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Trade Agreements, Labour Standards and Political Parties.

Differences between the U.S. and the EU in their Approach Towards the Inclusion of Labour Standards in International Trade Agreements

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Abstract

The connection between labour standards and international trade has become a key issue in the relations between industrialised economies and developing countries. Both the US and the EU are advocates of the inclusion of "labour standards" in trade agreements with developing countries, in multilateral, bilateral and unilateral contexts alike. As the prospects of establishing multilateral rules governing the relations between trade and labour within the framework of the WTO have diminished, both trade blocs increasingly focus on bilateral forums to pursue their policy goals.
In this paper, the objectives are twofold. First of all, we aim at describing the main points of difference between the EU's and the US's approach towards the inclusion of labour standards in bilateral trade agreements. In a second step we will formulate a possible explanation for these differences based on a theoretical model that focuses on the aggregative role of political parties in the context of European and US policy-making on trade.

Introduction: Labour Clauses and Trade Agreements

As a result of an increasingly competitive global economy, the link between labour standards and international trade agreements has been the object of a controversial political debate both at national and international levels. At the World Trade Organisation, the linkage of international labour standards to trade has been discussed on several occasions. Despite the efforts of several governmental and non-governmental proponents of a "social clause" to put these international labour standards on the global trade agenda, the 1996 Singapore Ministerial Declaration and later the Doha Declaration of 2001 somehow consolidated a practice in the other direction.[3] The International Labour Organisation has been recognised as the only institution competent and capable of dealing with the multilateral harmonisation of labour standards, also in their connection with international trade.

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[3] Cf. Paragraph 8, Doha Ministerial Declaration, 2001: "We reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognised core labour standards.We take not of work under way in the International Labour Organisation on the social dimension of globalisation"

Unsatisfied with this consensus and unhappy about the reluctance of powerful players inside the WTO to include some of those international labour standards in the global trade agenda, several industrialised countries usually considered as proponents of a social clause (such as some Member States of the European Union and the US) have been trying to bypass this status-quo by promoting the national internalisation of these standards through preferential trading agreements, where they enjoy more relative bargaining power. Not only in the granting of unilateral trade preferences (such as the Generalised System of Preferences), but also in the negotiation of bilateral trade agreements, the inclusion of a social clause has been a point of attention for both the US and to a lesser extent the EU, as will be described below.

With the relevance of unilateral preferential trade schemes decreasing, due to increasingly lower GATT tariffs and the drive on both sides towards more reciprocal trade relations, the relevance of these bilateral trade agreements for the future governance of labour and trade relations with developing countries can hardly be overestimated. During the last ten years, the US has concluded more than ten bilateral free trade agreements (among others with Jordan, Singapore, Australia, Morocco and several South- and Central-American countries), whereas the EU has successfully finished negotiations of twelve bilateral free trade agreements (mostly with Mediterranean and Southeast European countries, but also with South-Africa, Mexico and Chile). New agreements with important implications in terms of domestic labour concerns, such as the US-Korea-, EU-Korea, EU-India- agreements are waiting to be concluded.

Bilateral trade agreements negotiated by the EU and the US with third partners are of particular interest for the debate on labour standards and international trade, as the formulation and the inclusion of labour rights provisions in agreements can vary in many ways. In a first step, this paper will explore the main differences existing between the labour standards included in the bilateral free trade agreements of the United States on the one hand and the European Union on the other hand. In a second and more ambitious step, these differences will be explained while focusing particularly on the role taken by the representatives of the U.S. Congress and the EU's Member States in the negotiations of these free trade agreements.

Starting from the assumption of strong party discipline in European parliamentary democracies and weak party discipline in the United States, we will build a model that puts the aggregative role played by political parties in policy-making on trade at the centre of the analysis. This model will help us to verify to which extent differences in the internal decision-making context can account for a different attention for labour standards by the US and by the EU at the bilateral negotiation table.

Differences between the US's and the EU's approach of labour standards

When analyzing or comparing social clauses, two main "components" of labour rights provisions should be taken into account.[4] First, an assessment should be made on the differences in the scope of the labour rights provisions. Secondly, the variation in terms of tools of enforcement should be verified.

When referring to the scope of the labour rights provisions, both the type of obligations and the standards used to evaluate the level of commitment of the negotiating parties, should be taken into account. In the United States' bilateral free trade agreements, the 1998 ILO Declaration on Fundamental Rights at Work is used as a basis for the labour provisions included. In short, they cover the following fundamental labour rights: 1. freedom of association and the effective recognition of the right to collective bargaining 2. elimination of all forms of forced or compulsory labour 3. effective abolition of child labour 4. elimination of discrimination in respect of employment and occupation. Using these Core Labour Standards as a starting point, these agreements make a reference to a sui generis group of labour standards, named as "internationally recognised labour standards" which also include 'acceptable conditions of work with respect to minimum wages'.[5] Despite of the mentioning of "internationally recognised labour rights", the level of commitment of the parties is limited to the enforcement of national labour laws aimed

[4] For a more comprehensive overview, see Grynberg & Qalo, 2006, Greven, 2002.

