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The Illusion of Choice: The European Union and the Trade-Labor Linkage

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Abstract

What explains the European Union's (EU) reluctance to include a legally enforceable social clause in trade agreements? Moreover, what explains the lack of coherence in its linkage policy across the multilateral, bilateral and unilateral levels? This article assesses the diversity of EU approaches towards trade and labour and argues that the conception of the European Union as a particular normative actor is not fully capable to grasp this diversity. Instead, the EU's policies are contingent upon a generic cost-effectiveness calculation constrained by the internal and external context where decisions on labour standards have been taken. At the internal level, decision-making rules have sometimes directed trade-labour linkage policies to a 'lowest common denominator'. At the external level, the EU's decisions have been shaped by the perceptions and market power of negotiating partners. To prove its claim, the article explores the EU's trade-labour linkage at the multilateral, bilateral and unilateral settings.

Keywords

EU; trade; labour; normative power; rational choice

What explains the European Union's reluctance to include a legally enforceable social clause in trade agreements? Given the EU's formidable power in trade, the high degree of integration, and the existence of American precedents, one could expect that the EU would be prone to the use of sanctions to ensure labour compliance. However, with the exception of the Generalised System of Preferences (GSP) and the Economic Partnership Agreement (EPA) with the Caribbean countries (CARIFORUM), where a weak form of conditionality applies, the EU has so far abstained from consistently using such measures and has developed a patchwork of mainly cooperation-based approaches across the multilateral, bilateral and unilateral levels.

Existing scholarship interprets this soft type of conditionality as an emanation of the particular style of European foreign policy (Orbie 2011). The EU is portrayed then as a *sui generis* normative power, bent on the dissemination of its own values (in casu labour rights). Its preference for dialogue and engagement rather than for enforcement are an example of the means through which it seeks to expand its norms (Manners 2008). In this article we argue, however, that such a view only presents part of the story and leaves the underlying process of the EU's various approaches towards the trade-labour linkage underexplored, thereby obscuring other explanatory features of the EU's policy choices. To emphasise those features, we deviate from the *sui-generis approach* and turn to a rationalist, institutionalist argumentation.

Focusing on the political processes behind the choice for a hard or soft clause, we explain the ambiguous stance of the EU in the trade-labour debate as being the product of the internal and external context wherein a policy maker operates. We conceptualise this internal and external context in institutional terms. On the one hand, the use of Qualified Majority Voting (QMV), simple majority or consensus influences the ability of the member states to attain a common position. On the other hand, the external context may validate or delegitimise the EU's decisions. Across the different fora in which the trade-labour linkage debates were held, the trade partners' perceptions of the linkage as protectionism and the relative power of those partners vary, thus influencing the costs and desirability of adding teeth to labour-related provisions in a trade agreement.

This article aims to contribute to the broader literature in three ways. Firstly, it offers an alternative explanation of the limited enforceability of the EU's social clause in trade agreements. The focus on the political process, and in particular realist and liberal constraints, complements the existing reflectivist approaches not only empirically but

also theoretically by cautioning against “false successes”. More specifically, would we still consider the EU as a normative power if it did not face such constraints? Second, it raises an additional question regarding the coherence of EU foreign policy. Previous studies on this topic have focused almost exclusively on coherence between member states and European institutions (see e.g. Portela and Raube 2012; Thomas 2012; Nuttall 2005). This article is, to our knowledge, one of the first to systematically compare and explain the behaviour of the EU in multi-bi-and unilateral (trade) fora. Finally, it contributes to the broader IPE literature on trade that, until recently, has only devoted scant attention to the social clause even though its political salience is considerable as apparent from the discussions on the Colombia and India free trade agreements.

FRAMING THE RESEARCH QUESTION

Defining “the” European Position on the trade-labour linkage

Contrary to countries such as the US or India, which have maintained a strong consistency in their trade-labour linkage positions throughout the previous two decades, it is hard to pinpoint “the” EU’s position on the issue, even in a snapshot, due to the multiplicity of policies adopted at the different levels – unilateral, bilateral, multilateral – at which trade-labour discussions have taken place. Labour elements can be found in the EU’s trade policy at each of these levels. In the first place labour issues have been assessed by the World Trade Organization (WTO) between 1994 and 2001. In general terms, the talks pitted the US against the Informal Group of Developing Countries in a highly polarised discussion on whether or not to include a labour component in the trade regime. Whereas the United States fiercely supported the establishment of a working group on labour issues at the WTO, the developing countries rejected that proposal on a principled basis by arguing that such a working group would derail in protectionist attempts by the developed countries (Haworth et al. 2005; Wilkinson 1999). In this context, it is difficult to assess the EU’s position due to the fact that it was itself, internally, a replication of the multilateral lack of consensus during the 1990s. The Council conclusions on the issue (Council of the European Union 2003), adopted by unanimity in July 2003, proposed that the EU focused on achieving coherence in policy-making in ‘all relevant international organisations, including in the WTO and in the ILO’. Furthermore it agreed to pursue the status of observer for the ILO at the WTO,¹ and to ‘encourage discussions (...) on the respect of core labour standards during the review of a country’s trade policy in the WTO (...)’.

