

# **The European Union and Japan's Economic Partnership Agreement: labour provisions under the 'Trade and Sustainable Development' Chapter<sup>1</sup>**

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## **Abstract**

*The conclusion of bilateral free trade agreements is currently a phenomenon in considerable expansion and with significant potential. Many of them include a specific chapter relating to labour, eg. the EU-South Korea FTA Chapter entitled 'Trade and Sustainable Development', the CPTPP Chapter entitled 'Labour' or the CETA Chapter entitled 'Trade and Labour'. The objective of this study is to improve the understanding of labour provisions, which are included in the 'Trade and Sustainable Development' Chapter of the EU and Japan's Economic Partnership Agreement. The author researches different legal traditions between Japan and EU and concentrates on the lack of ratification on the part of Japan of the ILO Convention concerning Discrimination in Respect of Employment and Occupation, and the ILO Convention concerning the Abolition of Forced Labour (notwithstanding references to the ILO core standards in the EPA). She focuses her attention on the dispute resolution mechanism included in the EPA, which does not establish sanctions for breaching the obligations under the 'Trade and Sustainable Development' Chapter and may thus stymie the ratification process and the effective enforcement of labour standards. Moreover, this study contributes to the literature by offering insights on the Committee on Trade and Sustainable Development, and the involvement of civil society in the implementation of the 'Trade and Sustainable Development' Chapter. Findings suggest insufficient transparency with respect to the work of this Committee and the Joint Dialogue with civil society.*

**Keywords:** *the EU and Japan's Economic Partnership Agreement; 'Trade and Sustainable Development' Chapter; labour provisions.*

**JEL Classification:** K31, K33

## **1. Introduction**

After years of 'economic friction' between Europe and Japan that was experienced from the 1960s to the late 1980s and after a 'qualitative transformation' of their relationship in the 1990s, which was triggered by the Hague Declaration of 1991<sup>3</sup>, the countries have taken a political step forward. A

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<sup>3</sup> Yuko Hosoi, "Japan-EU relations after World War II and strategic partnership," *Asia Europe Journal* 17 (2019): 298-302. See more: Aiko Morii, "Dialogue without cooperation? Diplomatic implications of EU-Japan summits," *Asia Europe Journal* 13, no. 4 (2015): 418 *et seq.*, <https://doi.org/10.1007/s10308-015-0429-7>.

case in point is the EU and Japan's Economic Partnership Agreement (EPA), which entered into force on 1 February 2019<sup>4</sup>. It was concluded between two of the world's biggest economies with hope that the position of EU exporters and investors on Japan's large market would improve and, at the same time, strong guarantees for the protection of EU standards and values would be preserved<sup>5</sup>. The EU and Japan's EPA removes the majority of duties incurred by EU companies, which sum up to €1 billion annually. As it is declared, it opens the Japanese market to key EU agricultural exports and increases opportunities in a range of sectors<sup>6</sup>. According to the European Commission website, in the first ten months following the implementation of the EU and Japan's EPA, EU exports to Japan grew by 6.6 per cent in comparison to the same period a year earlier, and Japanese exports to Europe went up by 6.3 per cent in the same period<sup>7</sup>.

Similarly, to other free trade agreements, the Parties to the EPA have devoted one chapter, *inter alia*, to labour provisions. The theoretical contribution presented in this paper is new in that it provides a thorough analysis of Chapter 16 entitled 'Trade and Sustainable Development'<sup>8</sup> to improve knowledge of the new EPA that influences the situation of many workers.

I begin by explaining the specificity of Japanese labour law and outlining the international instruments to which reference is made in the EU and Japan's EPA. I then try to answer why is Japan reluctant to ratification of the two International Labour Organisation (ILO) core Conventions. Next, the article focuses on the Committee on Trade and Sustainable Development, domestic advisory group and Joint Dialogue with civil society. Particular attention is also paid to the special dispute settlement mechanism. Finally, the paper offers some concluding remarks.

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<sup>4</sup> Comparing to the EU negotiations with the US and Canada, the EU-Japan EPA negotiations encountered few critics from civil society organisations. See: Suzuki Hitoshi, "The new politics of trade: EU-Japan," *Journal of European Integration* 39, no. 7 (2017): *passim*.

<sup>5</sup> "Key elements of the EU-Japan Economic Partnership Agreement," European Commission, accessed May 19, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_18\\_6784](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_6784).