[5]The reference to "internationally recognised labour rights" is made in the following articles of selected trade agreements: art 6 US-Jordan FTA, Art 17.1 US-Singapore FTA, Art 18.8 US-Chile FTA, Art. 16.7 US-Morocco FTA, Art. US-Australia, Art 16.8 US-DR-CAFTA, Art 16.8. US-Colombia TPA, Art. 17.7, US-Peru TPA Art. 17.7

It is important to note that while the NAALC was based on 11 "internationally recognised labour rights", these labour rights have been united in 5 labour rights included in the agreements concluded after the NAALC.

at protecting these basic labour rights,[6] the choice and the distribution of means of enforcement remaining at the discretion of national governments. Nevertheless, all the agreements except for the North American Agreement on Labour Cooperation (NAALC), contain the explicit legal commitment not to derogate from existing labour standards in order to increase bilateral trade flows.

On the other side of the Atlantic, the European Commission's Communication on the "Social Dimension of Globalisation", adopted in 2004, recognised the inclusion of labour rights as an important element of EU policy on bilateral trade agreements negotiated with third countries.[7] Almost all EU bilateral trade agreements contain a chapter or paragraph on "cooperation on social issues", and a clear reference to a few core international labour standards is made in some specific arrangements.[8]

Contrary to the US's agreements, the standards used to evaluate the respect of these labour rights by the contracting parties seem to be stemming from international rather than national labour law. The standards adopted by the ILO are the main point of reference for the promotion and the development of these labour rights.

Despite of this reference to international labour standards, some authors argue that the emphasis of the EU is rather on general human rights, included as an "essential element" in all bilateral trade agreements (Clapham and Martignioni, 2006, 291). A serious violation of human rights allows the EU to terminate or suspend the operation of the agreements (Fierro, 2001, 43).

The differences between the US's and the EU's approach on the inclusion of labour standards in international trade agreements become more obvious by looking at the enforcement mechanisms used when promoting compliance. The US's trade agreements usually provide a "tiered structure" of protection of labour standards, where some labour standards can be the object of more constraining dispute settlement mechanisms and others are merely to be discussed through dialogue-mechanisms at the ministerial level. The sanctioning tools in case of non-compliance with certain labour standards also tend

[6] According to Polaski, the US-Jordan agreement differs from other US bilateral agreements in this regard, because it includes a commitment to ensure protection for ILO-determined fundamental standards through national labour laws that is not completely excluded from a possible dispute settlement procedure (Polaski, 2004).

[7] "The Social Dimension of Globalisation- The EU's policy contribution on extending the benefits to all". COMM (2004), 18/5/2004, p.9.

[8] See for instance art. 86 TDCA, art 50 Cotonou, art.44 EU-Chili

to vary according to the agreement concerned. The US-Jordan agreement, for instance, vaguely allows for "appropriate and commensurate measures" of any form to be taken as a result of a panel ruling.[9] Other agreements limit themselves to the possibility of forcing parties to financial compensations.[10] In the latter case, the withdrawal of trade benefits seems to be seen as an option of last resort.

Even though many labour activists have argued that these sanctioning mechanisms have proven inadequate and insufficient, formally and ultimately, these arrangements do provide for sanctioning mechanisms that link compliance with labour laws with the preservation of access to the U.S. market. This does not seem to be the case at all in the EU's trade agreements. The EU has always rejected a sanctions-based approach to labour standards.[11] Instead, the emphasis is put on the set-up of institutional arrangements for dialogue on social standards at the intergovernmental and, occasionally, civil society level ("Observatories"). At the same time, the EU commits itself to conducting Sustainability Impact Assessments of bilateral negotiations and agreements. These are meant to assess the impact of free trade agreements on social development in the EU and the partner countries. Moreover, most of the EU's bilateral agreement create room for cooperation and technical assistance in the field of social rights.[12]

In short, a first account of the EU's bilateral trade arrangements clearly shows that as far as labour standard compliance is concerned, the focus is on information exchange and technical assistance with the aim of improving domestic legislation, rather than on enforcement. The methods used for the promotion of labour standards are more in line with the soft governance approach used by the International Labour Organisation. No clear linkage is established between market access and compliance with labour standards.[13]

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[9] US-Jordan agreement, Art. 17.2 b.

[10] E.g. Annex 20a US-Singapore agreement

[11] Speech Peter Mandelson, "Trade policy and Decent Work Intervention", at the EU Decent Work Conference, 5 december 2006, COMM (2004)383def, 18. 5. 2004: "The Social Dimension of Globalisation- The EU's policy contribution on extending the benefits to all"., COMM (2006)249, "Promoting Decent Work for all- The EU's contribution to the implementation of the decent work agenda in the world"., "Promoting Core Labour Standards", 2001

[12] Regulation No. 2110/2005

[13] It is important to note here that this (preliminary) conclusion in only valid for bilateral free trade agreements, negotiated and concluded by the European Union and the United States with individual partner countries and having as a result the establishment of a free trade area. Therefore, it does not make any

Explaining the differences

The above has made clear that significant differences exist between the United States and the European Union in their approach to the inclusion of labour standards in bilateral trade arrangements. The result of the comparison is even counterintuitive. Whereas most European countries have a reputation of combining market mechanisms with high levels of social protection in their economic systems, the U.S. economy is considered to give the market much more free rein. And yet, in their bilateral trade arrangements the picture seems to be reversed. The U.S. stresses labour standards much more strongly than the European Union does. What could explain for this?

