

Laws and incentives – a pathway to fair globalisation

Can the Supply Chain Act bring about social justice?

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Shortly before the United Nations World Day of Social Justice on 22 February, the German government resolved to present the Supply Chain Act envisaged in the coalition agreement to the Bundestag. The World Day commemorates the Declaration on Social Justice for a Fair Globalization issued in 2008 by the member states of the International Labour Organization (ILO). This declaration affirmed that labour is not a commodity and that countries, employers and workers must act collectively within and – in the wake of economic globalisation – across borders to create good working conditions. The declaration thus also makes it clear that companies in Germany or elsewhere in Europe that purchase their products or components from global supply chains have a major role to play in ensuring fair globalisation. Up until now, Germany has relied mainly on companies adopting voluntary measures, supported by government incentives such as integrating social and environmental criteria into public procurement. The planned law is intended to oblige large German companies to ensure that their direct suppliers uphold human rights. The government has thus moved one step closer to the “smart mix” of incentives and obligations that will bring about a more sustainable and thus socially fairer way of doing business.

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Its 2016 National Action Plan for Business and Human Rights marked the first time that the German government had set out its expectations in terms of companies’ voluntary compliance with their human rights due diligence obligations as well as how the state is helping to protect human rights, such as through sustainable public procurement. When it emerged in late 2020 that only a minority of German companies are taking voluntary action to fulfil their due diligence duty in respect of human rights in their international supply chains, actors from the worlds of politics, civil society and the private sector called for corporate due diligence obligations to finally be made binding and enshrined in law. In implementing its new law, Germany is following a trend for similar legislation, such as in France and the UK, that is increasingly making the protection of human rights mandatory throughout international supply chains. Does this mean that Germany and its companies have now done their bit for fair globalisation, and are government measures such as sustainable public procurement to become redundant?

Firstly, the Supply Chain Act that the German government is planning is much less ambitious than many who had campaigned for it had hoped and the Federal Ministry for Economic Cooperation and Development (BMZ) and the Federal Ministry of Labour and Social Affairs (BMAS) had originally proposed. It will only apply to a small number of very large companies, the due diligence obligation will only cover the first step in the supply chain, and environmental criteria are likely to be excluded. Plans to allow affected parties to bring legal action have also been dropped. There is therefore a fear that, in reality, companies will only change their behaviour very slightly.

Secondly, even a more comprehensive law would only be one element of the “smart mix”. Laws on supply chains form part of a fair approach to globalisation that compels companies to develop management systems for social and environmental aspects in their supply chains. More important even than potential fines in the event of breaches are the measures that companies take to understand their own supply chain and to work with all their stakeholders to improve working conditions and the consequences of their business activities. Sustainable public procurement can also benefit from these changes. Many bidders in tendering procedures will have a hard time meeting the requirements of public contracting authorities relating to social and environmental aspects of international supply chains if they themselves lack sufficient experience of these elements of their supply chain. This lands them with extra work and additional costs, and what they have to offer in many product groups may prove inadequate. Limiting the scope to the first step in the supply chain means that the potential impact of the current proposal for a German Supply Chain Act will be less than if companies were required to consider the whole of their supply chain, from components to raw materials.

Moreover, laws on supply chains only cover corporate responsibility to a minimal extent. The aims of the ILO’s declaration on social justice go beyond merely upholding human rights: it is centred around fair wages, social security and healthy and safe working conditions, none of which are not sufficiently covered by the deliberations over a German Due Diligence Act.

The European Commission is already planning to draft an EU-wide Supply Chain Law. Hopefully, this will turn out to be more ambitious, incorporate environmental criteria, permit affected parties to bring legal action and apply to more companies. Either way, state actors are capable of increasing their efforts to bring about sustainable public procurement in order to achieve the goal of social justice and fair globalisation.