Labour provisions are also present at the bilateral level in the EU’s Preferential Trade Agreements (PTAs). A division can be made between the Caribbean Economic Partnership Agreement (EPA) and the Colombian PTA on the one hand, and other trade agreements on the other hand. The bulk of EU’s trade agreements have never included any concrete linkage between labour and trade, and often contain cooperation provisions on social issues (Euro-Mediterranean Agreements), references to respect for the ILO standards in the context of that cooperation (EU-Chile, EU-South Africa) or general references to the improvement of labour standards in the preamble (EU-South Korea), loose from any trade provisions (European Commission 2010; European Union 2008b, 2009; Grynberg and Qalo 2006; European Communities 2000). Conversely, the EPA with the CARIFORUM (European Union 2008a) and the EU-Colombia PTA (European Union 2012) contain labour provisions that go beyond the above but still not as far as the GSP. The parties to the EU- CARIFORUM EPA engage into cooperation on labour matters, and the treaty provides for a limited enforcement procedure. The EU-Colombia PTA contemplates similar measures.

The third level at which concrete EU action on the trade-labour linkage has taken place is the EU’s GSP, a scheme of unilateral, non-reciprocal trade preferences designed to give

priority access to developing countries' products to the EU market. Ever since 1994, the GSP has featured a component of labour conditionality, containing both sanctions and incentives based on compliance with labour standards.² Developing countries can benefit from special trade benefits if they ratify and implement a series of international treaties, among which the eight ILO conventions containing fundamental principles and rights at work.³ Nevertheless, these benefits may be withdrawn if the ratification, implementation and monitoring conditions are not met (European Union 2008a).

The trade-labour linkage in context

Even though it is difficult to assess the EU's approach to trade and labour as a whole due to the plurality of arrangements, when looked at it from the outside it is characterised by a soft, normative character that favours multilateralism, cooperation and positive incentives over sanctions. This is especially the case when the EU is compared to United States' policy, which strikes as a) more sanction-based, both at the bilateral and unilateral level and b) less focused on a normative universal conception of labour standards, since the US uses its own definition of relevant labour standards aside from the ILO's (Aasen 2009; Grynberg and Qalo 2006). From the above one may wonder why the EU at some occasions allowed for trade sanctions whereas it refrains to do so at other occasions? Moreover, why is it that the EU has opted for instruments that are not legally enforceable?

Existing studies on the linkage between trade and labour standards do not provide us with the appropriate frameworks to deal with the question above. In general, they can be divided into two groups. On the one hand, several studies have focused on whether trade and labour standards should be linked to one another, either by sanctions or by other means. Those studies, which adopt either an economic (Hafner-Burton 2005; Brown 2001; OECD 1996; Bhagwati 1995) or a legal (Howse et al. 2006) perspective, do not assess the political economy behind the social clause, but rather seek to address the prescriptive question whether labour standards should be enforced by using trade means. In other words, they do not look into why countries do or do not support a trade-labour linkage. On the other hand, a smaller group of political scholars have recently inquired into the politics behind the linkage. Attention has been devoted to policy formation of developing countries in the WTO (González-Garibay 2010) or on the EU's GSP+ (Orbie and Babarinde 2008; Orbie 2006).

In light of the rising importance of bilateral trade negotiations, recent attention shifted to assess the EU's behaviour across the whole spectrum. In this debate the notion of Normative Power Europe gained increasing traction (Orbie 2011; Manners 2009; True 2009). Two arguments feature prominently to establish the assertion that the EU behaves in accordance to the normative ideal-type : first, core labour standards are considered a part of the core values around which the EU is built, i.e. respect for human rights. Second, the methods by which that norm are diffused rely on dialogue, consultation and non-coercive matters. While insightful, such an approach has left a large part of the story untold. The reason is related to the type of research questions asked. Normative Power Europe, as a critical theory, focuses on what the EU *is* or *should be* rather than on what it does (Manners 2008). In other words, it seeks to define and assess the degree to which the EU's behaviour and policy choices are conform to an ideal-type normative power. Such a reflective approach focuses less on concepts of intentionality and the process by which policy instruments are chosen (Menon and Sedelmeier 2013). This focus is most apparent in the 'tripartite analytical method' forwarded by NPE-scholars. This method is 'based on comparing and contrasting what the EU "is" (its aims and principles); what the EU "says" (its policies and actions); and what the EU "does" (its outcomes and impact)' (Manners 2008: 10). As such it focuses more on political rhetoric, policy choices and their consequences than on the political

process underlying these decisions.

To fill this void, a rational choice analysis of the process by which policy instruments are selected provides a deeper understanding of the underlying causes behind such a choice. We are interested in why the EU behaves this way rather than what the EU is or should be. This difference in focus, however, does not imply an outright rejection of the claims made by NPE-scholars. Rather the contrary; commensurability not only implies accepting the difference in research objectives and the type of questions raised, but also embraces the lessons to be drawn from the insights acquired in alternative paradigms. In this article we aim to draw from realist insights to indicate the limitations for the impact of NPE (see Wood 2011). Liberal approaches on the other hand have emphasised that the EU is not a unitary actor and its identity and policy choices are still the emanation of the individual member states' preferences as they are combined according to the procedures laid down in the treaties (Balducci 2010).

