The European Union and the Social Dimension of Globalization

How the EU influences the world

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9 The social dimension of EU trade policies

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This chapter discusses the social dimension of the European Union (EU)'s most powerful external policy domain: trade. After an introductory section summarizing the international debate on the inclusion of labour standards in trade policy instruments – the so-called social clause – the chapter focuses on the EU's position in this discussion. Besides the Union's role in the World Trade Organization (WTO), we also consider and evaluate its policies promoting core labour standards (CLS) through unilateral and bilateral trade policies. Subsequently, we offer some explanations for the EU's limited internal ability to reach decisions on, and for its cautious stance in relation to, a social clause. Attention will be paid to four factors: the ideological disposition of EU member state governments; member state concerns about possible creeping EU competences in the area of labour regulations; the fact that trade-related labour standards may be less important for the member states than other trade-related objectives and concerns; and the increased attractiveness of the International Labour Organization (ILO) as an alternative to a WTO-based approach to international labour standards.

The international debate on labour standards in trade agreements

Whereas the promotion of CLS as fundamental human rights is widely considered as a legitimate goal in international relations, the potential use of trade instruments when pursuing this objective has been the subject of much debate among academics and policy-makers. Can laudable social policy objectives, such as freedom of association and the abolition of child labour, be advanced by integrating them into international trade rules?

This is precisely the debate on a social clause – broadly defined as any binding linkage between CLS and trade policy measures. Neo-liberal economists tend to oppose this idea, arguing that the pursuit of free trade will eventually entail economic and social development (cf. the 'trickle down' theory). According to this point of view, the incorporation of labour standards in trade relations may well endanger the liberal trade regime. For all the lofty ideals behind non-governmental organizations' (NGOs) proposals for a social clause – who would 'oppose child labour on the moon, if Carl Sagan or Neil Armstrong had been able to find life

there, even if we did not trade with the moon' (Bhagwati 1999: 14–16) – in practice, policy-makers cannot be trusted with such a discretionary power in trade policy. The mere existence of a seemingly legitimate barrier to trade would lead to protectionist misuse by governments, pressured by unions and vulnerable industries. Developed countries would use social clauses as veiled protectionist instruments, jeopardizing the comparative advantage of developing countries in international trade. Therefore, the latter are also highly critical of the idea of linking labour standards and trade rules (cf. Lee 1997).

Yet, a 1996 Organization for Economic Co-operation and Development (OECD) study concluded that 'concerns expressed by certain developing countries that core standards would negatively affect their economic performance or their international competitive position are unfounded; indeed, it is theoretically possible that the observance of core standards would strengthen the long-term economic performance of all countries' (OECD 1996: 13). The finding that a country's compliance with CLS – seen as human rights and to be distinguished from standards related to socio-economic development, such as minimum wages – does not affect its competitiveness puts the 'race to the bottom' hypothesis into perspective.

This is not to say that the OECD claims that social clauses should be used to advance CLS. It sides with mainstream neo-liberal thinking in emphasizing that – besides trade liberalization and export-led growth – other instruments should be employed to achieve this objective. In this regard, some point to the role of development aid budgets, but more emphasis is usually put on soft governance mechanisms (see Chapter 1) such as corporate social responsibility, private codes of conduct for multinationals and social labelling. The importance of indirect influence by the ILO is also highlighted.

Proponents of a social clause do not question the ILO's contribution, or the relevance of development aid. Rather, they argue that 'fair' trade rules should somehow allow for interventionist trade measures favouring CLS, while at the same time providing enough guarantees against protectionist abuse. This reasoning is widespread in the developed world, especially with leftist governments, and reflects the post-war ideological tradition of 'embedded liberalism' (Ruggie 1982), which assumes that sole reliance on the forces of the free market cannot stimulate broader societal objectives. For that to be the case, competition needs to be embedded in a strongly regulated socio-economic system.

Advocates of a social clause also refer to moral arguments and to the legitimacy of the international trading regime. The free trade system may be efficient, but it also needs to be perceived as legitimate by the public at large. One implication of this reasoning may be that the incorporation of labour standards in the world trade regime is necessary to preserve the legitimacy of the liberal international trading system, and to prevent a popular and protectionist backlash against globalization at large.

The idea that multilateral economic co-operation can allow for interventionist policy measures at the domestic and international level, without provoking a protectionist backlash, also inspired the United Nations Conference on Trade and Employment and the Havana Charter (1948). The resulting International Trade Organization (ITO) even established an institutional linkage between trade and

CLS. It provided for co-operation with the ILO, and foresaw that complaints about unfair labour conditions could be brought before the ITO's dispute settlement procedures (cf. Article 7, Havana Charter; Drache 2002).

However, after a coalition of 'protectionists' and 'perfectionists' in the US Congress had rejected the ITO, the provisional General Agreement on Tariffs and Trade (GATT) chapter of the Havana Charter was promoted to the main pillar of the post-war international economic architecture. Labour standards became disconnected from the world trade regime, with the notable exception of an 'ITO remnant' in GATT Article XX(e), which permits governments to ban trade in goods produced using prison labour. The breakdown of the ITO created a path-dependent process, whereby labour standards were seen as incompatible with, and thus separated from, the multilateral trade regime.

Although the 'free versus fair trade' debate has been going on for decades (Charnovitz 1987), it only became a hot international trade issue in 1993–94. During the final stage of the GATT Uruguay Round, a growing body of opinion expressed itself in favour of including labour standard provisions in the WTO agreements. The US and France were particularly enthusiastic about this. They argued for the establishment of a working group – within the newly created WTO – on the social dimension of trade liberalization. This was fiercely opposed by the developing countries, most prominently Malaysia, India and Pakistan, although countries such as the UK and Germany were equally reluctant. A last-minute compromise meant that the issue could be put on the WTO agenda at a later stage.