Lack of "fear of globalisation" as one possible explanation?

The discussion on the link between labour standards and international trade is embedded in a much larger debate in political economy on the impact of globalisation on different groups in society. In this respect, several economists have argued that the main opposition to globalisation in industrialised societies comes from labour.[14] Sapir, for instance, compared the political economy of domestic adjustment to globalisation both in the US and Europe (Sapir, 2001). He concluded that labour voices less opposition to globalisation in the EU than in the US, because there is less "globalisation fear" in Europe and this for the following reason. In the US, globalisation generated more wealth but also more income inequality and adjustment problems than in Europe. In the EU, where welfare systems are more generous, globalisation generated less wealth but also less income inequality and labour adjustment than in the US. Particularly the median voter suffered less in Europe than in the US. "Outsiders", such as young people and immigrants paid the price in terms of unemployment (Sapir, 2001, 202). Consequently, labour faces less incentives to voice opposition to globalisation in Europe than in the US. Sapir's analysis offers a compelling and straightforward explanation for the fact that the enforcement of international labour standards does not figure prominently on the EU's

claims about policy-making on unilateral trade instruments (such as the EU's GSP+), trade promotion agreements focusing on a limited amount of sectors (such as the US-Cambodia textiles-agreement) or on the "linkage" positions defended by the US and the EU in multilateral forums such as the WTO.

[14] For an overview of this debate see for instance (Lee, 1996)

agenda in its bilateral trade agreements. Because of the "buffer" created by European welfare states and the relatively limited share of exports coming from preferential trading partners towards the EU market,[15] there might just be a lack of "globalisation fear" among citizens and labour activists in Europe, at least when it concerns trade with its current preferential trade partners. Due to the limited pressure of labour activism, EU decision-makers would not be inclined to invest any negotiating capital on this, given the controversial nature of this issue for most developing countries.

However, Sapir's analysis does not seem to offer a completely satisfactory explanation. Basic labour rights to be protected consist of ILO "core labour standards" such as the freedom of association, the right to collective bargaining, the prohibition of forced labour, equality of treatment and non-discrimination in employment, and the effective abolition of the worst forms of child labour. These core labour standards have an important human rights' dimension as well (Lee, 1997:5). Consequently, proponents of the inclusion of labour standards into international trade agreements have not only advocated this linkage with the objective of protecting domestic workers from unfair competition and a social "race-to-the-bottom", but also because of evident moral concerns about inhuman labour conditions in trading partners of the developing world.

Indeed, in the case of the European Union, it seems that, just like in the US, federations of trade unions at the national, European (ETUC) and international (ICFTU) levels have been mobilised and have lobbied for the inclusion of labour standards in the EU's bilateral trade agreements.[16] The reality of considerable European activism of the labour movement with respect to these negotiations does not correspond completely with what is to be expected from Sapir's analysis. Considering that next to the "lack of fear of globalisation" other factors seem to play a role, we choose to turn to one possible

[15] In 2003, only 21% of the EU's imports concerned imports under a preferential trading regime (COM(2003)787)

[16] See for instance the speech of John Monks, General Secretary of ETUC at the "Decent Work Conference", in which he states that: "There is willingness to promote employment, social cohesion and decent work for all in all EU external policies, bilateral and regional relations and dialogues. But the real weight of the EU relies on trade, and we do not discern the same willingness to use that asset to promote the agenda. Our trade agreements must all be made vehicles to promote our values, be they bilateral or in the WTO context". (High-level Conference on "Promoting decent work for all", 4.12.2006), or the decisions adopted by the 17th World Congress of the ICFTU, stating that "regional trade agreements should integrate respect for trade union rights in their rules and practices. The ICFTU will cooperate with the appropriate trade union organisations to exert pressure in this direction" (Point 16, Decisions of the 17th World Congress of the ICFTU, 3-7.04.2000)

determinant, which is strongly related with certain differences in the institutional trade policy-making context in which bilateral trade agreements are negotiated by the EU and the US.

Political Parties and the inclusion of labour standards in bilateral trade agreements

Assuming that other variables related to the institutional framework of bilateral trade negotiations on both sides are to be considered, we find that a model based on three components could be helpful for explaining the differences the inclusion of labour standards in bilateral free trade agreements. The first element consists of the differences in the aggregative role of political parties in the U.S. and the European Union. The second focuses on the differences in electoral systems between the U.S. and the EU. The third points at the differences in the relevance of specific preference characteristics between the U.S. and the EU. The reasoning goes as follows.

