



Domestic Advisory Group under the EU-Korea FTA

Ms. Cecilia Malmström,
Trade Commissioner
European Commission
Rue de la Loi 200
1049 Brussels
Belgium

Brussels, 16 December 2016

Re: Government Consultations Pursuant to the EU-Korea FTA

Dear Commissioner Malmström,

You would remember that on 13 January 2014, the EU Domestic Advisory Group (DAG) wrote a letter to then Trade Commissioner Karel De Gucht concerning serious and widespread violations of the right to freedom of association and to bargain collectively in South Korea (Annex 1). Commissioner De Gucht replied to the EU DAG on 20 February 2014 explaining that he would decline to initiate formal consultations. Instead, he suggested the continued use of the regular institutional channels and rescheduled the meeting of the Committee on Trade and Sustainable Development (CTSD) at an earlier date than planned. The CTSD meeting made no progress. To date, none of the cases identified in that letter have been redressed, including the deregistration and dissolution of the Korean Teachers Union, the refusal to register the Korean Government Employees Union, the mass dismissal and jailing of members of the Korean Railway Union, and the illegal raid on the headquarters of the Korean Confederation of Trade Unions.

After the initiative of the EU DAG, the EU-Korea Civil Society Forum (CSF) sought to monitor the implementation of Article 13.4.3's provision that "Parties will make continued and sustained efforts" towards ratifying fundamental and up-to-date ILO Conventions. On 15 September 2015, the CSF issued a statement expressing "its disappointment with the lack of progress and concrete steps in particular regarding ratification and effective implementation of the ILO fundamental conventions and urge[d] the Parties to renew their efforts in that direction". No EU-Korea Civil Society Forum is to be held in 2016 due to complications from the Korean government.

We are concerned that in 2016, the Government of Korea has toughened its actions towards the trade union movement. For instance, the Government sentenced to five years in prison the President of the Korean Confederation of Trade Unions (KCTU), HAN, Sang-gyun, for his participation in strikes and demonstrations in 2015 opposing government policy aimed at abrogating collective bargaining agreements and significantly weakening labour law.

Furthermore, in 2016, the UN Special Rapporteur on Freedom of Assembly and Association undertook a mission to Korea and issued a critical report in June 2016. The full report is attached (Annex 2). Also in 2016, UN Working Group on Business and Human Rights visited Korea and issued a highly critical press

release concerning the human rights violations, including labour rights, which were committed in Korea. The full report has not yet been released, but the initial statement is attached (Annex 3).

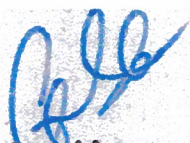
A summary of recent violations of freedom of association compiled by the ITUC is attached at Annex 4.

The Annexes, in particular Annex 4, demonstrate the efforts of the Korean Government to weaken labour protection with a series of *Guidelines* contrary to the commitments made under Article 13.3 of the EU-Korea FTA “to ensure that those laws and policies provide for and encourage high levels of labour protection and to strive to improve such laws and policies”. In addition, by issuing unilaterally the *Guidelines* without consultations¹, the Government is in breach of Article 13.9 that stipulates that such laws and policies should be developed in a transparent manner, with due notice and public consultation, including non-state actors². The ILO Committee on Freedom of Association took a decision³ on the case of the *Guidelines* agreeing that the Guidelines were adopted in violation of ILO Conventions. It called the Government to refrain from any further efforts to amend collective agreements and to negotiate any framework for collective bargaining with the full participation of social partners. The Annexes also report various violations of the commitments set out in Article 13.4.3 to “respecting, promoting and realising” in their laws and practices, the fundamental rights at work. These policies of the Government should be viewed also as an infringement of Article 13.7.2 that states that the Parties shall not weaken or reduce labour protection to encourage trade and investment.

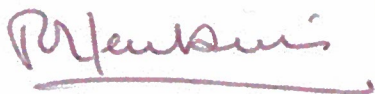
These cases and Annexes illustrate that the Government of Korea aims at diminishing the power of trade unions systematically. All of the actions above violate principles of freedom of association and collective bargaining.

For these reasons, we advise you to initiate the formal consultations process provided for in the FTA (Article 13.14). It is indeed incumbent on the Commission to use the FTA to raise these issues on a formal basis with the Korean Government. It is obvious that the existing institutional mechanisms of Article 13.12 have failed to result in any meaningful progress. We believe that failure of the EU to act in this case, in the light of the overwhelming evidence of the breach of Article 13, would undermine the effectiveness of Sustainable Development chapters in EU’s trade agreements, and could further erode confidence in the EU trade policy in general.

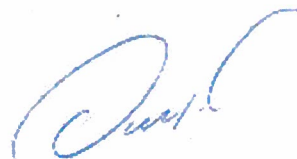
Sincerely,



Georgi Stoev
Chair of the EU DAG



Thomas Jenkins
Vice-Chair



Gaelle Dusepulchre
Vice-Chair

¹ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_534575.pdf - see pages 105-111

² The Government also breached the Tripartite Agreement on Structural Reforms of the Labour Market which was concluded on 15 September 2015 between social partners in Korea under which the parties agreed to draw up measures only after consultations.

³ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_534575.pdf - see pages 105-111