

## Switzerland-China Free Trade Agreement and Labour Rights

by Vasco Pedrina and Zoltan Doka

After four years of negotiations, Switzerland has become the second European country to sign a free trade agreement (FTA) with China<sup>1</sup>. The importance of the FTA rests in the fact that China regards it as a significant trial run for further FTAs with industrialised countries and the European Union (EU). This has led to political controversies accompanying the negotiation process.

Right from the start, the Non-governmental Organisations (NGOs) and the trade unions successfully committed the Swiss negotiating party to the inclusion of a “durability chapter” in this FTA, which emphasises human rights and labour rights as well as environmental standards. Swiss officialdom had long upheld a taboo on mixing trade issues with commitments to such standards by building them into an FTA; changing course in 2010 – mainly due to an international trend<sup>2</sup>.

### Durability provisions in the FTA – a controversial outcome

The Swiss Business Federation and the political Right were raring to secure privileged access to the massive Chinese market ahead of all the competitors in the EU countries; disregarding human and labour rights! The fact that they were dealing with a one-party state that tramples such rights was treated as a side issue to them. But civil society opposed the notion of leaving out any substantial durability chapter, leading to petition campaigns and other action. Despite having an impact, the outcome was controversial, driving a wedge between the NGOs and the unions. Ultimately their differing assessments of the negotiations came down to whether, they had delivered a half-empty or a half-full glass. Essentially, the NGOs’ contested the outcome, citing a lack of clear commitments to respect to human and minority rights, including all eight ILO core labour standards. To further substantiate this frustration, there was no clear reference to the Universal Declaration of Human Rights in the agreement. However, the preamble to the FTA cites the protocol of understanding reached between Switzerland and China in 2007 on what is termed a “human rights dialogue”. In addition, both sides confirm their commitment to upholding the UN Charter, which is the basis for the subsequently elaborated UN human rights instruments. Regarding ILO core standards, both countries commit to respecting those that have been ratified; China has ratified only 4 (excluding the standards protecting freedom of association and prohibiting forced labour). This is highly problematic. However, the agreement does contain a reference to both parties’ obligations arising from membership of the ILO and from the major ILO declarations on labour rights and social justice, observing all 8 core standards.

### Excerpts from the Agreement on Labour and Employment Cooperation between Switzerland and China

#### Art.2

1. The Parties reaffirm the obligations of China and Switzerland as members of the ILO, including their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.

3. The parties recall the obligations deriving from the membership of China and Switzerland to the ILO to effectively implement the ILO Conventions which they have ratified.

4. The Parties reaffirm the ILO Declaration on Social Justice for a Fair Globalisation,...

#### Art. 3

1. The Parties reaffirm the importance of cooperation to further improve their respective labour standards and practices in line with their national labour policy objectives and according to the obligations set out in applicable ILO Conventions.

2. In pursuit of this objective, the Parties agree that cooperation relating to labour and employment, including administrative and technical cooperation as well as capacity building, shall be conducted under the bilateral Memorandum of Understanding...

After considerable debate, the unions accorded a “critical YES” to this FTA, based on their conviction that:

- first, a policy of economic opening towards China is better than one of isolating that country, if it is to be gradually convinced to change course on human rights and labour rights
- secondly, the durability provisions that were negotiated (and China has never made so many concessions in any other FTA, including the one with New Zealand) provide better means of pressing both countries to combat human and labour rights breaches than would have been the case without such an FTA.

On the other hand, employment considerations were on the back-burner of the unions’ position, notably because the two national economies are highly complementary, so competition holds few terrors for them.

The monitoring mechanism provided in the FTA is a three-level model, which is also to be applied to the durability provisions. “Contact points”, to which questions and complaints can be addressed, are being set up by both sides. At this first (technical) level, those responsible for these contact points

will attempt to clear the matter up. If disagreement remains, a second technical level will be triggered, as part of which a “mixed committee” of diplomats and technical experts will meet if needed. The third, political level is the ministerial meetings, which are scheduled to take place every two years.