During the subsequent years, the debate on a social clause became increasingly politicized, culminating in the WTO Singapore Conference in 1996. The Singapore Declaration *de facto* relegates the issue to the sidelines, referring to the ILO as the competent organization to deal with international labour standards, thereby consolidating the idea that social issues are not to be dealt with in the multilateral trade regime (cf. Wilkinson 2001: 402, 411). EU and US attempts to put this on the agenda at the WTO Millennium Round failed with the collapse of the 1999 WTO Seattle Ministerial Conference, partly because of the growing assertiveness among those developing countries that strongly rejected US President Clinton's suggestion of introducing a punitive social clause in the WTO. When a new trade round was finally launched in Doha (2001), the agenda simply referred to the Singapore text (see below). Labour standards are still excluded from multilateral trade negotiations.

This deadlock at the WTO level sharply contrasts with the ILO's success in presenting itself as the appropriate international forum on labour standards. Stimulated by the WTO's Singapore Declaration, it put forward the ambitious 'Declaration on Fundamental Principles and Rights at Work' in 1998 (see Chapter 1). Shortly before Doha, the World Commission on the Social Dimension of Globalization (WCS DG) was set up, providing a diplomatically convenient alternative to the thorny WTO discussions.

The idea of a social clause thus remained a non-issue in trade affairs. Expectations that increased competition between developing countries following China's accession to the WTO would increase the support for a social clause have not materialized.

The European Union's position

The above makes clear that the inclusion of labour standards in the WTO legal framework faces strong opposition, especially from developing countries. The debate in the WTO is not, however, tantamount to a 'north-south clash'. Some 'northern' WTO members are too ambivalent on this for that to be the case. The European Union – one of the biggest players in the WTO – is a typical example of this. A closer look at the EU's approach to this issue is thus warranted.

As argued by Meunier and Nicolaïdis (2005: 907), the EU is not only a formidable power *in* trade, but it is also becoming a power *through* trade. Trade is traditionally the Union's most powerful external policy domain, which provides it with some leverage to act as a normative power in the world (Manners 2002). However, this leverage depends on the EU's capacity to define consistently the kind of norms and values it wants to pursue, and to act accordingly. With regard to CLS and their relation to international trade rules, an account of the EU's multilateral, bilateral and unilateral trade policies reveals that such consistency has been a major problem.

Despite a short debate about the integration of labour considerations in the Lomé Conventions, and the Generalized System of Preferences (GSP) at the end of the 1970s, it took until 1993–94 before the debate on a 'social clause' resurfaced on the European agenda (Orbie *et al.* 2005: 160–61). Shortly before the 1994 Marrakesh Conference of the GATT, the European Commission sided with the idea of a social clause, at the instigation of member states such as France and Belgium as well as the European Parliament. However, the desirability of labour standards within the newly established WTO regime was questioned by the conservative governments in Germany and the UK (Waer 1996: 26). As a result, the EU could only present a vague statement on the social issue in Marrakesh. During subsequent WTO Ministerial Conferences, the Commission continued to support the idea to incorporate labour standards into the WTO regime – or at least to discuss the linkages between the world trade regime and CLS during the new trade round.⁴ In Singapore (1996), it pushed for the establishment of a WTO working group to investigate the relationship between trade and labour standards, but was hindered in this demand by strong opposition from the UK. In Seattle (1999) and Doha (2001), the Commission proposed a Joint WTO–ILO Standing Forum. Throughout its efforts to find an internal consensus on the issue, the EU stressed that protectionist misuse of labour standards should be avoided and that Europe favoured an incentive-based approach rather than sanctions.

Proposals for a social clause did not remain limited to the multilateral trade level. Most bilateral agreements negotiated by the EU after 1995 also include a chapter on social co-operation and/or references to CLS. Contrary to the so-called 'human rights clause' used in all EU external trade and co-operation agreements in a rather homogeneous way, the Union does not seem to have one clear-cut formula for a 'social clause' to be inserted in all bilateral trade agreements. Rather, a tailored approach is chosen in accordance with the trade partner at the negotiation table, a practice that is also apparent in the new bilateral and biregional trade

negotiations that the EU is currently conducting with emerging economies in Asia and Latin America (Bossuyt 2009).

Indeed, it seems as if the EU's famous 'preferential pyramid' (Panagariya 2002) is reflected not only in its tariff structure, but also in the rule-making clauses (such as labour standards) included in its bilateral trade agreements. Roughly speaking, two types of social clauses can be distinguished. One type is used in agreements with (potential) candidate member states and with those countries covered by the European Neighbourhood Policy (see Chapters 3 and 4). In this first group, the social co-operation provisions aim to promote harmonization with EU Treaty provisions (concerning equal treatment for men and women and health and safety in the workplace) or are clearly connected with other specific EU policy goals (e.g. dialogue on the movement of persons in the case of the Euro-Mediterranean Association Agreements) (Grynberg and Qalo 2006: 641).²

The second type of social clauses usually consists of a commitment by both negotiating partners to promote 'international labour standards' as defined by the ILO. This category of social provisions can be found in the Cotonou Agreement (which was reiterated in the Council's 2003 negotiation mandate for future Economic Partnership Agreements) and the EU-Chile Association Agreement.³

Social conditionality is also included in Europe's unilateral GSP system. Since 1995, the EU can withdraw the GSP of those developing countries engaging in forced labour or prison labour. In 1998, the EU added a 'carrot' to this system, granting additional GSP to countries that comply with a number of CLS.⁴ In 2001, the legal basis of the GSP incentive and sanction clause was extended to include the eight fundamental ILO conventions (see Chapter 1).⁵