THEORETICAL FRAMEWORK: THE LOGIC OF CHOICE

Our theoretical framework starts from a canonical rational-choice model. In his theory on the 'logic of choice', Baldwin (2000) asserts that the use of power harbours an element of choice among alternative channels of influence. The logic of choice focuses on the efficiency of policy decisions, indicating a calculation of the costs associated with certain policy options vis-à-vis their effectiveness in obtaining the desired policy changes. For the study of the trade-labour linkage, the only relevant means between which the EU can choose are economic coercion (hard law in the form of trade preferences coupled to labour standard compliance, either in the form of incentives or sanctions) and symbolic or soft power (soft law, cooperation).

However, we have to acknowledge that these choices are constrained by the highly institutional setting which characterises the EU-policy making system. Any conceptualisation of the European Union as a *sui generis* entity in international relations implicitly draws upon and yet overlooks the presence of such institutional constraints that limit the availability and effectiveness in the use of certain power resources. Whether it is the absence of a noteworthy military or the inability to apply coercive measures, the EU is severely constrained in its international operations due to the institutional context within which it operates.

By applying a rational-choice institutionalist approach (Shepsle 2006), we bring these constraints to the forefront and elucidate how institutions affect the policy choices of the EU on the trade-labour linkage. The first part of this section applies the logic of choice model to the linkage debate. The second part elaborates on how such a choice is constrained by the internal as well as external institutional setting. In so-doing we seek to combine a liberal, institutionalist approach focusing on domestic political processes with a realist approach by giving due attention to the relevance of power differentials in foreign policy.

The baseline model

Assessing the effectiveness of enforceable labour standards versus a softer cooperative approach re-opens the long-standing debate on the effectiveness of economic sanctions.

⁴ Can countries be coerced into compliance? While opinions diverge, we follow the argument that it is the threat rather than the actual sanction that leads to compliance (Drezner 2003). Empirical research confirmed that cases where sanctions were imposed never led to significant concessions, but the threat of sanctions was successful in 57 per cent of the cases investigated (Elliot 2000). The effectiveness of a soft, coordinative

approach is lower in that regard. According to Orbie (2011), the impact of the EU's soft social clauses in terms of implementation has been rather limited. He attributed the biggest success so far to the (enforceable) GSP+ system in Latin-America. Also in preferential trade agreements it is shown that only "hard" human right clauses are effective in fostering compliance (Hafner-Burton 2005). Hence in terms of effectiveness, we retain that sanction-based approaches do have an edge over soft non-enforceable clauses.

The potential costs for the EU to apply sanctions or to engage in softer coordination are not so different. Including a soft clause does not require much investments apart from monitoring and the organisation of coordination meetings. In case of an enforceable clause there is also the costs associated with the possible sanctions applied. These are translated in the trade forgone and costs of retaliatory action. This is largely limited due to the asymmetries in trade between the EU and most of the target countries subject to such sanctions. Most of the countries with a poor record on labour standards do not represent significant markets for the EU. Evidently, India and China being the notable exception.

The puzzle in this context amounts to the question why the EU would not use its formidable power in trade and impose sanctions, seeing that – based on the logic of choice- it is the most cost-effective strategy available to the policy-makers? Instead of answering this question by referring to the normative identity of the EU, we argue that institutional constraints lie behind that choice. These are respectively the internal capacity to effectively transform the economic power of which the EU disposes, and the external context wherein the EU operates.

THE INTERNAL DECISION-MAKING PROCESS

Whether a power resource represents an effective means to influence other actors' behaviour is dependent on the institutional context that constrains the use of such power. This argument is nothing new in European studies, as the gap between expectations and capabilities has featured prominent in the study of EU foreign policy. This divergence is due to three primary components: the ability to agree, resource availability and the instruments available at the EU's disposal (Hill 1993).

Over time, the European Union has largely bridged the gap with regard to the resources and instruments available, but still faces difficulties to obtain internal consensus. By consequence the 'consensus-capabilities gap' represents the main hindrance in the pursuit of an effective EU foreign policy (Toje 2008). In the area of trade, this argument has also surfaced by conceptualising the EU as a conflicted trade power (Meunier and Nicolaïdis 2006). The EU's capability to transform its 'formidable power in trade' into real influence is contingent on the extent to which it is able to speak with one voice. That ability, we argue, is influenced by three factors: the institutional rules governing trade policy-making, the lack of a clear competence of the European Commission and the plurality of motives that is used to link trade to labour policies.

The Common Commercial Policy is an exclusive EU competence. This implies that the European Union, as represented by the European Commission, is the only legal entity entitled to negotiating multilateral and bilateral trade agreements. It does so, however, on the basis of a mandate agreed by the member states in the Council of Ministers according to the rules of QMV. Similarly, the final results of the negotiations are also subjected to the Council's approval on the basis of QMV. The seemingly straightforward formal decision-making structure hides the actual prevalence of uncertainty regarding the voting rules: an informal consensus is preferred over a formal vote, especially when determining the mandate for bilateral or multilateral trade negotiations (Meunier 2000). By contrast, QMV is more likely with regard to the GSP, which is closer to the EU's day-

to-day functioning and does not involve the definition of negotiating strategies (Orbie, Vos and Tavernier 2005: 183). In other words, even though all of the EU's trade policy is in principle subject to QMV, the possibility of a formal vote appears more remote for multilateral or bilateral negotiations, where it is practically never used, than for the unilateral GSP, where it may be regarded as a last resort. The above implies that, under the assumption that a majority of EU member states favours the linkage, a state opposing the introduction of labour matters into trade agreements is more likely to succeed in tilting the EU's position to his interests during bilateral and multilateral negotiations (consensus) than in the case of the GSP (QMV as last resort).

