ European Parliament non-legislative resolution P9_TA(2020)0027 of 12 February 2020 on the draft Council decision on the conclusion of the Free Trade Agreement between the European Union and the Socialist Republic of Vietnam.

¹⁵ *Ibid.*, para. 20.

of the EU) could also play a role in the protection of labour rights, they are not proper to the EU-Vietnam FTA and will therefore not be analysed here. The structure of the *Insight* will be two-fold. Firstly, we will analyse the substantial guarantees of the FTA in terms of labour protection. Secondly, we will analyse the accompanying procedures that allow to enforce these substantial guarantees. We conclude with critical remarks and reflections for the future.

II. THE SUSTAINABLE DEVELOPMENT CHAPTER: STRONG, LEGALLY BINDING AND ENFORCEABLE?

While references to sustainable development can be found since 1993 in agreements negotiated by the EU with third countries,¹⁶ the pursuit of a sustainability policy in EU external relations can be dated back to the 2002 European Commission's Communication "Towards a Global Partnership for Sustainable Development". The Commission committed to, among others, strengthening "the sustainability dimension of bilateral and regional agreements by including a commitment to sustainable development and establishing a dialogue to enable exchange of best practices".¹⁷ This objective is nowadays further reinforced within EU primary law. The Treaty of Lisbon indeed introduced among its external policy objectives the fostering of sustainable economic, social and environmental development (Art. 21 TEU).

In recent FTAs concluded by the EU,¹⁸ provisions related to social and environmental development are regrouped under a Sustainable Development Chapter, which includes varying commitments and obligations for both parties, as well as a specific dispute settlement mechanism.

II.1. LABOUR-RELATED COMMITMENTS IN THE EU-VIETNAM FTA: A TOOTHLESS TIGER?

In the EU-Vietnam FTA, provisions related to social and environmental development can be found in Chapter 13 "Trade and Sustainable Development" ("the TSD Chapter").¹⁹ The provision on "Multilateral Labour Standards and Agreements" (Art. 13.4) is of particular interest as it stresses the commitment of both parties to the fundamental rights at work, in accordance with obligations stemming from their participation in the Interna-

¹⁶ Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary.

¹⁷ Communication COM(2002) 82 final of 13 February 2002 from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *Towards a Global Partnership for Sustainable Development*.

¹⁸ The first Trade and Sustainable Development Chapter can be found in the EU-Korea FTA, which entered into force in 2011.

¹⁹ The text of the TSD Chapter is available at www.trade.ec.europa.eu.

tional Labour Organisation (“ILO”). Four rights are pinpointed: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. In addition, the TSD Chapter also provides for the obligation for the Parties to make sustained efforts towards ratifying the fundamental ILO Conventions, which cover the four aforementioned rights.²⁰ This issue is to be monitored closely considering that only five of them are currently in force in Vietnam. In June 2019, the Vietnamese General Assembly voted in favour of ratifying fundamental ILO Convention No. 98 on the Right to Organise and Collective Bargaining, which will enter into force on 5 July 2020. The Vietnamese Ministry of Labour confirmed that the two remaining conventions (Convention No. 105 on the Abolition of Forced Labour and Convention No. 87 on Freedom of Association and Protection of the Right to Organise) will be ratified by 2020 and 2023 respectively.²¹ Finally, the TSD Chapter provides that neither party can refrain from its obligations in order to incentivise trade and/or investment.

The inclusion of commitments to high labour standards and the desire to prevent a “race to the bottom” in a context of trade is laudable. However, several issues remain both from a textual as a contextual point of view.

From a textual point of view, it would seem that the counterpart for the inclusion of the TSD Chapter was the exclusion of any hard obligations.²² Even the ratification of the remaining core ILO Conventions, the respect of which lays at the heart of the TSD Chapter, is conditional upon the *sustained efforts* made by the Vietnamese government. No date limit or hard obligation is provided for these ratifications. In this respect, it is regrettable that the European Parliament, when voting on the approval of the FTA, did not pursue its initial position set out in its prior resolution on the FTA, which was that the concerned ILO Conventions should be ratified *ex ante*.²³

A related issue must be underlined here. The text is very careful not to engage the Parties in obligations stemming from ILO Conventions other than the ones they ratified.