The EU has clearly made some effort to promote respect for labour standards through its bilateral and unilateral trade instruments. Whether it has been successful is debatable. An internal evaluation of the European Commission concluded that 'we could have done more'.⁶ Some maintain that the Union has made significant progress in promoting social and labour rights, particularly through its bilateral trade agreements with Chile, the Africa, Caribbean and Pacific Group (ACP) and South Africa (Dombia-Henry and Gravel 2006: 190). Others argue that, despite references to international labour standards, the EU emphasis is rather on general human rights, included as an 'essential element' in all its bilateral trade agreements (Clapham and Martignoni 2006: 291). Whereas a serious violation of human rights may allow the EU to terminate or suspend the operation of its agreements (Fierro 2003: 43), this type of 'trade conditionality' does not exist at all in the case of labour standards. On the contrary, the phrase, 'labour standards should not be used for protectionist purposes', included for instance in the Cotonou Agreement, seems implicitly to preclude the use of sanctions in the case of non-compliance with labour standards.⁷ Unlike the US, whose bilateral trade agreements provide clear potential sanctioning tools, such as fines and even trade measures, the EU has always rejected a sanctions-based approach to labour standards in its bilateral trade agreements. Instead, the emphasis is put on setting up institutional arrangements for dialogue on social standards at intergovernmental and occasionally civil society level (through the so-called 'Observatories').

The impact and the relevance of these dialogue mechanisms seem to be rather limited. As regards the Cotonou Agreement, for instance, it is striking to see that the 'social dimension' of EU-ACP relations has rarely figured on the EU-ACP Joint Council agenda since the Agreement was signed. Moreover, the declaration of the Danish Presidency in 2004 concerning Zimbabwe has been the only declaration referring to CLS up to now within the framework of EU-ACP relations. Surprisingly, this declaration referred to Zimbabwe's obligations as a member of the ILO and not to its being a party to the Cotonou Agreement.

Along with the dialogue mechanisms, since 1999, the EU has also been committed to conducting sustainability impact assessments (SIAs) of bilateral negotiations and agreements, which assess the impact of free trade agreements on social development in both the EU and partner countries. Although a considerable amount of financial and staff resources have been devoted to these studies, their impact has been limited. According to Raza (2007: 80), trade SIAs remain 'an academic exercise', which serve to legitimize EU trade policies, but without having any substantial impact upon the actual conduct of the negotiations. Most bilateral agreements also create room for co-operation and technical assistance in the field of social rights, thereby transferring the 'social' dimension of trade policies to the domain of EU development policy.⁸

As for the unilateral GSP regime, the application of social conditionality long remained limited to three countries: Burma (the 'stick', because of forced labour, since 1997); Moldova ('carrot', since 2000); and Sri Lanka ('carrot', since 2004). In its evaluation, the European Commission (2001b) admitted that 'the special incentive arrangements did not encounter the success that was hoped for at the time they were adopted'. Faced with these disappointing results and with a WTO ruling against the GSP drugs incentives (see below), the EU reformed its GSP conditionality. In order to qualify for special GSP under the new 'sustainable development and good governance' regime, developing countries have to ratify and implement several international agreements, including the eight fundamental ILO Conventions (see Table 1.1 in Chapter 1). However, the EU's coherence in granting special incentives can be questioned (see below). Moreover, the impact of this new system on the implementation of CLS in beneficiary countries remains to be seen (Orbie and Tortell 2009).

Overall, it can be concluded that the EU's approach to the issue of labour standards and trade agreements has been characterized by a limited ability to take decisions internally and, where it did succeed in so doing, by caution and an inclination to prefer positive incentives over sanctions. The following sections will develop four types of reasoning to explain why this should be the case.

Ideological obstacles to a common European stance

The European Community has long failed to produce a clear and common stance on labour standards in trade agreements because of principled opposition from some member state governments. Although the Commission and some member states supported discussions on this topic in the WTO from 1994 onwards, the

Council of Ministers was divided on the issue. The desirability of labour standards within the newly established WTO regime was doubted in particular by the conservative governments in Germany and the UK (Waer 1996: 26). As a result of these disagreements, the Council could only present a vague statement on the social issue at the Marrakesh Conference. In the first half of 1995, the French Presidency attempted in vain to achieve an EU compromise (see also Chapter 1).

In the run-up to the Singapore Ministerial Conference, the issue was brought up again and fiercely opposed by the UK and – to a slightly lesser extent – by Germany. The debate in the German Bundestag on this Conference clearly indicated that a gap existed between the German coalition government (CDU/CSU and FDP), on the one hand, and the opposition parties, on the other. Such a divide could be expected to a certain extent as a consequence of the predictable opposition between government majorities and their parliamentary opponents. Nevertheless, the debate itself indicated that this opposition was more deeply rooted. It indicated that the left and right in Germany approached the importance of free trade as a tool for economic and social development in the developing world, on the one hand, and the preservation of German prosperity, on the other hand, in a different way. For the CDU/CSU and FDP, trade liberalization was seen as a way of achieving the former and preserving the latter. For those parties, the inclusion of labour standards in the WTO legal framework threatened to jeopardize such liberalization. For the left (SPD, Bündnis90-Greens, PDS), minimum labour standards in WTO agreements were a condition *sine qua non* for the achievement of both objectives.⁹

In the UK, a similar kind of ideological split was visible. Whereas MPs from the ruling Conservatives applauded the Singapore outcome on labour standards, Labour MPs expressed their dismay. Importantly, however, almost all of them were members of the Socialist Campaign Group, a group of left-wing MPs in the British Labour Party. Indeed, these so-called 'Old Labour' MPs dominated Labour criticism of the Singapore outcome. While these Labour MPs stressed the acceleration of child labour as a consequence of globalization, and expressed doubts about the raising of standards of living 'at all levels of society' as a consequence of liberalized trade, Conservative MPs, as well as members of the UK government, reaffirmed their belief in trade liberalization as the best strategy to raise such standards, including labour standards. Consequently, whereas the latter perceived references to the ILO in the Singapore Declaration as a successful attempt to shield the world trading system from creeping protectionism, the former defined these references as hypocritical and shameful on the part of the WTO (and the British government that had strongly supported them).¹⁰

British and German opposition resulted in the Council Presidency's inability to bring an EU compromise to the conference. Europe's invisibility in Singapore is all the more relevant given the importance of this WTO conference for the future debate on a social clause. As indicated above, the Singapore Declaration *de facto* puts this topic on the sidelines, referring to the ILO as the competent organization to deal with international labour standards, and thereby consolidating the idea that the multilateral trade regime should not deal with social issues (Wilkinson 2001: 402, 411).