In addition, the EU's competence to act on external matters of trade and labour is all but clear. Even though, the scope of the EU's Common Commercial Policy has been interpreted broadly by the EU's Court of Justice, labour issues in trade agreements are not explicitly part of the EU's exclusive competence. Labour standards are still a member state competence, with few exceptions (Novitz 2002). In short, the EU does not have the *obligation* to speak with one voice on trade and labour issues in multilateral fora, in contrast with negotiations related to trade in goods. Sophie Meunier and Kalypso Nicolaïdis' description of the EU as a 'conflicted trade power' is particularly relevant when it comes to issues that go beyond trade. Here possible conflicts are not limited to the contents of potential agreements but also extend to the very goals pursued by the agreements: is linking trade to labour a way of protecting domestic industries or promoting the EU's values? In such a context, member states that see trade first and foremost as just an economic policy tool are likely to have a different hierarchy of preferences than those who see it primarily as a tool for foreign policy purposes. In case of large disagreement, consensus will only be found at the most basic level, i.e. the normative underpinnings of foreign policy goals.⁵ Toje (2008: 139) argues in this regard that 'the consensus-expectations gap is set to continue to prevent the EU from engaging in effective crisis management, leaving the Europeans to continue making statements and setting examples – rather than actually shaping world affairs.' On the basis of this discussion we expect the internal context to be most stringent in multilateral settings and less severe in the unilateral context.

The external context

The choice of means used to pursue labour standards is also affected by the external context. The question of influence is intrinsically linked to the question of scope and domain; it depends on who tries to influence whom and on which topic. Power differentials matter. While the United States under the Clinton administration imposed sanctions on Taiwan for its failure to counter the illegal trade in rhinoceros horn and tiger bones, it refrained from doing so against China

(Krustev 2010). The decision to incorporate sanctions and effectively enforce them in case of non-compliance is contingent on the size and importance of a target country.

The decision not to push for an enforceable clause or apply economic sanctions when dealing with large trading nations can be interpreted in accordance with Baldwin's logic of choice. On the one hand it affects the costs to be incurred by the EU, which are positively correlated with the amount of trade between the countries concerned. On the other hand size also affects the effectiveness of such sanctions. Whether a country acts through coercion or attraction depends on the size of the opposing partner (De Nevers 2007). Larger, more powerful countries are persuaded through softer versions of power whereas weak nations can more readily be the target of coercive forms of power.

In addition, given the inherent lack of information about the position and intentions of partners, when negotiating trade agreements, the reactions to the EU's linkage proposals will be based on the subjective assessment of the EU as opposed to its self-

conception as a normative power. In other words, developing countries will not necessarily take into account what Ian Manners refers to as the value-based identity or role of the EU, but their own views and conceptions thereof, shaped both by historical developments and strategic considerations. Summarising, 'the way in which the EU is perceived by other countries is likely to have a direct bearing on its success as a player in the international arena' (Lucarelli and Fioramonti 2009: 2). It should be noted that, even though nowadays perceptions are often studied in the framework of constructivist studies, they have long been studied from a rational point of view (Jervis 1976), and may thus be incorporated into rational-choice institutionalism, under the preliminary assumption of "bounded rationality" (Odell 2009).⁶ These perceptions therefore matter for the ease with which the power resources used can accomplish the desired effect. This is especially the case if one aims to apply non-coercive forms of power. It is indeed difficult to portray the policy proposed as beneficial to third countries' economies when the EU is being perceived as pursuing its own –protectionist- interests.

Finally, the external context can affect the costs associated with such an approach as it reflects the odds of retaliatory action. The more the EU is isolated in its international endeavour, the more likely any sanctions imposed will be questioned. Retaliatory action is more likely and thus it increases the costs of pursuing coercive economic measures.

THE EU AND THE TRADE LABOUR LINKAGE: SOFT POWER BY DEFAULT⁷

Based on the theoretical arguments presented above, we suggest that the EU's reluctance to include enforceable social clauses in the trade-labour domain did not emerge as such in a conscious and intentional manner, but was shaped in the first place by the internal decision-making environment of the EU, in combination with the lack of consensus among the EU's member states, which led to the pursuit of differentiated policies at the multilateral, bilateral and unilateral levels. Second, the EU's trade-labour linkage has also been shaped by the external environment: whereas the strong opposition of the developing countries at the multilateral level fostered changes in the linkage rhetoric towards a more universal, rights-based perspective, the unilateral character of the GSP made it possible to ignore the opposition towards the EU. Most data was gathered through desktop research. This includes primary documents such as speeches, ILO-reports and statements made in the WTO or in the context of bilateral negotiations but also secondary sources such as news articles from Agence Europe and academic literature.