Political parties act as interest aggregating organisations in society. They aggregate and represent an array of societal interests and concerns. In doing so, they take into consideration both specific interests, and the interest – as they perceive it – of society as a whole, this in addition to the interests of the political party as organisation. The perspective from which they engage in this aggregation reflects the scale on which the party is organised. National parties will tend to weigh specific sectoral or geographically concentrated interests against the national aggregate effects of the policy-choices they make. Regional parties will do the same but then concerning the regional aggregate effects of their choices. This aggregative capacity of the political parties is only relevant to the extent that they are able to control the holders of political offices, be it in parliament or in government. In the absence of such control, or in the case of weak control, the logic of the aggregation by individual governmental officeholders instead of the political party as a whole will matter, and with it, the geographical scale on which they operate.

That scale is to a large extent determined by the geographical scale (reach) of their electoral district, which brings us to the second component of our model. The size of the electoral district largely depends on the type of government institution, which may be

local, regional, or national. The smaller the scale however, the higher the probability that geographically concentrated interests will be able to capture locally elected officeholders, and thus to weigh on their policy-choices. This is due to the higher probability of a lower diversity of interests within the electoral district of the officeholder. This limits the ability of such a holder to balance one local interest against another in determining his stance on policy-issues. For parliamentary bodies were such officeholders have a seat, the consequence is that policymaking is submitted to the logic of logrolling rather than to the logic of an integrative aggregation process in which the collective interest matters substantially too. In the case of strong political party control, the scale at which the political party operates will supplant to a large extent the scale of the electoral districts.[17] Given the wider geographical span of that scale, a higher diversity of interests is probable, and with it the capacity of the officeholders to balance different interests against each other and against the aggregate interests of the party and the country as a whole. For a specific interest, it will be a challenge to stand out among the plenty.

This leads us to introduce the third component of our model. Considering the difficulty a specific sectoral interest faces in "surviving" this process of aggregation, we would argue that in order to stand out among a variety of interests, two conditions have to be met. First of all, the intensity of the interest has to be such that it triggers a sufficiently high level of inside and outside lobbying so that it outperforms the voice of all, or most other, interests in society. Secondly, it is necessary that the neglect by the officeholders of that voice comes at a substantial electoral cost for the political party as a whole. In the latter, the characteristics of the electoral system play an important role.

The difference between the United States and the European Union in terms of their insistence on labour standards in international trade agreements can be explained then by the strong role of both the U.S. Congress and the EU's Council of Ministers in policymaking on trade, and by the weaker role of political parties in the former institution at least in comparison with most Member States of the European Union.

[17] Note that even if the scale of the electoral districts has an impact on the power that political parties can exert over the electives officeholders, the relationship between the two is neither linear, nor excessively strong. It is indeed a relationship that is mediated by a range of other factors, including inter alia the nature of the candidate selection within the party, and the constitutional set-up of the governmental system, most prominently its system of institutional checks and balances.

When looking at the US's case, the consequence is strongest for the House of Representatives with its generally smaller electoral districts. The probability of interest homogeneity in such districts is high. In addition, the weaker role of the political parties (at least in comparison with Western Europe) makes that the policy-making process in Congress is more characterised by the logic of logrolling, where the gleaning of votes is predominant and thus where the attention for collective interests that supersede the local level is relatively weak. Geographically concentrated interests are therefore able to weigh relatively heavily on the process. To the extent thus, that labour interests are pivotal in constructing House majorities in favour of international trade agreements, the pressure on the U.S. government to include labour standards in such agreements is strong. That is exactly what has been happening during the last fifteen years.

In the case of the European Union, the story is quite different. All European Union member states can be characterised as party democracies, that is, as 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. Even if there is variance in the extent of party disciplines across the different member states, they all share the fact that such discipline is significant for the way in which their parliamentary and governmental institutions operate. As a consequence, internal party interest aggregation mechanisms are prevalent, and with it the role that collective interests play in such aggregation. Different interests are balanced against each other and against the overall interests of the party, and eventually of the nation. Local interests have less chance to weigh heavily here unless they are able to reach a high level of intensity on the one hand, and to benefit from the institutional characteristics of the electoral system on the other hand. This may be the case for agricultural interests, but is much less so for trade-related labour standards. As a matter of fact, the much more extensively developed welfare state systems, smoothen the impact that trade liberalisation has on employees and with it the incentives for a substantial part of them to raise their voice and to engage in political activism.

For the political parties, the electoral incentives to include strong labour standards in international trade agreements against the opposition from developing countries is

therefore, relatively weak, certainly compared with the U.S. Consequently, the pressure from EU governments in the EU Council of Ministers is relatively low as well, as is the pressure in the national parliaments when international trade agreements concluded by the EU need to be approved as mixed agreements. Moreover, it even seems that this relatively low pressure creates a situation in which disputes about competences on social policy supersede the question of the inclusion of labour standards in international trade agreements concluded by the EU.