It took until the Seattle Ministerial Conference in 1999 before the '15' reached a common position.¹¹ An important explanation for the new-found European consensus is that social democratic parties had become dominant in most EU governments, including the UK and Germany. However, the impact of this was greater in Germany than in the UK. In sharp contrast to the position taken by the German government in the run-up to the Singapore Ministerial Conference, the Social Democratic/Green coalition government took the most extreme position in favour of a social clause in the WTO of all EU member states during Union preparations for Seattle.¹² Likewise, together with Sweden, the German government continued to press for stronger language on labour rights in the run-up to the Doha Ministerial, largely in response to the position taken by the Commission that the Seattle Ministerial had made clear that the developing countries would never agree with a dialogue on labour standards within the framework of the WTO. Consequently, the German government could not be completely satisfied with the outcome on labour standards at the Doha Ministerial,¹³ as it indicated in a Bundestag debate on the issue.

On the British side, no major difference appeared compared with the stance of the previous government in the run-up to the Singapore Ministerial. Then and now, the British government opposed the creation of a working group on labour standards and trade in the WTO.¹⁴ Consequently, no frustrations were expressed by the Tony Blair government as regards the Doha outcome. Its rhetoric on this outcome in relation to labour standards was basically similar to that of the John Major government after the Singapore Ministerial. The only difference this time was that Old Labour opposition was more muted. The same observation can be made about the parliamentary debates and questions that preceded both the Seattle and Doha Ministerials and that dealt with the position the British government was defending in the EU on the question of labour standards in the WTO.¹⁵

That the EU succeeded in finding a common position on labour standards before the start of the Seattle Ministerial was largely due to the realization by those member states that favoured their inclusion in the WTO legal framework that this was simply not feasible because of virulent opposition from developing countries in the WTO. As the European Commission indicated in its proposal to the Seattle Ministerial, the Singapore Ministerial had made this particularly clear.¹⁶ The outcome of internal EU deliberations on the Seattle Ministerial – in which the labour standards issue had been one of the two most controversial topics (together with the cultural exception clause) – focused on the efforts the Union would make in the WTO to create a Joint ILO – WTO Standing Forum on Trade, Globalization and Labour, with the purpose of promoting 'a better understanding of the issues involved through a substantive dialogue between all interested parties (including governments, employers, trade unions and other relevant international organisations)'.¹⁷ This forum would *inter alia* prepare for a ministerial-level meeting that would be hosted by the EU and was supposed to take place within two years. The outcome – proposed by the Finnish Council Presidency – split the difference between supporters and opponents of labour standards in the WTO legal framework. It did not create a working party for that purpose in the WTO. It merely provided for a Standing Forum, which would not become a permanent

component of the WTO's institutional framework, the reference to 'Standing' suggesting that the forum would not be restricted to one meeting only. Neither was there any guarantee that it would link labour standards to WTO agreements. But it would at least reopen the door – closed at Singapore – to a discussion on labour standards within the WTO.

To satisfy the opponents, the linkage of this discussion to the ILO was stressed through the 'Joint' character of the ILO–WTO forum, leaving the door open to an outcome in which the existing (exclusive) role of the ILO in this area would be confirmed. The latter was also considered to be elementary to entice developing countries into the labour standards discussion. With the same purpose in mind, the EU's position also stressed that the dialogue was aimed at WTO encouragement of 'positive incentives' to promote observance of core labour rights, and indicated its opposition to 'any sanctions-based approaches' (Council 1999: para. 13). At the end of the day, resistance from these countries proved insurmountable.

Likewise, in the run-up to the Doha Ministerial, developing countries continued to resist any EU efforts or semblance of such efforts to bring the labour rights debate into the WTO.

Competence concerns as impediments to a proactive EU policy

Disagreements within the Council cannot simply be attributed to ideological factors. Member state sensitivities about creeping EU competences also played a role. In general, the 1990s witnessed serious competence conflicts between the member states and the Commission about the scope of Europe's external trade competences, on the one hand (e.g. ECJ Opinion 1/94), and about further intra-European integration of ILO labour standards, on the other (e.g. ECJ Opinion 2/91; see also Chapters 2 and 5). The idea of a social clause is, by definition, situated at the crossroads of these policy domains. Member states were anxious that social conditionality in trade would *de facto* strengthen, or at least facilitate, the Community's role regarding labour issues.

For example, in the context of the first GSP scheme with social conditionality, member states such as the UK and Germany, but also declared proponents of a social clause such as France, Denmark and the Netherlands, added a declaration to the Council minutes, stressing that the references to labour standards in ILO Conventions did not imply any EC competence with respect to the content of these Conventions.¹⁸ As suggested by Messerlin (2001: 166), external EC competences to promote labour standards could lead to a 'boomerang effect on *intra*-EC relations'. And this may well explain the reluctance by several member states to engage in an ambitious external policy to promote CLS. Hence, the problems of complementarity and co-ordination, which also characterize EU–ILO relations, spill over into the European debate on a social clause.

At a more general level, the Union's limited international capacity to act in the area of a social clause also reflects its institutional set-up. As a 'regulatory state' (Majone 1994), the EU's mandate has been focused primarily on the functioning

and deepening of the internal market. In contrast, more difficult redistributive measures have remained largely at the national level. This EU position is also mirrored in its international trade policy, where it mainly aims to project its internal market to the global level – i.e. the Union's deep trade agenda, including regulatory convergence besides liberalization – but without engaging in interventionist measures. Here again, consistency can be discerned between Europe's internal 'market model' and its external position (cf. Chapter 2).