<sup>6</sup> "Overview of FTA and Other Trade Negotiations," European Commission, accessed May 19, 2020, [https://trade.ec.europa.eu/doclib/docs/2006/december/tradoc\\_118238.pdf](https://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf).

<sup>7</sup> "Trade: First year of the EU-Japan Economic Partnership Agreement shows growth in EU exports," European Commission, accessed May 19, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_161](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_161). It should be however noted that, even after EPA, market access in Japan is not easy for European companies because of informal market barriers. These are as follows: difficulties with adaptation to the Japanese business culture and the closed nature of Japanese society; legal system and practice, which tend to discriminate against foreign companies; top tax rates of more than 50%; high prices for land and property; considerable market entry and operational costs; and significant sales and distribution costs. As a result, the below-average integration of Japan into the global economic division of labour is clearly discernable. See more: Hanns Günther Hilpert, "The Japan-EU Economic Partnership Agreement - economic potentials and policy perspectives," *Asia Europe Journal* 16, no. 4 (2018): 445, <https://doi.org/10.1007/s10308-017-0496-z>.

<sup>8</sup> "EU-Japan Economic Partnership Agreement: texts of the agreement," European Commission, accessed May 19, 2020, <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1684>.

## 2. Labour laws and labour provisions

Already at first glance, the Chapter entitled ‘Trade and Sustainable Development’ seems to correspond with other recent EU trade agreements. However, given the very different legal traditions between EU and Japan, Article 16.1, paragraph 2 states that ‘The Parties (...) recognise that the purpose of this Chapter is to strengthen the trade relations and cooperation between the Parties in ways that promote sustainable development, and is not to harmonise the environment or labour standards of the Parties’. In fact, it must be observed that the important characteristics of the Japanese system differ from those in Europe or the US, and are related to lifetime employment system<sup>9</sup>, the large gender gap in earnings<sup>10</sup>, and enterprise unionism, where each unionised enterprise has its own union with which it undertakes collective bargaining independently. In this respect, it should be noted, however, that the unionisation rate is only about 18 per cent<sup>11</sup>.

<sup>9</sup> Haruo Takeuchi, “The present situation in the Japanese employment system, with special reference to the problems regarding temporary workers,” in *Labor Markets and Labor Market Policies between Globalization and World Economic Crisis: Japan and Germany*, eds. Hans H. Bass, Toshihiko Hozumi, Uwe Staroske (München: Rainer Hampp Verlag, 2010), 166; Mariana Pargendler, “The Grip of Nationalism on Corporate Law,” *Indiana Law Journal* 95, no. 2 (2020): 557. Lifetime employment and seniority-based wages constitute the characteristics of a stable long-term employment, i.e. regular employment (regular worker is called "seishain" in Japanese). See: Nobuko Nagase and Mary C. Brinton, “The gender division of labor and second births: Labor market institutions and fertility in Japan,” *Demographic Research* 36 (2017): 346 and 342, DOI: 10.4054/DemRes.2017.36.11. On the other hand, however, Japan’s labour market includes non-standard employment, consisting of part-time workers, arubaito workers, temporary contract workers, dispatch workers, and entrusted workers. As explained by Diamond, arubaito is similar to part-time employment, but very often relates to college or high school students. Dispatch workers are employed by a temporary employment agency. Finally, entrusted workers are those who are usually retained by the company after mandatory retirement on relatively long fixed-term contracts. Importantly, there are great differences in wages between regular and non-standard workers. Jess Diamond, “Employment Status Persistence in the Japanese Labour Market,” *The Japanese Economic Review* 69, no. 1 (2018): 72, DOI: 10.1111/jere.12148.

<sup>10</sup> See e.g.: Sagiri Kitao and Minamo Mikoshiba, “Females, the elderly, and also males: Demographic aging and macroeconomy in Japan,” *Journal of The Japanese and International Economies* 5 (2020): 9, <https://doi.org/10.1016/j.jjie.2020.101064>. Moreover, in the light of the 2011 data provided by the Japanese Ministry of Health, Labour and Welfare, 45.9 per cent of Japanese women are in part time work, compared with only 13.8 per cent of Japanese men. See: European Commission, “Trade Sustainability Impact Assessment of the Free Trade Agreement between the European Union and Japan,” Final Report, Brussels, 2016: 196. In addition, it should be noted that Japan was ranked 121 out of 153 countries in the Global Gender Gap Index 2020. See: World Economic Forum, “Global Gender Gap Report 2020,” Cologny, 2019: 9. For previous research, see: John Benson, Masae Yuasa and Philippe Debroux, “The prospect for gender diversity in Japanese employment,” *International Journal of Human Resource Management* 18, no. 5 (2007): 892.