THE INTERNAL ENVIRONMENT

As has been stated above, the internal institutional setting influences the EU's international position in two ways. First, the lack of consensus among the member states and the Commission affects the EU's capacity to include coercive measures. Second, the decision-making rules governing the multi-, bi- and unilateral decision-making within the Council shaped that lack of consensus so that it produced three different outcomes at the three levels.

The multilateral level

The lack of a European consensus on the trade-labour linkage at the multilateral level became most visible during four sets of multilateral discussions on trade and labour at the WTO during the nineties: the 1994 Marrakech Ministerial Meeting, which constituted the formal end of the Uruguay Round; the 1996 Singapore Ministerial Conference, the

1999 Seattle Ministerial Conference and, to a lesser extent, the 2001 Doha Ministerial Conference.

During the Marrakech Ministerial Conference, the lack of consensus in the EU became evident, both among the member states within the Council, and between the Council and the Commission, in the statements read both by the Commission and by the Council Presidency. The Council's statement underlined the fact that 'even in the European Union, points of view are not uniform' and attempted to balance pro- and anti-linkage arguments. The EU's member states' statements echo the Presidency's intervention: whereas Belgium, Denmark, France, Luxemburg, Portugal and Spain manifested themselves in favour of linkage, the United Kingdom's positioned itself clearly against it. In this context, it should be noted that whereas most states favouring linkage only framed the topic from a human rights perspective, Portugal linked it directly to the performance of its textile industry. By 1996, the discussion did not seem to have considerably progressed. The Commission did not make any formal proposal, but seemed to lean towards the US' pro-linkage approach. At the same time, Leon Brittan's representatives attempted to soothe the developing countries' worries by arguing, during informal meetings, that they would seek to limit the labour-trade discussion at the WTO to forced and child labour, and freedom of association (Brazilian Delegation in Geneva 1996). During the Conference, no consensus seemed to have been found at the level of the member states. Nearly all member states (with the exception of the UK) clearly manifested their will to discuss the issue at the WTO,⁸ embedding their requests whether in normative terms of universality and workers' well-being or in economic terms of competition for local industries (Portugal). Simultaneously, the Commission only gave its support in a veiled way.

The 1998 Council statement further confirmed the lack of a particular EU consensus: the British presidency only stated that the EU attached importance to the Singapore Ministerial Declaration, without any further specification. However, by 1999, the Commission had been mandated by the Council to support an ILO/WTO working group, for which it introduced a proposal during the preparations of the Seattle Ministerial Conference. Whereas all EU members supported the proposal in their statements at the Conference plenary, the UK omitted any reference to it. At Doha, where the debate briefly resurfaced, most EU member states (Germany, France, Italy, Austria, Denmark, the Netherlands, Sweden, Luxemburg and Ireland) manifested their support for an ILO-WTO dialogue, or at least for the WTO addressing the issue. In short, until the Council conclusions of 2003 (cf. supra), the only common denominator between the UK and the rest of the EU member states plus the Commission was the same as between the linkage proponents and detractors: the Singapore Ministerial Declaration. It can further be argued that the Council conclusions of 2003, adopted by unanimity, were not the *only* but also the *lowest* common denominator of the member states' and the Commission's interests. In light of the internal disagreement, a softer, norm based approach reflects the fall-back position fostered by the institutional constraints that limit the effective use of more coercive instruments.

Two assertions can be made in the light of the theoretical argument presented above. First, the effect of the internal context on the EU's multilateral position is evident. There was a clear lack of consensus, encumbered not only by the presence of different views on the trade-labour linkage, but also by the confusion between humanitarian and economic goals and means. It was, in other words, not clear in which terms (trade protection or labour rights) the cost-effectiveness analysis should take place, and what were the alternatives for action (coercive measures or development assistance). Second, the institutional component of the internal context has also an important role in explaining the EU's position on the linkage: contrary to other commercial negotiations in which a qualified majority is enough to pass a Council decision, the consensus requirement that applies to multilateral negotiations (Orbie, Vos and Taverniers 2005) empowered those countries that were against the trade-labour linkage, mainly the

United Kingdom, to block the proposition, at the multilateral level, of any coercive measures. Furthermore, the lack of clarity as to the Commission's competence to deal with labour matters in the EU's international relations made it possible for the member states to express their views publicly in the multilateral forum.

The bilateral level

Though the bilateral level is difficult to document systematically due to the closed-doors nature of the Council decision-making, the lack of consensus among member states germane to the multilateral setting also surfaces in those negotiations. For instance, the UK government explicitly rejected a sanctions-based approach (BIS 2011), whereas the Belgian lower chamber has urged its government to put enforceable labour standards more at the forefront of trade agreements (Kamer van Volksvertegenwoordigers 2009).

The lack of consensus is further illustrated, for the most recent PTAs, by the discussions at the European Parliament (EP), which gained more competences in trade policy with the implementation of the Treaty of Lisbon. Even though the EP is generally more ambitious than the Council with regard to the pursuit of the linkage, significant divergences between the political groups can be observed when the question is raised as to how far such pursuit should go.⁹ In this context, it may be argued that the lack of a consensus among the member states pushes the European Commission to negotiate less ambitious social clauses in its PTAs. Seeing that there is a *de facto* requirement of consensus, states opposing social clauses are likely to water down those clauses thanks to their informal veto power.