Not a priority on the trade front

Apart from internal disagreements, it should also be noted that Europe's general commitment to promote CLS through trade has been ambiguous. Even when the EU had finally reached a compromise position, its ambition and proactiveness have been tempered by its consideration of other objectives. For example, for obvious economic reasons, the GSP social incentives were too small to be attractive for most potential beneficiaries. Northern member states and European importers criticized the EU for being more concerned with the prospect of increased imports than with a coherent strategy for improving labour standards in the world (e.g. Von Schöppenthau 1998: 44). In addition, the number of potential beneficiaries was also limited because of the Union's other preferential trade regimes *vis-à-vis* developing countries. These other trade arrangements discouraged them from applying for the social incentive clause because they already enjoyed more favourable market access than 'normal GSP' beneficiaries.¹⁹ Significantly, some of these trade schemes were established simultaneously with the GSP social incentive scheme.

For example, the special GSP drugs incentive system, which had granted additional market access to those Andean countries that had been fighting drug trafficking and production since 1990, was extended in 1998 to include the members of the Central American Common Market. The Commission proposed henceforth that beneficiaries from these schemes also had to comply with the CLS. But the countries involved began an intensive lobbying campaign in the European capitals, and the Council decided to unlink the drug and labour incentive arrangements. Thus, the newly established GSP social incentive scheme became almost superfluous for these Latin American countries. The international trade union movement and the European Parliament strongly criticized this concession, pointing to the assassination of nearly 1,500 trade union activists in Colombia.

Labour considerations were also overshadowed by other priorities at the bilateral and multilateral trade levels. One of the main characteristics of the EU's bilateral trade agreements is its very broad scope, covering many dimensions of trade rule-making such as trade in services, Singapore issues (competition, investment, trade facilitation and transparency in government procurement) and intellectual property rights (McQueen 2002: 1372). Some authors refer to these issues as being part of the EU's 'deep trade agenda' (Young and Peterson 2006: 788). Given the difficulty of including such behind-the-border matters in a satisfactory way in multilateral negotiations, they have become an EU priority in the bilateral context. In comparison, labour standards are of a secondary nature.

Moreover, next to advancing the Union's economic governance rules worldwide, most EU bilateral agreements include extensive mechanisms for political dialogue. As seen for instance in the Cotonou Agreement, these mechanisms are usually employed by the EU to express concerns regarding respect for fundamental human rights, democratic principles, good governance and the rule of law.²⁰

Owing to the dual role played by bilateral agreements as a vehicle of the EU's 'deep' trade agenda, on the one hand, and an instrument of the EU's human rights and democratization efforts, on the other, labour standards do not seem to stand out as a clear priority. As a matter of fact, when important commercial interests appear to be at stake, even the democracy and human rights clauses included in these agreements are not supported unambiguously by the Commission or the EU member states, as was the case, for instance, with the agreement with Mexico and, more recently, at the start of negotiations with China and India.

Commercial considerations also seem to prevail at the multilateral level. While officially maintaining the EU Seattle mandate and its preference for a permanent ILO-WTO forum, several months before the Doha Conference, it became clear that the EU was gradually abandoning this demand as a concession towards developing countries (cf. Novitz 2002: 7–8; Van den Hoven 2004: 265–67). In its July 2001 Communication on international labour standards, the Commission basically argued that the goal of promoting CLS remained the same, but that the ILO was a more suitable forum to discuss this. There is no reference whatsoever to the Doha Conference, which is surprising given the timing of the document (European Commission 2001a). On the same day, the UK's *Financial Times* (18 July 2001) put it more clearly: according to the Commission, attempts to include labour standards in the WTO would jeopardize a new trade round (see also Chapter 1). Again, Europe's relatively cautious approach to a social clause contrasts with its offensive pursuit of (equally contested) issues such as those concerning investment and competition. The latter were only dropped from the EU's wish list after the failure of the 2003 WTO Cancún Ministerial. In terms of coherence, it may thus be argued that the promotion of social objectives through trade policy became subordinated to the 'core business' on the EU trade agenda.

How can such a choice of priorities, whereby labour standards seem to be secondary to other trade-related concerns, be explained? The answer may be found in the way in which interests are aggregated in the EU member states, and the role that interest aggregation within national political parties plays here (Kerremans and Gistelinck 2008). Indeed, when it comes to the labour standards issue, the role of national political parties can hardly be neglected. All the representatives in the Council of Ministers, a key institution in the EU decision-making process on trade, belong to national political parties that try to shape the position taken by their country's national government, thereby using the need for their support in parliament as leverage.

Political parties act as aggregating mechanisms in society. They aggregate and represent a broad array of societal interests and concerns. In so doing, they take into consideration both specific interests and the interest – as they perceive it – of society as a whole. The perspective from which they engage in this aggregation

reflects the scale on which the party is organized. National parties will tend to weigh specific sectoral or geographically concentrated interests against the national aggregate effects of the policy choices they make. However, this aggregative capacity of the political parties depends on the extent to which they are able to control those who hold political office, in particular in their national parliament and government. The stronger that control, the more the geographical scale at which the party operates will matter, and the less this will be the case for the interests of each of the electoral districts that the electoral system provides for. Consequently, national party positions are affected more by an integrative aggregation logic than by the additive logic that prevails when majorities need to be constructed on the basis of log-rolling between individual members of parliament. Therefore, the scale at which the costs and benefits of possible policy alternatives will be assessed will be national rather than local. The intensities of interests will need to be such that they trigger a sufficiently high level of inside and outside lobbying so that they outperform the voice of all, or most other, interests in society. Neglecting this voice would need to come at a substantial electoral cost for the political party as a whole.