<sup>11</sup> Marcus Rebick, “The Japanese Economy,” in *The SAGE Handbook of Modern Japanese Studies*, ed. James D. Babb (Los Angeles, London, New Delhi, Singapore, Washington DC: SAGE, 2015), 510; Lonny E. Carlile, “The labor movement,” in *Routledge Handbook of Japanese Politics*, ed. Alisa Gaunder (London and New York: Routledge, Taylor & Francis Group, 2011), 162. See also: Heidi Gottfried, “Precarious Work in Japan: Old Forms, New Risks?,” *Journal of Contemporary Asia* 44, no. 3 (2014): 467, <http://dx.doi.org/10.1080/00472336.2013.867523>. Even though the

But what is also interesting is that, admittedly, in accordance with the Civil Code of Japan the employer has the power of dismissing the worker without reason, but the jurisprudence of abuse of dismissals has introduced significant and rigorous limitations on the employer's dismissal rights in practice<sup>12</sup>.

Chapter 16 establishes the prohibition of relaxing or lowering the level of protection provided by domestic labour laws to encourage trade or investment<sup>13</sup>, and it also introduces the provision on non-discrimination ('The Parties shall not use their respective environmental or labour laws and regulations in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on international trade', Article 16.2, paragraph 3).

The EU and Japan's EPA refers to the spectrum of international instruments (Article 16.1, paragraph 1), in particular to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Parties reaffirm their commitments with regard to this document (Article 16.3, paragraph 2). However, the EPA does not require the ratification of the ILO Conventions in order to conclude an agreement ('Each Party shall make continued and sustained efforts on its own initiative to pursue ratification of the fundamental ILO Conventions and other ILO Conventions which each Party considers appropriate to ratify', Article 16.3, paragraph 3). In common with many other agreements such as the Transatlantic Trade and Investment Partnership (TTIP), the EU and Japan's EPA includes lofty phrases, but the question is, whether it is able to ensure enforcement of labour standards<sup>14</sup>. Unfortunately, soft, promotional formulations (eg. 'Recognising the right of each Party to (...) establish its own levels of domestic (...)

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establishment of Rengō (Japanese Trade Union Confederation) in 1989 helped labour unions achieve substantial unification of the labour movement, union density has been declining, in particular since the 1990s, when the government's implementation of labour market deregulation took place. Hiroaki Richard Watanabe, "Labour Market Dualism and Diversification in Japan," *British Journal of Industrial Relations* 56, no. 3 (2018): 593, doi: 10.1111/bjir.12258; Hiroaki Richard Watanabe, "The Struggle for Revitalisation by Japanese Labour Unions: Worker Organising after Labour-Market Deregulation," *Journal of Contemporary Asia* 45, no. 3 (2015): 510, <http://dx.doi.org/10.1080/00472336.2015.1007388>. For an overview of changes, see: Susumu Watanabe, "The Japan Model and the future of employment and wage systems," *International Labour Review* 139, no. 3 (2000): 307-333.

<sup>12</sup> Li Yu-Chun, "Law Review and Comparison of Dismissal Regulations," in *Severance Payment and Labor Mobility: A Comparative Study of Taiwan and Japan*, eds. Tatsuo Hatta, Shinya Ouchi (Singapore: Springer, 2018), 126; Shinya Ouchi, "Why Should the Monetary Compensation System Be Introduced in Japanese Dismissal Regulation?" in *Severance Payment and Labor Mobility: A Comparative Study of Taiwan and Japan*, eds. Tatsuo Hatta, Shinya Ouchi, (Singapore: Springer, 2018), 4-6.

<sup>13</sup> 'The Parties shall not encourage trade or investment by relaxing or lowering the level of protection provided by their respective environmental or labour laws and regulations. To that effect, the Parties shall not waive or otherwise derogate from those laws and regulations or fail to effectively enforce them through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties' (Article 16.2, paragraph 2).

