

Are social clauses really just hidden protectionism?

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Social clauses in trade deals are sometimes represented as a premise for denial of market access to developing countries. The evidence suggests otherwise.



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The European Union can look back on a great success in foreign policy. At the end of February, the South Korean parliament ratified International Labour Organization conventions 87 (freedom of association), 98 (the right to organise and collective bargaining) and 29 (forced labour).

In spite of three decades of incessant campaigning by the Korean trade unions, successive governments had failed to adopt internationally recognised labour standards, due to opposition from business and conservative groups. In 2018, under increased pressure from civil-society organisations, particularly the [European Trade Union Confederation](#), the EU called for the ratification of the fundamental ILO conventions, claiming that non-compliance could constitute a violation of the free-trade agreement (FTA) between the two sides.

Following deadlock in political consultations, in the summer of 2019 the EU called for a [panel of experts](#) to examine the dispute. This was the first use of such a procedure under the Trade and Sustainable Development chapter of ‘new generation’ EU FTAs—of which that with South Korea, signed in 2010, is the prototype. In late January of this year, the [panel confirmed](#) that Seoul was not meeting its labour commitments under the trade agreement.

The case of South Korea is significant: it is the ninth largest trading partner of the EU, is the object of one of the longest standing [complaints](#) of trade-union rights violations before the ILO’s Committee on Freedom of Association and regularly receives one of the highest scores—that’s worst for violations—on the [Labour Rights Indicators](#) and the International Trade Union Confederation’s [Global Rights Index](#). This has fuelled the charge that oppressive labour practices have conferred an unfair advantage in export trade.

Level playing-field

The EU's approach to promoting core labour rights through trade policy has now delivered an important victory. It helps to create a level playing-field—notwithstanding the opposition, from left and right, to policies linking trade and social (and environmental) issues.

The progressive (or leftist) criticism is that social clauses are ineffective, because the political will to enforce the commitments is lacking or the mechanisms are inadequate. The absence of unilaterally enforceable trade sanctions in case of violations is most often bemoaned. While not monolithic in this respect, the EU approach does emphasise monitoring and implementation through social dialogue and capacity-building.

Some on the right think trade agreements are not an appropriate instrument to promote social standards—a task for the ILO but not the World Trade Organization. This is however to forgo an essential lever for improving working conditions throughout the world.

Impact on trade

What about the impact of labour clauses on trade flows? Led by economists, developing countries generally consider social clauses a form of hidden protectionism, resulting in a decrease in their exports to developed countries. The argument is twofold. First, the increased labour costs associated with the implementation of social clauses may be detrimental to the competitiveness of economies whose comparative advantage is based on low wages and otherwise low production costs. Secondly, advanced economies can use strongly enforceable clauses to suspend preferential market access for developing countries which violate their obligations.

Surprisingly, this question has long awaited a convincing answer. This is crucial because it concerns developing countries' material incentives to engaging in the developed countries' agenda of linking trade and labour issues. My recent co-authored study addressed it.

Using the Labor Provisions in Trade Agreements (LABPTA) dataset—the most detailed and comprehensive, with about 450 agreements signed since 1990—we found that social clauses have a *positive* effect on exports of manufacturing goods from developing countries with low labour protection in north-south agreements. This effect is mostly driven by social clauses accompanied with strongly institutionalised co-operation mechanisms, such as those in the dominant EU approach.

Social clauses with sanctions-backed enforcement mechanisms, by contrast, have no statistically significant impact on bilateral trade. The correlation is however mildly negative, suggesting that such clauses might pave the way for institutional capture by lobby groups in developed countries for protectionist purposes.

Supply and demand

In sum, from the perspective of developing countries, there is a 'business case' for labour clauses with strong co-operation mechanisms in north-south agreements.

These results can be explained by supply-and-demand mechanisms—on the one hand, by productivity gains linked to better working conditions on the supply side and, especially, on the other hand, by increased demand in northern countries for goods produced under worker-friendly conditions. Although further research is needed, they also suggest that the co-operation approach is probably more effective at improving labour practices in developing countries than the sanctions-based approach, providing a more credible signal regarding adequate labour standards and thus helping increase demand for products not produced by sweatshops.

WTO rules and practices must be updated and improved to reflect global challenges, in particular environmental and social sustainability and economic development. This overhaul can only be based on the common objectives of member states.

The introduction of a social clause at the multilateral level would respond to this double imperative. If well-conceived, its implementation would contribute to an open, sustainable and equitable trade policy and thus give the WTO a new lease of life. It is an idea whose time has come.

A shorter French version of this previously appeared in Le Temps



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