In the EU, this is indeed the case. All EU member states can be characterized as party democracies, that is parliamentary democracies in which party discipline in parliament is strong and in which internal party control mechanisms supersede the normal role that parliamentary majorities have in controlling governments. Consequently, internal party interest aggregation mechanisms prevail and, with them, the role that collective interests play in such aggregation. Local – geographically concentrated – interests have less chance to weigh heavily, which leads to a high probability that they will have to cede to aggregate welfare and political concerns. In addition – as Sapir (2001) noted – the extensively developed welfare state systems of the EU member states smoothes the impact that trade liberalization has on employees, and with it the incentives for a substantial part of them to raise their voices and engage in political activism. The probability that their voices will outperform other concerns in and about society is thus low, as is the probability that national political leaders will be prepared to invest a substantial amount of political capital in protecting domestic jobs by confronting developing countries over international labour standards.

Increased relevance of the International Labour Organization

In parallel with abandoning a social clause on the WTO agenda, the European Commission has increasingly emphasized the ILO's role in the international promotion of labour standards. As explained in the first chapter of this book, in all its recent communications on the issue, a greater emphasis on dialogue, stimulation, non-binding mechanisms such as development co-operation (see Chapters 11 and 12) and corporate social responsibility (see Chapter 10), on the one hand, and increased co-operation with the ILO (see Chapter 5), on the other hand, is clearly noticeable.

This increased relevance of the ILO is also reflected in the EU's bilateral trade relations. Even though in its follow-up to the WCDG report, the Commission does not seem to include a clear idea on how compliance with labour standards could be linked to bilateral trade flows, it does mention regional and bilateral agreements – and particularly the 'dialogue' mechanisms of these agreements – as an important tool to promote social rights in general. With this objective in mind, the Commission is committed to exploring 'new joint mechanisms' within bilateral agreements to keep track of developments with regard to the social dimension of globalization. In this monitoring exercise, international organizations such as the ILO would play an important role. As indicated above, specific commitments to promoting the relevant conventions of the ILO (covering the four CLS) figure in both the Cotonou Agreement and the Association Agreement with Chile.²¹ The Cotonou Agreement even includes fundamental social rights in the Preamble and among the essential elements of the Agreement.²² Yet, it seems that these provisions, as well as the 'social co-operation' chapters included in other agreements, still need to be fully exploited.

The EU's increasing emphasis on the role the ILO can play with regard to the relationship between trade and labour standards is also visible in one of the EU's most important unilateral trade instruments: the GSP. Since 2001, the legal basis of the social GSP clause, both the punitive and the incentive dimensions, has been extended to all eight ILO fundamental conventions. In addition, it was stated that, henceforth, the ILO's activities – 'available assessments, comments, decisions, recommendations and conclusions of the various supervisory bodies of the ILO' – will serve as a point of departure for granting or withdrawing tariffs.²³ To a large extent, this increased emphasis on the ILO in GSP regulations is reflected in the Union's policy practice of granting and withdrawing trade preferences (see Orbie and Tortell 2009). As for the GSP sanction clause, there is an almost exact consistency between European sanctions and ILO condemnations. For example, EU reports on Belarus clearly refer to the ILO fact-finding process, the conclusions reached and even the recommendations made. Nevertheless, there is no sharp division of labour between the ILO's role as a fact-finder and the EU's role to make political decisions based on these assessments. Up to now, the EU's conclusions have been in line with the work in the ILO – but it keeps its options open.

As for the social GSP incentives, there is a suggestion that the inclusion of the ILO core conventions as a requirement for the application of tariff incentives has had a real and measurable effect on ratification (e.g. in Venezuela, Mongolia and El Salvador). Nevertheless, while there seems to be a positive correlation between the *ratification* of conventions and the application of incentives, so that no country currently holds a GSP-plus tariff incentive without having ratified all eight fundamental ILO conventions, there is no corresponding correlation between the tariff incentive and *implementation* of the conventions. In fact, in many of the cases in which incentives have been granted by the EU, criticism by ILO Committees of those countries' implementation has been vigorous (e.g. Colombia).

Thus, although the GSP-plus system may have spurred on countries such as El Salvador to ratify all the CLS, it appears that the EU looks mainly at the

ratification record, rather than at the implementation of CLS. Therefore, the new GSP basically boils down to a continuation of the former drugs incentive system – albeit in a more objective way.²⁴

Conclusions

Although the European Union has taken several initiatives to advance core labour standards in its multilateral, bilateral and unilateral trade policies, its success in this regard has been limited. Moreover, we found that the EU could not easily reach a common position on a social clause, and that at times its international stance has been cautious and ambiguous. Four explanations were suggested for the Union's difficulties in acting as a normative power *through* trade – despite its considerable power *in* trade.

The first reason concerns the ideological dispositions among member state governments about the need for enforceable labour standards in trade relations. The second one concerns member state sensitivities about possibly creeping EU competences in the field of labour regulation. The third reason covers the *relatively* low level of preference intensities among member state governments as regards the necessity to include enforceable labour standards in trade agreements and to invest political capital for that purpose, and the role of political party interest aggregation in this. The last reason refers to the increased attractiveness of the ILO for labour standard regulation at the international level, which diminishes the necessity to import them into the WTO legal regime or in bilateral trade agreements.

The chapter has also illustrated the influence of external context, such as resistance by developing countries, and the institutional mandate of the WTO. But one main finding of this chapter is that preferences among EU member state governments continue to have an important influence on Europe's international policies on promoting labour standards. This is even the case in trade, which is the EU's common external policy *par excellence*. Most accounts of Union trade politics either ignore the preferences of the member state principals or stick to the basic division between protectionist and liberal member states. However, research into the EU's 'new' trade agenda also warrants a more detailed analysis of the establishment and influence of member state preferences, and the extent to which these may evolve.