<sup>14</sup> Aneta Tyc, "Workers' rights and transatlantic trade relations: The TTIP and beyond," *The Economic and Labour Relations Review* 28, no. 1 (2017): 121-122.

labour protection (...), each Party shall strive to ensure that its laws, regulations and related policies provide high levels of (...) labour protection and shall strive to continue to improve those laws and regulations and their underlying levels of protection' as in Article 16.2 paragraph 1) may not achieve this effect. It should be clearly stated that Japan has only ratified six out of eight ILO core Conventions. It has not ratified Conventions No. 105 (Abolition of Forced Labour Convention)<sup>15</sup> and No. 111 (Convention concerning Discrimination in Respect of Employment and Occupation)<sup>16</sup>. The EU and Japan's EPA places greater emphasis on the implementation of ILO Conventions that have been already ratified ('Each Party reaffirms its commitments to effectively implement in its laws, regulations and practices ILO Conventions ratified by Japan and the Member States of the European Union respectively', Article 16.3 paragraph 5).

### 3. Japan's difficulties with ratifications

One may wonder what the reason for the lack of ratification of the two core Conventions is. While such state of affairs in regard to the Convention concerning Discrimination in Respect of Employment and Occupation seems to be related to cultural backgrounds, the situation connected with the Abolition of Forced Labour Convention is quite different. Since 1995, the CEACR has been examining the issues of wartime industrial forced labour and sexual slavery (so-called 'comfort women') during the Second World War. The CEACR, noting the observations of the All Japan Shipbuilding & Engineering Union, refers in particular to a decision of the Korean Supreme Court of Justice of 24 May 2012 which reversed the decisions of lower courts rejecting the demands for compensation by forced labour victims against two leading Japanese industries. Consequently, the Retrial Courts (the Seoul and Pusan High Courts of Justice) ordered the industries to pay compensation to former victims of forced labour. Unfortunately for the victims, the defendants filed an appeal to the Supreme Court of Justice. This means that plaintiffs who have since passed away will not know the outcome of their complaint. It has been highlighted that a number of lawsuits have been initiated recently concerning wartime industrial forced labour following the retrial judgment of the Supreme Court of Justice. According to further observations of the All Japan Shipbuilding & Engineering Union, officials of these companies declared that they considered that the issue of compensation had been settled by the conclusion of the 1965 Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Cooperation between Japan and the Republic of Korea, for which reason they filed the appeal. The CEACR notes with concern that no concrete outcome has been achieved. At the same time, the CEACR expresses the firm hope that, given the seriousness and long-standing nature of the case, the Government will make every effort to achieve reconciliation with the victims, and that measures will be taken, without further delay, to respond to the expectations and claims made

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<sup>15</sup> International Labour Organization, accessed May 19, 2020, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310\\_INSTRUMENT\\_ID:312250:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312250:NO).

<sup>16</sup> Ibid.

by the aged surviving victims of wartime industrial forced labour and military sexual slavery. Another factor to consider if analysing the lack of ratification of the Abolition of Forced Labour Convention is a CEACR Direct Request adopted 2018, published 108th ILC session (2019), and related to the trafficking in persons. The CEACR requested the Government to indicate the measures taken to raise awareness and strengthen the capacities of the authorities responsible for enforcing the law to ensure that sufficiently dissuasive and effective penalties are applied to perpetrators of trafficking for both labour and sexual exploitation. The CEACR remained concerned, *inter alia*, about the low number of prison sentences imposed on perpetrators<sup>17</sup>.

#### 4. The Committee on Trade and Sustainable Development

Article 22.3 of the EU and Japan's EPA establishes the Committee on Trade and Sustainable Development, which shall be responsible for the effective implementation and operation of Chapter 16. According to Article 16.13 paragraph 2, the Committee shall have the following functions:

- a) reviewing and monitoring the implementation and operation of Chapter 16 and, when necessary, making appropriate recommendations to the Joint Committee for its consideration;
- b) considering any other matter related to Chapter 16 as the Parties may agree;
- c) interacting with civil society (independent economic, social and environmental stakeholders, including employers' and workers' organisations and environmental groups) on the implementation of Chapter 16;
- d) carrying out other functions as may be delegated by the Joint Committee comprising representatives of both Parties (it may allocate responsibilities to specialised committees, working groups or other bodies); and
- e) seeking solutions to resolve differences between the Parties as to the interpretation or application of Chapter 16.

The first meeting of the Committee on Trade and Sustainable Development took place on 29-30 January 2020 in Tokyo<sup>18</sup>. Corporate social responsibility, responsible business conduct, engagement with civil society, and – quite mysterious – ‘other issues’ have been listed in agenda as the priorities for cooperation. During the meeting there was also a dedicated session on labour and trade, which focused on update on ratification and implementation of ILO Conventions and potential cooperative activities.