That kind of monitoring mechanism is relatively weak - all the more so as no real sanctions are envisaged. But the same goes for all the FTAs that Switzerland has negotiated so far, either alone or as part of the European Free Trade Association (EFTA), and for most other countries’ FTAs. The NGOs and unions demanded the following within this political process:

- the creation of a support and supervision body including representatives of the social partners, NGOs and environmental organisations for all FTAs with a durability chapter
- the creation of a supervisory mechanism, within the administration, for the durability provisions of all FTAs and investment protection agreements, with the involvement of all the governmental departments concerned. This mechanism should collect observations and reports from the partner countries involved, as well as from civil society, get them deepened out, assess them and then lead on to targeted action.

In this respect, joint pressure by the NGOs and the unions has indeed already ensured that:

- the social partners and NGOs are regularly consulted on the effective implementation of the durability provisions, within the framework of existing federal commissions
- the government has committed itself to report back to parliament on this subject every year.

As part of a current discussion, within EFTA, on the role of civil society in the monitoring of FTAs, the trade unions are, generally, trying to convince the governments of the four participating countries (Norway, Iceland, Liechtenstein and Switzerland) that a more far-reaching solution is needed.

### Union campaign for Chinese labour rights

It remains to be seen whether this FTA can really become a lever in the struggle for human and labour rights in China. Much will depend on civil society’s actual determination and commitment to act and campaign on the issue. In this regard, the Swiss multisectoral trade union, Unia, together with the development organisation, Solidar Suisse, has chosen an interesting approach, with the dual aim of both contributing to the application of labour rights in China and promoting the notion of solidarity among their own members and the general public. The main element is the provision of support to rank-and-file groups in China that have set out to assist workers in their struggle to get their rights applied. Chinese labour law does provide scope for this, but the big problem is implementation. As part of this programme, support is given to grassroots organisations which advise and mentor workers regarding problems with overtime, social insurance and occupational health.

A second objective, in both countries, is to establish a link between employee representatives within Swiss firms active in China (whether subsidiaries or joint ventures). The aim here is to get labour rights respected by promoting collective agreements. In China, the conditions for this have been slightly improved recently by the creation of a new legal basis for collective bargaining policy. In several provinces, it is now quite possible to conclude collective agreements. This raises the question of the form to be given to relations with the official trade unions affiliated to the ACFTU federation. These are the only organisations with a recognised entitlement to represent employees. But can democrats and defenders of human rights principles cooperate with organisations that have no democratic legitimacy, that often adopt positions counteracting workers’ interests and that are part of the Chinese party and government apparatus? Strictly speaking, the answer to that is “No”. But in practice, in order to gain legal credentials at the workplace level, some dealings will be needed, case by case, with local ACFTU representatives and structures – but, of course, without abandoning the independent employee representation bodies that arise from social movements.

The third element is awareness-raising in Switzerland. “My colleague Li” is the slogan that Unia and Solidar Suisse have chosen for regional events, a film, workplace leafleting etc. The aim is to inform union members about the realities of labour struggles in China today and our solidarity action, thus encouraging them to play an active part. By denouncing abuses, the intention is also to put pressure on the Swiss authorities and on China to start changing things. The durability provisions in the new FTA are to be used as a lever for this. Given the anxieties within our own ranks, it is important to get across the message that the Chinese workers are not to blame for wage dumping practices but firms and public authorities. Nor is it helpful to paint a black-and-white picture of China. This campaign is intended to be part of broader efforts to counter the “national withdrawal” that is becoming more and more noticeable in Switzerland and some other European countries, with worrying consequences!

<sup>1</sup> The following three agreements are part of the Switzerland-China FTA (<http://www.seco.admin.ch/themen/00513/02655/02731/04118/index.html?lang=en>):

- Free Trade Agreement between the Swiss Confederation and the People’s Republic of China (2014)
- Agreement on Labour and Employment Cooperation between the Federal Department of Economic Affairs, Education and Research of the Swiss Confederation and the Ministry of Human Resources and Social Security of the People’s Republic of China (2014)
- Memorandum of Understanding regarding Cooperation on Labour and Employment Issues (2011).

<sup>2</sup> ILO. “Social Dimensions of Free Trade Agreements”, International Institute for Labour Studies, 2013.

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