Notes

- 1 See, for example, proposals for GSP reform (European Commission 1994); the market access strategy (European Commission 1996a: 17–18); Sir Leon Brittan's interventions in the EP (answer on Written Question E-0794/96, 3 April 1996); and the European Commission (1996b) communication on labour standards in trade.
- 2 See, for instance, the provision in the Stabilization and Association Agreement with Croatia (SAA Croatia, Article 91) or the Euro-Mediterranean Agreement with Algeria (EMAA Algeria, Article 67). The EMMA also contain articles with provisions similar to GATT Article XX (Grynberg and Qalo 2006: 643).

- 3 Article 44 of the EU–Chile Association Agreement, Article 50 of the Cotonou Agreement. Note that the EU–Mexico Agreement does not include this type of reference, despite enduring union pressure. Some argue that the EU did not want to invest any negotiation capital in this as Mexico was already a party to the North American Agreement on Labor Cooperation (NAALC), the labour side agreement of the North American Free Trade Agreement NAFTA (Interview with Gerard Karlshausen, CNCD, 11.11.11. seminar, 21 September 2006).
- 4 More specifically, it concerns the incorporation in their domestic legislation of 'the substance of the standards laid down' in ILO Convention Nos. 87 and 98 (right to organize and to bargain collectively) and Convention No. 138 (minimum age) (see Article 11 of Regulation No. 2820/98 of 21 December 1998, OJ L 357).
- 5 Article 14 of Regulation No. 2501/2001 of 10 December 2001, OJ L 346/1.
- 6 See Gareth Steel (DG Trade) in Session 2 on 'Social dimension of EU trade policies', Transcripts of Open Forum and Debate on 'The European Union and the Social Dimension of Globalisation', Ghent, 22 November 2007. Available at <http://www.eu-sdg.ugent.be> (accessed 1 March 2008).
- 7 Article 50.3, Cotonou Agreement.
- 8 See in this respect para. 72 of the 'European Consensus on Development' (EU 2006).
- 9 Deutscher Bundestag, Plenarprotokoll 13/146 (13. Wahlperiode, 146. Sitzung), 6 December 1996, pp. 13230–44.
- 10 See House of Commons, Official Report, Debate of 17 December 1996, Column 760.
- 11 This Union stance, included in the EU negotiation mandate for a new trade round, basically repeated the Commission's argument for an ILO–WTO working group (Council 1999).
- 12 Cf. *Agence Europe*, No. 7571, 13 October 1999, p. 12. Note that other countries also sought the creation of a working group on labour standards and trade in the WTO, albeit less strongly than Germany. These countries were France and Sweden and, to a lesser extent, Denmark, Portugal, Luxembourg and Finland (EU Council President at that time). See *Inside U.S. Trade*, 9 October 1999.
- 13 The outcome of the Doha Ministerial Conference was basically a reaffirmation of the Singapore Ministerial Conference conclusions on the topic and thus, from the point of view of the member states that wanted to go further, a standstill. See Doha Ministerial Declaration, para. 8. It is significant that no reference was made to 'social development' in the declaration, something some EU member states – among them Germany – had tried to include. A final attempt by the Commission during the Doha Ministerial to incorporate stronger language on labour standards failed. In particular, the Commission targeted the last sentence of para. 8 of the draft declaration, which read as follows: 'The ILO provides the appropriate forum for a substantive dialogue on various aspects of [internationally recognized core labour standards]'. The Commission wanted to add 'to which the WTO, within its arm of competence, should contribute'. Owing to opposition from developing countries to any reference to labour standards in the declaration – particularly from India and Pakistan – the entire last sentence was deleted. Ultimately, this deletion was part of the price the EU had to pay for developing country acceptance of negotiations on the relationship between trade obligations in multilateral environmental agreements, on the one hand, and WTO rules, on the other.
- 14 British opposition was supported by the Netherlands, Ireland, Spain and Greece.
- 15 Cf. House of Commons, Official Report, 17 November 1999 (debates), column 73; 7 December 1999 (debates), column 302; 8 December 1999 (oral answers to questions), columns 811–13; 7 November 2001 (debates), columns 256–68; 15 November 2001 (debates), columns 997–1008.
- 16 See *Agence Europe Documents*, 29 July 1999.
- 17 *Agence Europe*, 23 October 1999.
- 18 Statement by the UK, Denmark, Germany, France and the Netherlands (Council 1994: 20).

- 19 For example, this concerns ACP countries under the Lomé/Cotonou Agreements; countries that concluded a bilateral trade agreement with the EU, such as Mexico, Chile and South Africa; beneficiaries of the GSP drugs regime (Latin American countries); and EBA beneficiaries (the least developed countries). These trade schemes reduce or nullify the attractiveness of requesting additional trade preferences based on compliance with CLS.
- 20 Consultations were held, in the framework of Article 96 of the Cotonou Agreement, with countries such as Zimbabwe and Togo, where the EU particularly condemned electoral fraud and the violations of the rule of law in these countries (see *Agence Europe*, 29 January 2007, 16 November 2006).
- 21 Article 44, EU–Chile Association Agreement; Article 50, Cotonou Agreement.
- 22 In the Preamble of the Cotonou Agreement, both the EU and the ACP countries express being 'anxious to respect basic labour rights, taking account of the principles laid down in the relevant conventions of the ILO'. Article 9 of the Cotonou Agreement, including both the essential and the fundamental elements, states that: 'the Parties undertake to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural'.
- 23 Council Regulation No. 2501/2001 of 10 December 2001, OJ L 346, cons 19.
- 24 Besides the former drugs beneficiaries, Georgia, Moldova and Sri Lanka also receive GSP-plus references.