Interest Aggregation on Trade in the U.S. Congress

The Shaping of the Trade Negotiating Authority

The dynamics of logrolling in U.S. external trade policy and its impact on the question of labour standards became quite clear in the debates on the granting of trade negotiating authority to the U.S. president in 2002, and in the subsequent efforts to construct Congressional majorities in favour of a range of free trade agreements negotiated since then by the Bush Administration. The two are closely inter-related. Indeed, the authority to conclude international trade agreements rests with the U.S. Congress, as provided by the U.S. Constitution. Congress delegates the authority to negotiate such agreements to the president, but does so with a number of strings attached. These indicate the issues that have to be included in such agreements, and the kinds of agreements the president can negotiate (bilateral, multilateral). As long as the president respects these conditions and limits, trade agreements negotiated by him can be approved by Congress in an expeditious way.[18] Congress forgoes the ability to amend such agreements, and time limits are set on the consideration of these agreements in the Congressional committees. When the limits and conditions are not respected, the agreements are not covered by the Congressional delegation, and are thus, exposed to the normal processes of committee

[18] This is the so-called fast-track part of the trade negotiating authority delegation. For that reason, the trade negotiation authority delegated by Congress to the President is also known as the "fast-track authority". Note that for import tariffs, Congressional approval is not necessary as long as the president remains within the reduction limits set by the trade negotiating delegation law.

deliberation, and amendments. In these cases, Congress does not restrict itself to an up or down vote.

It is clear that the restrictions that Congress sets for itself when delegating trade negotiating authority to the president have an important impact on the strings that Congress wants to attach. If Congress wants to condition the content of an external trade agreement, it needs to do so through the conditions that it includes in the trade negotiating authority law. Thus, the legislative battle to include conditions in relation to labour standards tells us a lot about Congressional dynamics in relation to labour standards and international trade. As a matter of fact, labour standards, played a prominent role in the debate on the granting of trade negotiating authority to the president that took place between 1994 and 2002.[19] The question in this debate was whether labour standards should be included in the principal negotiating objectives of the delegation law, and if so, in which way, and, eventually, with which sanction mechanisms. This focus on the principal negotiating objectives of the delegation law was not a surprise as these objectives provide the criteria to determine whether an internationally negotiated trade agreement is covered by the delegation law (and thus by its fast-track provisions) or not. Agreements that include issues that are not listed in these objectives are not covered. The same holds for agreements that fail to "make progress in meeting" these.

The debate started in 1994 with a shot across the bow. An attempt by the Clinton Administration to include a provision on internationally recognised worker rights in the bill on the implementation of the Uruguay Round agreements was repudiated, even if the language of that provision was relatively modest.[20] Attempts by the Clinton Administration to include such worker rights in a fast-track bill in 1995 failed as well (to

[19] The question of the granting of fast-track authority to the President emerged as a consequence of the expiry of the previous trade negotiating authority delegation law in June 1993 (and in April 1994 for the issues covered by the Uruguay Round negotiations), see P.L. 100-418, sections 1102 and 1103; and P.L. 103-49, section 2902.

[20] The provision called upon the president "to seek the establishment in the GATT 1947, and, upon entry into force of the WTO agreement with respect to the United States, in the WTO of a working party to examine the relationship of internationally recognised worker rights as defined in (..) the Trade Act of 1974, to the articles, objectives, and related instruments of the GATT 1947 and of the WTO, respectively." See Section 131 (a) of H.R. 5110 (103th Congress).

the extent that Clinton never officially proposed the bill to Congress), as were efforts by the Republican majority in Congress to adopt a fast-track law that excluded such worker rights.[21] The resulting stalemate was clear. The inclusion of worker rights in fast-track would hurt its adoption as much as their exclusion would do. The former was a consequence of the resistance of the economic conservatives within the Republican caucuses in Congress. The latter was due to the resistance of a number of so-called labour Democrats. Neither party could rely on an automatic majority in favour of fast-track. Given their Congressional majorities in Congress – more specifically in the House of Representatives – between January 1995 and January 2007, the Republicans needed to construct a majority by attracting votes from the Democratic minority by playing to their concerns and interests while preserving a sufficiently high level of support for fast-track within their own caucus. Labour rights played a role in this strategy, as moderate Democrats had become more sensitive on them since the acrimonious debate on the approval of NAFTA in the course of 1992 and 1993. But it was not the only factor. Other factors played a role as well, such as attracting the votes of a sufficiently high number of representatives elected in agricultural districts, sufficiently minimising the opposition from representatives elected in textile districts, and in steel districts. In addition, the question on labour standards proved to be inextricably linked to the one on environmental protection, and, even more importantly, to the one on investor-state disputes. The linkage consisted of the fact that opposition or support for one of them proved to be accompanied by opposition or support for the other ones.

In affecting this opposition or support, the party leaders in Congress – especially the House of Representatives – were not powerless. But at the same time, the story of constructing a Congressional majority in favour of fast-track between 1994 and 2002 was one of Republican leaders in Congress struggling to keep as much support as possible within their own caucus, while constructing a minimum winning coalition with the support of at least some members of "the other side of the aisle". This endeavour was

[21] Given that they realised that they would fail to reach a majority that would support such a law, the Republican leaders in the House of Representatives decided not to submit a bill in that regard to the full House. This happened in November 1995 and concerned H.R. 2371 (104th Congress).

much more complicated in the House then in the Senate; witness the minimum (razor-thin) majorities in favour of the law in the former and the large majorities in the latter.