²⁰ The fundamental Conventions are defined by the ILO governing body and are: Conventions No. 87 on Freedom of Association and Protection of the Right to Organise Convention, No. 98 on Right to Organise and Collective Bargaining, No. 29 on Forced Labour and its 2014 Protocol, No. 105 on Abolition of Forced Labour Convention, No 138 on Minimum Age Convention, No. 182 on Worst Forms of Child Labour, No. 100 on Equal Remuneration and No. 111 on Discrimination (Employment and Occupation).

²¹ ILO, *Revised Vietnamese Labour Code to Help Everyone Gain Fair Shares of Economic Growth*, News of 20 November 2019, www.ilo.org.

²² M. BRONCKERS, G. GRUNI, *Taking the Enforcement of Labour Standards in the EU's Free Trade Agreements Seriously*, in *Common Market Law Review*, 2019, p. 1597.

²³ European Parliament non-legislative resolution P8_TA(2015)0467 of 17 December 2015 on the draft Council decision on the conclusion, on behalf of the Union, of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Vietnam, of the other part.

However, Vietnam has ratified only 24 ILO Conventions out of 190. As was rightly pointed out by Bronckers and Gruni, “the focus on these [four] core labour standards overshadows other standards which are relevant in a global economy”.²⁴ Furthermore, the wording of such provision lacks consistency with other FTAs concluded by the EU, and applies substantially lower standards. For example, the FTAs with Mercosur and Canada both include more far-reaching TSD Chapters.²⁵ When comparing with the preliminary text of the EU-Mercosur FTA specifically, of which the Member States are also considered emerging economies, it includes in Art. 4 of its TSD Chapter provisions on the respect of standards regarding health and safety at work, compensation for illness or injury and decent wages. Furthermore, it contains commitments to ensure effective labour inspections and access to administrative and judicial proceedings in case of violation of the labour standards provided for in the TSD Chapter. These provisions, and especially the two latter, could play an important role for the prevention of a race-to-the-bottom economy and effective protection of labour standards. The absence of such references in the EU-Vietnam FTA lays bare the inconsistency of the Commission’s external trade policy, and is questionable regarding the track-record of Vietnam.

This leads us to question the strength of the TSD Chapter with regards to the Vietnamese context. Leading up to the conclusion of the FTA, Vietnam modified its Labour Code to be better in line with international obligations, namely regarding workers’ representation, one of the four rights underlined in the TSD Chapter. According to the new reformed Labour Code, workers can now “exercise their right to form or join a representative organisation of their own choosing, which does not have to be affiliated to the Viet Nam General Confederation of Labour”.²⁶ While ILO and the European Trade Union Confederation welcomed this move,²⁷ they also expressed concerns regarding the absence of revision of the Penal Code, which still incriminates actions that would be considered as contrary to the interests of the State, namely joining organisations, and thus independent labour unions.²⁸ In their open letter to the European Parliament, NGO’s pressed the Members of the European Parliament to put pressure on Vietnam to modify its Penal Code, without which there can be no true free and independent union membership.²⁹

Finally, it is particularly regrettable that the TSD does not stress the right to access to social protection, especially unemployment benefits. In the framework of the Trade

²⁴ M. BRONCKERS, G. GRUNI, *Enforcement of Labour Standards*, cit., p. 1597.

²⁵ Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part. For the EU-Mercosur FTA, see text agreed upon in principle at www.trade.ec.europa.eu.

²⁶ ILO, *Revised Vietnamese Labour Code to Help Everyone Gain Fair Shares of Economic Growth*, cit.

²⁷ European Trade Union Confederation, *ETUC Position on the EU-Vietnam Free Trade and Investment Agreement*, 18 December 2019, www.etuc.org.

²⁸ See, namely, Arts 109, 116-118. Full text (in English) at www.wipo.int.