References

- Bhagwati, J.N. (1999) 'Free trade in the 21st century: managing viruses, phobias and social agendas', Lecture given at the University of Pennsylvania, 13 April, available at <http://www.columbia.edu/~jb38> (accessed 19 January 2008).
- (2002) *Free trade today*, Princeton, NJ: Princeton University Press.
- Bossuyt, F. (2009) 'The social dimension of the new generation of EU bilateral trade agreements', *European Foreign Affairs Review*, forthcoming.
- Charnovitz, S. (1987) 'The influence of international labour standards on the world trading regime: a historical overview', *International Labour Review*, 123, 5: 565–85.
- Clapham, A. and Martignoni, J.B. (2006) 'Are we there yet? In search of a coherent EU strategy on labour rights and external trade', in V.A. Leary and D. Warner (eds) *Social issues, globalisation and international institutions*, Leiden: Martinus Nijhoff.
- Council (1994) 'Draft minutes', 11982/94, PV/CONS 92, 19–20 December.
- (1999) 'Press release', 12121/99 (Presse 318), 26 October.
- Doumbia-Henry, C. and Gravel, E. (2006) 'Free trade agreements and labour rights', *International Labour Review*, 145, 3: 185–207.
- Drache, D. (2002) 'When labour and investment standards almost mattered', in S. McBride, L. Dobuzinskis, M.G. Cohen and J. Busumtvi-Sam (eds) *Global instability*, Dordrecht/Boston/London: Kluwer.
- European Commission (1994) 'Integration of developing countries in the international trading system: role of the GSP 1995–2004', COM(1994)212, 1 June.
- (1996a) 'The global challenge of international trade: a market access strategy for the European Union', COM(1996)53, 14 February.
- (1996b) 'The trading system and internationally recognized labour standards', COM(1996)402, 24 July.
- (2001a) 'Promoting core labour standards and improving social governance in the context of globalisation', COM(2001)416, 18 July.

- (2001b) 'Proposal for a Council Regulation applying a scheme of generalised tariff preferences for the period 1 January 2002 to 31 December 2004', COM(2001)293, 12 June.
- European Union (2006) 'Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the EP and the Commission on EU Development Policy: "The European Consensus"', OJ C 46/1.
- Fierro, E. (2003) *The EU's approach to human rights conditionality in practice*, The Hague/London/New York: Martinus Nijhoff.
- Grynberg R. and Qalo, V. (2006) 'Labour standards in EU/US preferential trading arrangements', *Journal of World Trade*, 40, 4: 619–53.
- Kerremans, B. and Gistelinck, M. (2008) 'Trade agreements, labour standards, and political parties. Differences between the U.S. and EU in their approach to the inclusion of labour standards in international trade agreements', *UNUCRIS Working Papers*, W-2008/1: 1–27.
- Lee, E. (1997) 'Globalization and labour standards: a review of issues', *International Labour Review*, 136, 2: 173–89.
- Majone, G. (1994) 'The rise of the regulatory state in Europe', *West European Politics*, 17, 3: 77–101.
- Manners, I. (2002) 'Normative power Europe: a contradiction in terms?', *Journal of Common Market Studies*, 40, 2: 235–58.
- McQueen, M. (2002) 'The EU's free-trade agreements with developing countries: a case of wishful thinking?', *The World Economy*, 25, 9: 1369–85.
- Messerlin, P.A. (2001) *Measuring the costs of protection in Europe: European commercial policy in the 2000s*, Washington: Institute for International Economics.
- Meunier, S. and Nicolaïdis, K. (2005) 'The European Union as a trade power', in C. Hill and M. Smith (eds) *International relations and the European Union*, Oxford: Oxford University Press.
- Novitz, T. (2002) 'Promoting core labour standards and improving global social governance: an assessment of EU competence to implement Commission proposals', *EU Working Papers*, 59.
- OECD (1996) *Trade, employment and labour standards: a study of core workers' rights and international trade*, Paris: OECD.
- Orbie, J. and Tortell, L. (2009) 'The EU and ILO relationship: a case study of GSP labour standards conditionality', *European Foreign Affairs Review*, forthcoming.
- Orbie, J., Vos, H. and Taverniers, L. (2005) 'EU trade policy and a social clause: a question of competences?', *Politique Européenne*, 17: 159–87.
- Panagariya, A. (2002) 'The EU preferential trade arrangements and developing countries', *The World Economy*, 25, 10: 1412–32.
- Raza, W. (2007) 'European Union trade politics: pursuit of neo-mercantilism in different fora?', in W. Blaas and J. Becker (eds) *Strategic arena switching in international trade negotiations*, Aldershot: Ashgate.
- Rodrik, D. (1997) *Has globalization gone too far?*, Washington, DC: Institute for International Economics.
- Ruggie, J.G. (1982) 'International regimes, transactions, and change: embedded liberalism in the postwar economic order', *International Organization*, 36, 2: 379–415.
- Sapir, A. (2001) 'Who's afraid of globalization? Domestic adjustment in Europe and America', in R.B. Porter, P. Sauve, A. Supramanian and B. Zampetti (eds) *Efficiency, equity, legitimacy. The multilateral trading system at the millennium*, Washington, DC: Brookings Institution.
- Szymanski, M. and Smith, M.E. (2005) 'Coherence and conditionality in European foreign policy: negotiating the EU–Mexico global agreement', *Journal of Common Market Studies*, 43, 1: 171–92.
- Van den Hoven, A. (2004) 'Assuming leadership in multilateral economic institutions', *West European Politics*, 27, 2: 256–83.
- Von Schöppenthau, P. (1998) 'Social clause: effective tool or social fig leaf?', *European Retail Digest*, 20: 44–45.
- Waer, P. (1996) 'Social clauses in international trade. The debate in the European Union', *Journal of World Trade*, 30, 4: 25–42.
- Wilkinson, R. (2001) 'The WTO in crisis: exploring the dimensions of institutional inertia', *Journal of World Trade*, 35, 3: 397–419.
- Young, A. and Peterson, J. (2006) 'The EU and the new trade politics', *Journal of European Public Policy*, 13, 6: 795–814.