That the Congressional leaders realised that labour standards were important became clear when they tried to link the approval of the fast-track law with the approval of the free trade agreement between the United States and Jordan. This plan emerged after two attempts to approve fast-track (in 1997 and 1998) had failed, and after President Bush had entered office. The idea behind this strategy was relatively simple. The U.S. –Jordan FTA would attract a sufficient number of democratic votes in the House for two reasons. One was related to the broad support that Jordan enjoyed because of its policy of rapprochement to Israel. The other consisted of the labour and environment provisions in the FTA. The linkage strategy ultimately failed however, because escalating tensions between the Palestinians and the Israelis made the Jordan FTA too important and urgent politically to let it become embroiled in the debate on fast-track, expected as it was that this debate would drag on, if not for years, at least for months to come.

When President Bush published his "Principles on Trade" in May 2001 as a way to unblock the fast-track debate in Congress, he clearly had in mind the necessity to attract at least some Democrats. And in doing so, labour proved to be prominent. At the same time, any linkage between labour standards and the WTO was avoided, partly out of concern for strong developing country resistance against such a linkage. Bush's position opened the door for some among the Republican leadership in the House to negotiate a compromise package with a critical number of moderate Democrats, despite growing and strong opposition from the Democratic minority leadership. The estimated number of Democratic votes attracted in this way approached thirty, while it was expected that the Republicans would lose about twenty votes of their own as a consequence of the deal. The net result would be a razor-thin majority in favour of fast-track. In order to counter the risk of narrowly failing to reach that majority, additional last-minute concessions were made to secure the votes of Republican representatives elected in textile districts. It was ultimately the decision by one of these – Jim DeMint (R-SC) – to change his vote from a negative to a positive one that turned the table in favour of fast-track when it was

voted upon in the House.[22] In the negotiations that took place between the House and the Senate – after the latter had adopted its own version of the fast-track law – the compromise package with the moderate Democrats could be preserved, and with it the small majority in favour of the law. In July 2002, the House approved it 215 against 212. The Senate majority in favour of the law was larger, 66 against 34, exemplifying the fact that the constituencies of the Senators are larger, and thus more heterogeneous in most cases. This gives them more leeway in balancing the interests of one group of constituents against those of another.

In the compromise package that was constructed in the House, the Democrats were seduced by the inclusion of labour and environmental standards in the principal negotiating objectives of the law, but only in the sense of an obligation for the U.S.'s trading partners to effectively enforce their own labour and environmental laws.[23] The inclusion puts them on an equal footing with the other objectives of the delegated negotiating authority. The concession they needed to make was to accept that no reference would be made to sanctions through which the enforcement of the respect for these standards would be guaranteed. As a way of consolation, they got the inclusion of a toolbox of measures through which these standards could be promoted, among which greater cooperation between the WTO and the ILO, the obligation for the Secretary of Labour to consult with any country seeking a trade agreement with the U.S. concerning that country's labour laws, the possibility to provide technical assistance in this regard, and the obligation to submit a report to Congress on the labour rights of that country, and on its laws governing exploitative child labour.

[22] The December 6, 2001 vote – which required the Republican leaders to extend the voting time beyond its normal fifteen minutes while intensively lobbying Rep. DeMint on the floor of the House – delivered a 215 against 214 result in favour of the law.

[23] See section 2102 (b)(11) of P.L. 107-210 in 116 Stat. 933. A separate provision (section 2102 (b)(17)) refers to the worst forms of child labour and the fact that the administration has to "seek commitments by parties to trade agreements to vigorously enforce their own laws prohibiting the worst forms of child labor."

Labour Law Activism within the Confines of the Fast-Track Law

It is important to note that as soon as Congress had delegated trade negotiating authority to the president, its ability to affect the president's negotiating activities was restricted by the only binding tool in its possession: the ability to reject a trade agreement submitted by the president to Congress, or rather, counter the possibility that a majority would approve such an agreement. The story of the conclusion of free trade agreements by the United States since 2002 is partly a story of individual members of Congress that successfully pressurised the Bush Administration to pay attention to labour rights in trade agreements by credibly threatening to successfully counter their Congressional approval. It is also a story however, of the ability of the president to resist such pressure, thereby using the benefits of its delegated negotiating authority. The outcome is that labour standards did receive a lot of attention in the negotiations on free trade agreements. It is however, equally an outcome in which the Administration could exert significant influence on the format and substance of that outcome.

Important in the labour-standard-related opposition from the Democratic members of Congress to the free trade agreements, was the question whether the negotiating partners of the U.S. already adhered to the core labour standards of the ILO, something that was largely the case with Chile and Singapore.[24] This concern for the adherence to the core standards could be explained by the focus of the fast-track law on the effective enforcement by the U.S.'s trading partners of their own labour laws. A weakening of such laws would be less probable with trading partners that already adhered to the ILO's core labour standards. It would however, be more probable in the case of trading partners that did not. This explains the higher sensitivity of the Democratic Congressional members with the free trade agreements with Central America and the Dominican Republic (CAFTA-DR),[25] as well as those with the Andean countries (Peru, Ecuador, and Colombia), and Bahrein and Oman, than with Singapore, Chile or Australia. As a

[24] Note also that the penalties provided for the violation of the labour law enforcement clause are substantially lower than the ones for the commercial disputes under the agreement with Chile, as the former have been capped at $15 million.