²⁹ Human Rights Watch, *Joint NGO Letter on EU-Vietnam Free Trade Agreement*, cit.

Sustainability Impact Assessment for the EU-ASEAN FTA, the European Commission underlined that in Vietnam, while overall GDP growth is expected to be high, it is foreseen that the biggest sector in Vietnam, agriculture, will be severely hit by unemployment.³⁰ Since Vietnam has not ratified ILO Conventions 102 on Minimum Standards in Social Security or 168 on Employment Promotion and Protection Against Unemployment, and access to social protection is difficult, the latter will face harsh situations, which might lead to violations of their rights, directly caused by the FTA.

The combined issues of the inadequacies of the TSD Chapter – both as such and in comparison to other EU FTAs – and the problematic context in Vietnam, lead us to assert that the substantial guarantees in the TSD Chapter are too weak as such. The conclusion of the agreement may nevertheless be in line with the EU's external policy objectives, if the text provides for strong procedural guarantees.

II.2. TRADE AND SUSTAINABLE DEVELOPMENT CONFLICT RESOLUTION PROCEDURES: A WATCHDOG?

The lack of strong commitments in the EU-Vietnam FTA can be mitigated by strong procedural guarantees, such as a sanctions regime, the instauration of an independent review body and the possibility for private actors and stakeholders to file complaints to this body, and/or binding periodic reviews of the correct implementation of the TSD Chapter.

The Commission's approach has been from the outset to differentiate the general dispute settlement procedure for the FTA and the one for the TSD Chapter, focusing more on incentivising partner countries to work with the Union in a soft approach, through government-to-government consultations and cooperation in joint platforms.³¹ In its 2017 non-paper on TSD Chapters in FTAs, the Commission underlined that “this approach has helped to strengthen the existing multilateral governance structures, rather than creating a parallel set of bilateral rules on labour”.³² However, it also recognised that there are still many concerns regarding the implementation practice, due to *inter alia* inefficient allocation of resources and underutilisation of cooperation with international bodies. The question was raised in the 2017 non-paper whether introducing a sanctions regime for non-compliance with the TSD Chapter, based on the way Canada and the USA conclude FTAs with their partners, respectively through the imposition of

³⁰ European Commission, Commission Services' Annex on Vietnam to the Position Paper on the Trade Sustainability Impact Assessment of the Free Trade Agreement Between the EU and ASEAN, www.trade.ec.europa.eu.

³¹ Communication COM(2015) 497 final of 14 October 2015 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Trade for All. Towards a More Responsible Trade and Investment Policy*, p. 16 *et seq.*

³² Non-paper of the Commission Services, *Trade and Sustainable Development (TSD) Chapters in EU Free Trade Agreements (FTAs)*, 11 July 2017, p. 4, www.trade.ec.europa.eu. See also Congressional Research Service, *Labor Enforcement Issues in U.S. FTAs*, updated 2 March 2020, www.fas.org.

finances or the withdrawal of trade concessions, would have a beneficial effect in terms of implementation. In its Resolution of 5 July 2016, the European Parliament called for the possibility of a sanctions regime as a last resort in case of non-compliance with labour standards.³³ However, in a 2018 follow-up non-paper, the Commission noted that there was no consensus for such regime, and that it would not be in line with the EU's model. In its view, "the EU would be 'compensated' for such a breach [...], but [it] would not guarantee that this will result in effective, sustainable and lasting improvement of key social standards on the ground".³⁴ The EU's focus therefore remained on cooperation, communication and incentivisation.