The unilateral level

Similar to the two previous cases, the decision making about the EU's unilateral GSP, reflected in several successive Council Regulations, was a contentious process. However, reconstructing that process to the letter becomes cumbersome due to the difficult access to primary Council documentation. Consequently, two non-exhaustive examples of the cleavage are provided below.

First, the discussions that followed the introduction of a Commission GSP proposal in 1994 saw labour conditionality introduced for the first time into the scheme. This was done in the form of a temporary preference withdrawal for countries using forced or prison labour, and an incentive that would reward the adoption and application of standards on freedom of association and collective bargaining and minimum employment age as laid out by the corresponding ILO conventions. As documented by Orbie (2006, 2011), the linkage was not the product of a clear consensus. Commissioner Leon Brittan included a labour dimension into his GSP proposal which was supported by the majority of the member states, but the UK and Germany opposed it.

Second, discussions re-emerged in 1997, when the Commission presented a proposal to the Council in which it advocated the application of the social clause incentives under stronger controls. Commissioner Manuel Marín openly defended an incentive-based scheme. At the time the United Kingdom, by then under a Labour government, was expected to have softened its position. Even though this time the inclusion of a social clause in the GSP was not questioned in the same way as it had been in 1994, cleavages emerged concerning the size of the custom duties' reductions that would be granted in exchange for social and environmental compliance. The more pro-liberalisation member states (Britain, Sweden, the Netherlands) aimed for a reduction 'sufficiently substantial to act as a true incentive', whereas the traditionally pro-social clause, less liberalizing states (Italy, Greece, Portugal), feared that 'these clauses would open up the

market too widely to products which are sensitive for the European market' (Agence Europe 14 April 1998). The final decision contemplated 'sufficiently substantial' customs reductions, as favoured by the more liberal member states and the Commission (Agence Europe 24 April 1998). In addition to the GSP scheme itself, divisions on the social clause's application emerged with regard to its application to Burma/Myanmar's imports in 1996, when forced labour practices by the military junta were denounced by, among others, the International Confederation of Free Trade Unions (ICFTU). Even though the consensus on the need to punish the anti-democratic regime was evident and trade preferences were eventually withdrawn, Agence Europe reported an initial disagreement within the Council (Agence Europe 9 October 1996).

In light of the theoretical argument provided above two issues are evident. First, the strong divergence across the member states' positions was similar to the disagreement at the multilateral level. Second, QMV allowed to overcome the lack of consensus regarding the introduction of a trade-labour linkage in GSP scheme, and later on the decision to implement that linkage: the very possibility to conduct a vote on the points of contention enabled the pro-linkage member states to construct majorities and overcome any opposition even if, following the tradition of consensus, QMV did not actually take place.

THE EXTERNAL CONTEXT

The EU's choice of instruments to promote the trade-labour linkage has not only been influenced by the internal constraints, but also by the realist, external context, which is mainly characterised by developing countries' widespread and strong opposition to the linkage under any form. However, the extent to which that opposition has had an impact on the EU's policy has also been mediated by the level (multi-, bi- and unilateral) at which decisions take place.

The multilateral level

The previous sub-sections have made clear that the trade-labour standards debate has been characterised, at all policy levels, by heated discussions. The developing countries' opposition had, from the very beginning of the linkage discussions in 1994, two main features. It was in the first place unrelenting. Their standard formulation consists in positing that the trade-labour linkage cannot be discussed at the WTO because it may lead to protectionist measures. Secondly, it was unanimous. Even though some South American countries and South Africa did initially make some attempts to lean in favour of a social clause those efforts were soon overrun by the intensive informal coordination of mainly India and Pakistan. The developing countries' strategy proved extremely successful in influencing both the developed countries' and the ILO's discourse. In the first place, the fact that the developing countries even declined talking about whether to start a procedural discussion drove the discourse to their terrain: the linkage advocates' discursive strategies were focused on proving their innocence (attempting to convince the developing countries of their non-protectionist intentions) rather than on discussing whether or not to start a debate on the issue.

In the above framework, the European Commission (and also the US) had little choice but to reformulate its strategy, as stated by Pascal Lamy (European Commission 2000):

'After Seattle, while keeping its core idea, the EU's approach has evolved a little in order to take into consideration the preoccupations expressed by the developing countries in Seattle. We preach now the need to launch a regular

dialogue covering a larger domain, and with a larger participation of international organizations and other interested parties.’¹⁰

Later documents progressively dilute the emphasis on trade measures, universal labour standards and the circumscription of the dialogue to the WTO-ILO, and instead emphasise the need to “conciliate” and increase the coherence of international economic and social policy-making. The developing countries’ strong opposition to the labour issue did not only affect the EU’s approach directly; it obliged the ILO’s secretariat to soften its language, what on its turn allowed the EU to embed its own consensus in a multilateral normative framework. Through the mid-1990s, the ILO secretariat advocated a mildly economically oriented policy towards labour standards in the context of globalization. The topic was first addressed by the Director-General’s Annual Report in 1994 (ILO 1994). Even though that report discarded the use of trade sanctions in response to labour standards violations, it pleaded for a potential social clause that would link fundamental labour standards to the removal of already present trade barriers.