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<sup>17</sup> “Direct Request (CEACR) - adopted 2018, published 108th ILC session (2019),” International Labour Organization, accessed May 19, 2020, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101\\_COMMENT\\_ID:3081910](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:3081910).

<sup>18</sup> “EU–Japan Economic Partnership Agreement (EPA): 1st Meeting of the Committee on Trade and Sustainable Development 29-30 January 2020, Tokyo. Agenda,” European Commission, accessed May 19, 2020, [https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158594.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158594.pdf).

## 5. Civil society's involvement

The EU and Japan's EPA ensures the involvement of civil society in the implementation of Chapter 16. This can take two forms: first, domestic advisory group (Article 16.15); and second, Joint Dialogue with civil society (Article 16.16). As regards domestic advisory group, both Parties to the Agreement shall convene meetings of their own new or existing domestic advisory group or groups on economic, social and environmental issues related to Chapter 16 and consult with the group or groups in accordance with their laws, regulations and practices. The advisory group should consist of a balanced representation of independent economic, social and environmental stakeholders, including employers' and workers' organisations and environmental groups. An important competence conferred upon the advisory group of each Party is that it may meet on its own initiative and express its opinions on the implementation of Chapter 16 independently of the Party and submit those opinions to that Party. In this regard, it is worth noting that the EU and Japan's EPA provides a more complex explanation of domestic advisory group than other agreements do, eg. the EU and South Korea Free Trade Agreement (FTA) of 2009. The document specifies its composition, consultative role and other important functions and powers.

With respect to what the EU and Japan's EPA terms 'Joint Dialogue with civil society' (Article 16.16), the Parties shall convene the Joint Dialogue with civil society organisations situated in their territories, including members of their domestic advisory groups, to conduct a dialogue on Chapter 16. The Parties shall promote in the Joint Dialogue a balanced representation of relevant stakeholders, including independent organisations which are representative of economic, environmental and social interests as well as other relevant organisations as appropriate. The EPA requires the Parties to provide the Joint Dialogue with information on the implementation of Chapter 16. The views and opinions of the Joint Dialogue may be submitted to the Committee and may be made publicly available. It is worth stressing that the Parties convened the Joint Dialogue with civil society on 31 January 2020 in Tokyo<sup>19</sup> (no later than one year after the date of entry into force of the Agreement, Article 16.16, paragraph 3). The Joint Dialogue shall be convened regularly, unless the Parties agree otherwise.

## 6. Dispute resolution

It is worth noting that the EU and Japan's EPA includes Chapter 21 entitled 'Dispute settlement', however, the provisions of Chapter 16 shall not be subject to dispute settlement under Chapter 21. Instead, Chapter 16 offers the special dispute settlement mechanism, which provides two special tools for dispute resolution,

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<sup>19</sup> "EU–Japan Economic Partnership Agreement (EPA): Trade and Sustainable Development Joint Dialogue with Civil Society 31 January 2020, Tokyo, Venue: EU Mission in Tokyo. Agenda," European Commission, accessed May 19, 2020, [https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158578.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158578.pdf).

namely governmental consultations (Article 16.17) and recourse to the panel of experts (Article 16.18). The latter shall interpret the relevant Articles of Chapter 16 in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969. The panel of experts shall issue an interim and a final report setting out the findings of facts, the interpretation or the applicability of the relevant Articles and the basic rationale behind any findings and suggestions. The final report shall be made publicly available. The Parties shall discuss actions or measures to resolve the matter in question, taking into account the panel's final report and its suggestions. Each Party shall inform the other Party and its own domestic advisory group or groups of any follow-up actions or measures, which – by the way – shall be monitored by the Committee. The domestic advisory group or groups and the Joint Dialogue may submit their observations in this regard to the Committee.

The dispute resolution mechanism does not establish sanctions for breaching the obligations included in Chapter 16, but relies on cooperation on the part of the country that has breached the EPA's provisions<sup>20</sup>. Such a solution may raise the question of enforceability of labour provisions. By way of comparison, according to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) to which Japan is a party, a panel can be established and sanctions (even compensation and suspension of benefits) can be imposed towards the CPTPP member in case of non-compliance on labour provisions. The CPTPP does not envisage a special special dispute settlement mechanism, but only stipulates that in any dispute arising under Chapter 19 (Labour), panellists other than the chair shall have expertise or experience in labour law or practice<sup>21</sup>.