[25] Cf. the statement by Rep. Sander Levin (D-MI) during the hearing on CAFTA of the House Ways and Means Committee, June 10, 2003, in: http://waysandmeans.house.gov/.

consequence, Democratic pressure largely focussed on the adoption and enforcement of laws that reflect five so-called internationally recognised labour standards, as defined in previous U.S. legislation on the General System of Preferences (Grynberg and Qalo, 2006: 644),[26] or on the adoption of the ILO's five core labour standards.

Important is however also that Democratic members concerned about labour standards could weigh most heavily on the issue of these standards when the Republicans faced difficulties in maximising their own support for the agreements the Bush Administration negotiated. Issues such as sugar, textiles and clothing market access played an important role here.

The strategy of these Democrats consisted of two parts. First, they tried to avoid that a Congressional majority would be constructed in favour of the free trade agreements that lacked sufficiently strong labour standards, given the state of the labour law in the countries concerned. Their job was made more difficult by the position taken by the so-called New Democrats, a group of about twenty-five Democratic House members that traditionally support trade liberalisation, but that were really sitting on the fence because of their concerns about the weak labour provisions in the proposed free trade agreements. As a group, these New Democrats could use their leverage because they were able to transform a minority in favour of the agreements into a majority. This was most obviously the case with the approval of CAFTA in the course of 2005.

Second, they tried to change the labour language in the agreements themselves, by trying to convince the countries with which the Bush Administration negotiated the agreements, to accept stronger labour provisions. Remarkable is here that the strongest resistance came from the Bush Administration itself, more than from the governments of the countries concerned. The approach followed by the Administration was to convince its negotiating partners to unilaterally adopt stronger labour laws while avoiding that

[26] It concerns the following rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labour; (d) a minimum age for the employment of children; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. These rights reflect the ILO Conventions that have been both ratified by the U.S. and codified in U.S. law (DiCaprio, 2004: 5).

provisions on the strengthening of such laws would be included in the free trade agreements. By doing this, they hoped to get the support from a sufficient number of New Democrats for the agreements. This strategy worked to a certain extent in the case of Morocco (which adopted a labour reform package during the negotiations), and Bahrain[27] (where a promise was made to bring domestic labour laws up to ILO standards). It also proved to be important in the case of CAFTA. There, the Central American governments decided to adopt a white book on issues where a strengthened enforcement of their labour law was considered to be necessary. Ultimately, it was the decision by the Bush Administration to financially support the Central American countries to strengthening the enforcement of their labour and environmental laws that proved to be decisive, this in combination with last-minute concessions to seven Republicans elected in textile districts.[28] These commitments attracted the votes of about ten New Democrats and five textiles Republican that were necessary to form a minimum winning coalition in favour of the approval of CAFTA. The New Democrats supported the approval of CAFTA despite "incredible pressure" against such support from the Democratic leadership in the House.[29] At the same time and despite last-minute lobbying by the president and the vice-president, twenty-eight Republicans opposed the deal.[30]

Both the stories about the adoption of the fast-track legislation in the U.S. Congress – especially the House – and that of the free trade agreements negotiated by the Bush Administration – most prominently CAFTA – clearly indicate how majorities on trade liberalisation need to be constructed by catering to the concerns of individual members. This allows labour issues to play a prominent role, both in the legislation or agreements themselves, and in the additional commitments made on labour laws by the administration. Party discipline proves to be weak, as individual members of Congress depart from the wishes of their congressional leaders on these politically sensitive issues.

[27] And the United Arab Emirates.
[28] The United States Trade Representative, Rob Portman, announced this financial support during the July 19 session of an Inter-American Development Bank donor conference on the white book that the Central American governments had adopted (*Inside U.S. Trade*, July 22, 2005: p. 18).
[29] *Inside U.S. Trade*, July 15, 2005, pp. 15-16.
[30] Ultimately, CAFTA was approved with 217 against 215 in the House (July 27, 2005). The margin was larger in the Senate, just like what happened with the fast-track law in 2001-2002, although the margin was smaller this time. The Senate approved the deal 55 against 45.

Labour was not the only issue that mattered here. But given the constellation of the votes in favour and against the trade issues under consideration, it played a significant role in the formation and ultimately adoption of the free trade agreements concluded by the U.S.

Interest Aggregation on Trade within the Member States of the European Union

The negotiation of bilateral free trade agreements and the role of the Member States

During international trade negotiations involving the European Union, Member States are usually considered to participate only at "arms-length" in the negotiation process. Once they have specified the terms of the negotiations in a negotiation mandate, an act of delegation takes place in favour of the European Commission who negotiates on behalf of the Member States. Contrary to the United States where different agreements can be concluded in the framework of one single trade negotiating authority law, in the European Union one specific mandate has to be adopted for each trade agreement. Despite this delegation-logic, the involvement of the Member States in these negotiations becomes crucial both when these trade agreements involve trade-related matters such as intellectual property rights, trade in services and investment rules (Young, 2002) and when these trade negotiations are combined with the establishment of a political "association" between the European Community and a third state in the sense of art. 310 of the TEC. In these cases, "mixed agreements" are being negotiated where both Member States and the European Community have concurrent powers to conclude the agreements. Mixed agreements have two important implications in terms of European policy-making on trade. First of all, unanimity is required in the Council of Ministers. Secondly, the agreements need to be ratified both by the European Community and each of the 27 Member States according to their respective national ratification procedures.