The ILO’s proposal awakened fierce opposition from the developing countries. After several embittered discussions, the ILO members adopted the 1998 Declaration on Fundamental Principles and Rights at Work, as a consensus document that would strengthen the ILO without establishing any links with trade. In this regard, the Declaration explicitly ruled out the commercial use of the four fundamental rights and principles it enshrined. At the same time, all references to the ‘social clause’ or to ‘trade and labour standards’ were replaced by the more neutral label ‘the social dimension of globalization’. This implied a broadening of the policy focus from the narrow trade-labour relationship to the much broader impact of globalization on social conditions (ILO 1998a; 1998b; World Commission on the Social Dimension of Globalization 2004).

The reforms were later (1999) synthesised in the Decent Work paradigm. The concept includes the promotion of employment, the development of social protection, the promotion of social dialogue and tripartism and the respect for the four fundamental principles and rights at work (ILO 2008; 2001; 1999). The EU’s move away from the economic language of trade and labour coincides with the increased use of the ILO’s paradigms: after 2001, the use of the “decent work” paradigm and the “social justice” emphasis, in which no trade-labour linkage attempts are made, become ubiquitous in the EU’s Commission and Council documents (European Commission 2006a; 2006b; 2004a; 2004b). At the same time, the labour conditionality present in the GSP has remained as such.

In that framework, the evolution of the EU’s discourse towards “soft power” should be seen as stemming both from the pursuit of international credibility and from a cost-effectiveness analysis. First, the lack of consensus during the first years of the debate had damaged the EU’s credibility as an external actor in two ways. On the one hand, the emphasis of some member states on the economic motivation of linkage undermined the “soft-power” approach to promote human rights, by making the EU appear as a “hypocrite power”. On the other hand, the visible lack of consensus among the member states strengthened the developing countries’ argument. By using the EU’s internal divisions as an example, the linkage opponents justified their own position: the UK’s opposition to the linkage contributed to “mainstreaming” it beyond the group of developing countries.¹¹ In this sense, the discourse’s moderation towards the ‘lowest common denominator’ helped to enhance the EU’s credibility by allowing it to speak with a single voice.

Second, cost-effectiveness elements are highly likely to have played a role in the EU’s discursive change. Confronting the developing countries over linkage entailed risks of unwillingness to discuss other topics of the multilateral agenda crucial to the EU’s liberalisation strategy (investment, services). Whereas those risks would be negligible in the case of small developing country markets, larger countries opposing the trade-labour

linkage such as India, Pakistan or Brazil did pose a larger risk, as the two remaining cases below also illustrate.

The bilateral level

At the bilateral level, the external context matters primarily with regard to the divergences in market size. First, discrepancies in market power clearly affect the extent to which the EU can negotiate a favourable deal. Second, pushing hard on non-trade issues such as labour may imply concessions on, for instance, the opening of weak sectors at home. Such trade-offs are more outspoken when negotiating with powerful trade partners, as the following three examples (the CARIFORUM EPA and the PTAs with Colombia and India) show.

In terms of market power, the CARIFORUM states are weak when compared to Colombia whose economy is more than twice as large. Colombia on its turn is dwarfed by India in terms of GDP. These differences are reflected in the social clauses that have been or are being negotiated by the EU: as indicated above, the EPA with CARIFORUM includes the most elaborated social clause in the PTAs negotiated by the EU thus far, and shares some features with the Colombian agreement: both deals contemplate a limited possibility to enforce labour-related issues through consultations and the possibility to convey a group of experts that may issue non-binding recommendations. In addition, the two agreements include a prohibition to lower labour standards to encourage trade or investments.

Further, Colombia's potential leverage regarding labour standards issues is diminished by its lack of compliance with ILO conventions. The assassination and intimidation of union officials has been a highly salient topic in the PTA negotiations: EU trade unions have complained that the social clause in this PTA would be a weakening of the earlier system governing EU-Colombia trade i.e. GSP+ (EMCEF 2011; TUC 2010), and special tripartite meetings to address the issue have taken place at the ILO. These events legitimise the European demands to a large extent, and reduce the chances of allegations of murky protectionism during the negotiations. Moreover, the fact that both the CARICOM countries as well as Colombia already agreed on a tougher clause in its negotiations with the US, softens the perception of the EU's relatively weak social clause. In the case of India, including labour issues is much more cumbersome, as debates are more concerned with the inclusion of a sustainable development chapter rather than on the concrete features of such a chapter. From the beginning of the negotiations, Indian representatives have made clear that labour issues constitute a red line (González-Garibay 2010: 780-782). This has been echoed by Commissioner De Gucht in addressing European Parliament on the 9th of May 2011: 'We also need to be clear that a sustainable development chapter which would allow the use of trade restrictions linked to social or environmental issues will not be acceptable to India.' It is thus likely that, if a sustainable development chapter is included at all in the PTA, it will be in a diluted version.