## 7. Conclusion

The purpose of this paper was to explore labour provisions under the 'Trade and Sustainable Development' Chapter of the EU and Japan's EPA. To gain a better understanding of the nature of the EPA, the study has focused specifically on different legal traditions between Japan and EU and has articulated some key characteristics of the Japanese system. It has highlighted problems arising against the background of the Japanese culture, *i.e.* the lack of ratification of the Convention concerning Discrimination in Respect of Employment and Occupation

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<sup>20</sup> This reflects the EU's approach to hard enforcement mechanisms in trade agreements in general. See e.g. Billy Melo Araujo, "Labour Provisions in EU and US Mega-Regional Trade Agreements: Rhetoric and Reality," *International & Comparative Law Quarterly* 67, no. 1 (2018): 241-242.

<sup>21</sup> "Comprehensive and Progressive Agreement for Trans-Pacific Partnership text and resources," New Zealand Foreign Affairs and Trade, accessed May 19, 2020, <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources/#chapters>. See also: Alice Poidevin, and Hosuk Lee-Makiyama, "The EU-Japan EPA: Freer, fairer and more open trading system: Conference note," European Centre for International Political Economy Policy Brief 10, Brussels, 2018: 4.



and has listed the causes of non-ratification of the Abolition of Forced Labour Convention. Of course, what the EU should do is put pressure on Japan to make every possible effort to resolve these difficulties and to ratify above-mentioned ILO core Conventions. The question, however, is one of whether or not the EPA includes tools needed to exert such pressures.

The findings presented indicate that, similarly to other agreements, eg. the EU-South Korea Free Trade Agreement, the EPA has rejected a sanctions-based approach to labour standards. Such a situation provokes a threat of creating serious problems with enforcement of the 'Trade and Sustainable Development' Chapter. In the near future, we will witness the outcome of the EU-Korea dispute settlement over workers' rights<sup>22</sup>, in which the panel was established and started its work on 30 December 2019<sup>23</sup>. It was supposed to present its report to the Parties by the end of March 2020, however, in light of COVID-19 travel restrictions, Parties and panel have agreed to postpone hearing in EU-Korea dispute on workers' rights in Korea<sup>24</sup>. Clearly, much is to be reported as South Korea has so far failed to ratify four of eight ILO core Conventions. It should be also highlighted that on 20 January 2020 the EU made its first submission in the dispute, requesting for findings and recommendations<sup>25</sup>. It will soon become clear whether the EU's approach has the potential of influencing the process of ratification of the ILO core Conventions.

This article makes it clear that we should not simply assume that lofty phrases (eg. the Parties 'reaffirm their obligations deriving from' the ILO membership or 'The Parties further reaffirm their respective commitments with regard to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up') translate easily into policy with teeth. I entertain considerable doubts whether soft formulations of a promotional nature (eg. 'strive to ensure'; 'strive to continue to improve'; 'make continued and sustained efforts on its own initiative to pursue ratification') have the potential to ensure effective enforcement of labour standards.

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<sup>22</sup> "EU-Korea dispute settlement over workers' rights in Korea enters next stage," European Commission, accessed May 19, 2020, <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2095>.

<sup>23</sup> This step was not so obvious to make as a lack of political will on the part of the EU to enforce labour standards provisions was symptomatic for a long time. As it was pointed out by a Commission official: 'It is important to have a positive forward-looking agenda. Confrontation would lead to a backlash on behalf of Korea. We want to add investment protection into the agreement. If we took action under this chapter, we might lose benefits elsewhere. So we do need to think about the bigger context'. See: James Harrison, Mirela Barbu, Liam Campling, Ben Richardson, and Adrian Smith, "Governing Labour Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters," *Journal of Common Market Studies* 57, no. 2 (2019): 269, DOI: 10.1111/jcms.12715.

<sup>24</sup> Amy Porges, "Porges Trade Law PLLC," accessed May 19, 2020, <https://www.porgeslaw.com/rta-disputes>.

<sup>25</sup> "Panel of Experts Proceedings Under Article 13.15 of the EU-Korea Free Trade Agreement," European Commission, accessed May 19, 2020, [https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158585.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158585.pdf).

The specific objective of the paper was also to present the Committee on Trade and Sustainable Development, with an emphasis on its important functions. What comes to mind, however, is a critique of the poor transparency of its work. What we have access to is only a one-page agenda prepared for the first meeting of the Committee on Trade and Sustainable Development. The same consideration applies to the Joint Dialogue with civil society convened on 31 January 2020.

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