Women working in textile factory

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The effectiveness of human rights clauses in EU trade agreements

A study commissioned by the Greens/EFA International Cluster

A policy report by Prof. Dr. Peter Van Elsuwege and Dr. Joyce De Coninck Ghent European Law Institute (GELI).

EXECUTIVE SUMMARY

Despite the increased visibility of human rights considerations in EU trade agreements by virtue of 'essential elements clauses' and concomitant suspension clauses, the enforceability of such provisions has remained modest. To date, the EU has only triggered the option of taking 'appropriate measures' with respect to human rights violations in a limited number of cases, mainly under the Cotonou Agreement with the African, Caribbean and Pacific (ACP) countries. Proceeding from this observation and in light of the European Parliament's call to adopt a more assertive approach regarding the enforcement of human rights clauses, this report contributes to the debate about the role and effectiveness of such clauses in EU trade agreements.

Taking into account the inherent connection between trade and human rights in the EU legal framework, the report scrutinizes the evolving practice surrounding the inclusion of human rights clauses in EU trade agreements as well as the emergence of similar (though not analogous) clauses in US free trade agreements. Building on this internal contextual and external comparative approach, this report offers

several recommendations on how the role of human rights clauses within trade agreements may be improved, while attempting to strike a balance between the benefits of trade liberalization and the need to effectively safeguard human rights in the EU's external relations.

These recommendations entail that, prior to the conclusion of the agreement, clear standards are set concerning the procedural and substantive human rights commitments undertaken by the parties. These standards are developed in reference to internationally recognized human rights standards and mindful of the typology of human rights commitments, human rights obligations and standards of enforcement. The recommendations also provide for a procedural methodology to be followed in the event human rights violations are observed by the implicated trade partners, focusing on the chronology of the procedure, as well as the burden, standard, and method of proof in establishing such violations. This involves, amongst other, the creation of a dedicated complaint handling portal for alleged human rights abuses – going beyond the scope of the existing Single Entry Point (SEP) – and regular reporting requirements about the status of compliance with core international conventions. This should allow the European

Commission and the European External Action Service (EEAS) to provide a more tailored and coherent approach to human rights protection within the framework of the EU's (trade) relations with third countries.

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Attached documents

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