The unilateral level

Given the fact that the EU's GSP decision making does not foresee any formal negotiations with or input from the potential beneficiaries of the scheme, the potential impact those countries may exert on the final outcome is somewhat arbitrary. Discussions do, however, take place, and beneficiaries react to the measures adopted. For instance, GSP preferences were discussed in the framework of the EU-Central America relations during the 1990s, and in 1998 the Andean Community lobbied for the de-coupling of trade preferences aimed at combating drug trafficking from compliance

with labour standards (Orbie 2006). In 1998 Pakistan lobbied the member states' governments intensively in response to a complaint of child labour filed by several trade union federations (Agence Europe 25 February 1998). Similarly, the 1998 Council approval of new GSP guidelines unchained reactions from the large developing countries, with India and Pakistan openly criticizing the social and environmental clauses as a possible precedent for WTO action (Agence Europe 02 June 1998).

However, none of the aforementioned actions has ultimately an effect on EU member states. For instance, bilateral talks on GSP do not produce binding outcomes, as in the case of PTAs, and the Andean lobbying was reportedly successful only due to the support of some member states at the Council (Orbie 2006). Similarly, the Indian and Pakistani *a posteriori* complaints did not imperil the application of the GSP social and environmental clauses. In other words, from a formal viewpoint, the EU has the last word on the final form of the GSP. In spite of the lack of formal input by the developing countries, it should be noted, however, that the implementation of the GSP social measures has so far only taken place against relatively small trading partners (Sri Lanka, Burma, Belarus) whose violations of human rights and/or labour standards are consensually acknowledged by most if not all of the EU's member states. Conversely, China, which is often criticised for its human rights violations, has not been the subject of any preference withdrawal so far, and the complaints against Pakistan in 1998 were not conducive to any concrete outcome. This may be regarded as an evidence of the fact that the external context does influence the EU's unilateral policy making through strategic considerations that weigh in the way in which the GSP is implemented.

CONCLUSION

This article raised the question why the EU has refrained from applying a sanction-based regime to enforce compliance with labour standards. Prior studies have explained the EU's soft and cooperative approach as the outcome of its particular identity. In this article, we have focused less on the outcome and more on the process. Hence, we provide an alternative explanation using liberal and realist insights. The former manifests itself in the procedural limitations to achieve consensus about an ambitious clause. The latter marks the constraints derived from the EU's (limited) power in the different forums where it could have advocated the linkage.

Lack of agreement among the member states about the EU's identity and policies have long been acknowledge to explain a lack of coherence in foreign policy. Trade is an interesting area as it is an exclusive competency. Here, the member states cannot act on their own. This article has shown that in such event, lack of coherence is manifested through the EU's behaviour in arenas where different internal rules apply. The stricter the requirement for consensus the more likely we will see a lowest common denominator position being advocated.

Our analysis has also shown that liberal and realist notions provide an alternative reading of the EU's policies as they focus more on the policy process than the policy outcome. Identifying and acknowledging the importance of such factors can help us in establishing the (lack of) intentionality behind the EU's decisions and hence assess how far the EU might still be from the ideal of a Normative Power Europe. Indeed, as Jan Orbie acknowledged in light of the then-launched trade negotiations with India: 'the principles and activities of European trade arrangements have certainly become more normative in the past decade, but the EU (at least as it is presently constituted) may soon be facing the limits of what it can achieve' (Orbie 2009: 181). Moreover, the combination of normative and protectionist motives behind the promotion of labour standards at least raises some questions as how to reconcile this diversity among intentions across the member states and distil common underlying norms and principles.

¹ There is to date no formal link between the two organisations.

² In 2005 all GSP conditionalities (labor, environment, human rights, good governance) were grouped in the so-called GSP+ arrangement.

³ These rights, also called 'core labor standards', are freedom of association and collective bargaining, the prohibition of forced labor, the prohibition of child labor, and non-discrimination

⁴ For critical views on the effectiveness of (trade) sanctions see Pape (1997) and for an application to the trade-labor debate, see Brown (2001).

⁵ Implicitly, we assume some form of hierarchy here between the ease by which consensus can be found and the instruments being pursued. It is most difficult to come to a common position with regard to the use of military force, followed by economic sanctions and finally, the normative statements. Therefore, we consider the soft power approach, based on the normative underpinning of the EU as its default position in case no consensus can be found.

⁶ The difference between both theoretical strands lies in the fact that, in a rational-choice context, perceptions are regarded as causal variables, as opposed to constructivism, which pays attention to the extent to which those perceptions *constitute* actors' identities.

⁷ A large part of the information contained in this section was retrieved from the WTO Documents Online facility (<http://docsonline.wto.org/>). For the sake of simplicity, references to individual documents are omitted and only sources external to the facility are indicated throughout the text.

⁸ Luxembourg and Germany did so in a somewhat ambivalent manner. Whereas both countries stated their wish to establish an ILO-WTO dialogue, they also made clear that the topic of labor standards belonged in the ILO. Ireland did not issue any statement at all.

⁹ This became apparent in the discussion on a resolution to include an ambitious sustainable development chapter (available at:

<http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2011-0291&language=EN>. Accessed on 21 March 2013)

¹⁰ Moreover, in 2002, Pascal Lamy stated that he stopped pursuing the inclusion of new labor language at Doha due to India's threat not to approve the launching of the Doha Round (European Commission 2002).

¹¹ A statement by the Brazilian Foreign Minister is illustrative in this regard: 'Even the European Union is very divided and its position will have to be the lowest common denominator' (Lampreia 10 November 1996).

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