To favour such cooperation, the EU-Vietnam TSD Chapter provides, at Art. 13.15, for the designation of a contact point within the administration of each Party and the establishment of three different (sets of) bodies with varying responsibilities. Firstly, the Committee on Trade and Sustainable Development ('the Committee'), which is comprised of senior officials from the relevant administrations of each Party. It is instituted under the auspices of the Trade Committee, established at Art. 17 of the FTA, which possesses a general competence for the oversight of the correct implementation of the FTA. Secondly the agreement foresees the creation of two sets of bodies, the Domestic Advisory Groups (DAG), set up by each Party. These bodies are to be comprised of independent representative organisations, ensuring a balanced representation of stakeholders, such as employers' and workers' organisations or business groups. The DAGs can submit views and recommendations to their respective Party on the implementation of the TSD Chapter. The two DAGs should meet once a year in a joint forum to dialogue on the Chapter and may include in those fora other stakeholders as well. Finally, the Committee must establish, at its first meeting after the entry into force of the Agreement, a Panel of Experts (Art. 13.17), comprised of independent individuals with specialised knowledge or expertise in labour and/or environmental law.

Each of these three bodies play a different role in the specific dispute resolution mechanism set up for disagreements over the implementation of the TSD Chapter, in a cascading process. The default procedure is a government-to-government consultation procedure. In case a conflict arises, a sustained request for consultations must be addressed to the contact point of the other Party, and a first round of consultations should in principle lead to a mutually satisfactory resolution. If not, the Parties can request that the Committee convenes in order to find a solution on the matter. If deemed necessary, the Committee may seek the advice of the DAG or other expert assistance. Finally, if within a certain timeframe no solution has been found, a Party may request

³³ European Parliament Resolution P8_TA(2016)0299 of 5 July 2016 on a new forward-looking and innovative future strategy for trade and investment.

³⁴ Non-paper of the Commission services, Feedback and Way Forward on Improving the Implementation and Enforcement of Trade and Sustainable Development Chapters in EU Free Trade Agreements, 26 February 2018, www.trade.ec.europa.eu, p. 3.

that the Panel of Experts is convened to examine the matter, who issues a report to both Parties. Based on this report, the Parties discuss appropriate actions and/or measures to be implemented.

Several elements of the dispute settlement procedure can be criticised. Firstly, even if the Commission wishes to pursue a soft approach without hard sanctions, it is regrettable that the dispute resolution mechanism provided for in the TSD Chapter is not integrated in the general dispute settlement procedure set out in Chapter 17. The two procedures are similar, however the latter provides for an arbitration procedure in case of failure to resolve the dispute, and provides for stricter rules on compliance with the final report and a system of remedies in case a Party does not comply. Secondly, the dispute resolution mechanism of the TSD Chapter leaves no room for claims brought by private actors and stakeholders. In contrast, the Investor-State Dispute Settlement (ISDS) mechanism of the Investment Protection Agreement (IPA) allows private investors to bring complaints against the Parties to an international tribunal when they feel that national legislation may have an unjust negative impact on their financial interests. The ISDS mechanism has been severely criticised by civil society during the negotiations of TTIP and CETA for its alleged undemocratic character, because it would allow an avenue for corporate interests to override public ones,³⁵ to the point that the Belgian government requested an Opinion from the Court of justice on the compatibility of such mechanism with EU law.³⁶

While leaving the merits of the criticism on the ISDS in the middle, a greater balance between the interests of different stakeholders, both investors and workers, and the way these interests can be defended in the framework of an FTA, would restore the credibility both of the FTA as of the labour standards it aims to defend. Especially in the case of Vietnam, close and serious monitoring of labour standards is of particular importance.

This issue is closely linked with the role of the DAGs. The TSD Chapter allows the DAGs to submit views and recommendations, however it does not specify that the Parties must follow up on those recommendations. Furthermore, the DAGs are not automatically included in the dispute resolution mechanism, since their implication is subject to the discretionary decision of the Committee to seek their advice. Since the Committee is comprised of EU and government officials, it is not difficult to imagine their reluctance to seek advice from independent stakeholders. Finally, the DAGs have no formal power to address a request for consultations, or even provoke a Party to do so. This seriously limits the ability of civil society to have a voice in the discussions and even less a concrete role in the monitoring of the implementation of the TSD Chapter. In its 2018 non-paper,³⁷ the Commission committed to expanding and supporting the role of

³⁵ See, *inter alia*, the "Stop ISDS" movement, www.stopisds.org.

³⁶ Court of Justice, opinion 1/17 of 30 April 2019. The Court ruled that the ISDS mechanism is not contrary to EU law.

³⁷ Non-paper of the Commission services, Feedback and Way Forward on Improving the Implementation and Enforcement of Trade and Sustainable Development Chapters in EU Free Trade Agreements.

the DAGs, but only for future FTAs. As a consequence, the EU-Vietnam FTA was excluded from such commitment, which was first rolled out in the EU-Mexico and EU-Mercosur FTAs. This regrettable approach was unnecessarily rigid, as it would have been beneficial in the Vietnamese context for civil society to have a more powerful role in the oversight of the respect of the TSD Chapter.

Finally, it needs to be stressed that overly putting faith in a State-to-State dispute resolution procedure enhances the risk of very little litigation, in order not to disrupt diplomatic relations.³⁸

The TSD conflict resolution procedure is in our opinion not satisfactory, as it lacks involvement of stakeholders, and is subject to the political will of the Parties.

III. CONCLUSION

Overall, while the inclusion of a TSD Chapter is in itself a laudable first step to ensuring labour protection standards in the EU-Vietnam FTA, it lacks serious substantial and procedural guarantees for labour protection in Vietnam. The absence of strong, binding commitments and of safeguards in terms of oversight of the implementation of the TSD Chapter, combined with the risk of Vietnam being exposed to higher levels of unemployment in the short-term, and the inability to react quickly and efficiently in case of non-respect of the TSD Chapter, do not ensure a protection of labour standards in Vietnam that would be in conformity with the high level of labour protection that the EU must promote in its external relations.

However, two very recent, encouraging counterexamples can be advanced here.

On 17 December 2018, the Commission triggered for the first time ever the request for formal consultations with Korea in the framework of the EU-Korea FTA TSD Chapter,³⁹ after prolonged failure on Korea's behalf to respect their commitments on labour protection, and more specifically on the right to collective bargaining.⁴⁰ The initial consultations did not lead to satisfactory results, and on 19 December 2019, the European Commission announced the composition of the Panel of Experts, whose report is expected at the end of March 2020. It is at this stage crucial to closely monitor the actions the Parties will take in the EU-Korea FTA after the Panel of Experts publishes its report.

³⁸ H. GÖTT, *Linkages of Trade, Investment and Labour in Preferential Trade Agreements: Between Untapped Potential and Structural Insufficiencies*, in *European Yearbook of International Economic Law*, 2019, p. 149.

³⁹ Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part. See also the 2018 non-paper, cited above, in which one of the objectives of the Commission was to step up its efforts to ensure that trading partners respected their commitments in the TSD Chapters.

⁴⁰ European Commission, *EU-Korea Dispute Settlement over Worker's Rights in Korea Enters Next Stage*, www.trade.ec.europa.eu.

It will constitute a decisive precedent for other FTAs, and most importantly for the one with Vietnam, where the same concerns have been highlighted by civil society.

Furthermore, on 12 February 2020, the European Commission decided to partially withdraw preferential access to the European market for Cambodia, which benefits from the “Everything But Arms” (EBA) preference under the Generalised Scheme of Preferences Regulation.⁴¹ The Commission pointed once again to the systematic violations of human and labour rights, in particular the right to collective bargaining. This precedent should be highlighted as until the entry into force of the FTA, Vietnam still enjoys a Generalised Scheme of Preferences as well.

These two precedents show that, despite the absence of strong formal safeguards, very serious violations of labour standards can indeed lead to action on behalf of the European Union. It can be hoped that this practice, along with heightened awareness of the shortcomings of the TSD Chapter, will be translated into formal modifications of future FTAs, allowing for greater protection of labour standards, through more binding provisions and procedures and increased implication of stakeholders, in order to obtain a truly binding and enforceable sustainability policy.

⁴¹ European Commission, *Trade/Human Rights: Withdrawal of Cambodia's Preferential Access to the EU Market*, 12 February 2020, www.trade.ec.europa.eu.