When dealing with the inclusion of social clauses in trade agreements, the picture becomes even more favourable towards the (institutional) interests of the Member States. The main reason for this is that different ambiguities persist with regard to the EC's external competence to promote international labour standards (Novitz, 2002). Even though the ECJ's Opinion 2/91 has established an implicit exclusive competence for the

European Community to negotiate social agreements related to health and safety at the work place, some fundamental labour rights, such as the right to strike, remain a national internal and external competence.[31] Thus, only the Member States are entitled to conclude agreements touching upon these matters.

The above has shown that in the context of bilateral trade agreements (involving trade related standards or establishing an association between the EC and a third country), Member States can put considerable weight on the negotiation process, even after the negotiation mandate has been given. This has important implications for the inclusion of labour standards. In order to reach the negotiation table or, in the opposite case, in order to be explicitly excluded from this table, the intensity of the preferences among national constituencies regarding labour standards has to be sufficiently strong to survive both the delegation act from the Member States to the European Commission and the aggregation mechanisms at national levels characterised by strong party discipline. The analysis below focuses specifically on the latter.

Interest aggregation concerning bilateral trade agreements in Belgium and the United Kingdom

As mentioned before, the EU and its Member States have negotiated more than twelve bilateral free trade agreements in the past ten years. We will concentrate here exclusively on three of these agreements, namely the Stabilisation and Association Agreement between the EU and Croatia, the Euro-Mediterranean Agreement with Algeria, and the Association Agreement with Chile. Whereas the first two include a tailored chapter on social cooperation, the last one registers an explicit reference to core labour standards as established by the International Labour Organisation. With regard to the aggregation mechanisms at the level of the Member States, our analysis will focus on the case of Belgium and the United Kingdom. Belgium is considered to be one of the main proponents of the inclusion of labour standards in trade agreements, whereas the United Kingdom has always expressed serious concerns on the linkage between labour standards

[31] Art. 137.5 TEC

and trade (Waer 1996, Burgoon, 2000). From both countries we expect thus that they will be among the most vocal Member States when it comes to the labour-standards issue.

In order to capture the aggregation mechanisms taking place at the level of these Member States, we have chosen to look at two processes disclosing the most outstanding preferences of the Member States regarding these agreements. First, we will look at the addition of "declarations" to the adopted agreement (by the EC or by individual Member States), certifying the importance of an issue for specific Member States. Secondly, we will try to capture the preferences of important political parties regarding these free trade agreements by looking at national (federal) parliamentary discussions prior to the ratification of these free trade agreements. The central question will be to which extent labour standards are given any attention at all in these processes.

The EU-Croatia agreement, signed in October 2001 by the EC and the Member States on the one hand and by Croatia on the other hand, contains a paragraph on social cooperation. The provisions in this article refer to cooperation with regard to employment policies and social security reform and include a commitment to adjust Croatian legislation on the equal treatment for men and women and health and safety at the work place to Community legislation.[32] Several joint declarations were added to the Croatian agreement. However, these declarations essentially concerned the trade liberalisation chapters of the agreement (such as rules of origin, intellectual property rights, liberalisation of airport services) and did not make reference to specific wishes or concerns of Member States.

In accordance with Belgian Constitutional Law, the legislative proposal leading to ratification of the Croatian agreement was introduced in the Senate in January 2003 and transmitted to the House of Representatives a month later. In none of the Chambers a real discussion regarding these agreements took place and the agreement was adopted almost by unanimity in both Chambers: 133 against 0 in the House and 51 against 0 in the Senate.[33]

[32] Art. 91, Stabilisation and Association Agreement between the European Union and Croatia

[33] Annalen van de Belgische Senaat, 20/2/2003, 2-271 and Integraal Verslag van de Kamer, 3/4/2003, CRABV 50 PLEN 356

In the UK, in accordance with the Ponsonby- rule on the ratification of international treaties and the rules established by the European Communities Act of 1972,[34] the order to approve the agreement with Croatia was laid before Parliament by the Minister for Trade and Industry in October 2002. For more than two years, the order was suspended due to Croatia's lack of cooperation with the International Criminal Tribunal for former Yugoslavia (ICTY). Once this cooperation had improved, the order was transmitted again to both Houses. The agreements were debated in July 2004. During discussions and interventions in both Houses, Liberal Democrats and Labour Representatives stressed the security dimensions of these agreements, emphasising the need for enduring pressure on Croatia to cooperate with the ICTY, to negotiate bilateral agreements with Serbia, and to guarantee the protection of Serbian Minorities.[35] The focus of the political parties was clearly on the more general national foreign policy objective of the agreement in the sense of contributing to an improvement of the security situation in the Balkans. Sectoral interests in terms of labour standards did not come to the surface.

The EMAA between the EU and Algeria, signed in April 2002, also contained some provisions on "social cooperation".[36] These focused on the working conditions of migrant and seasonal workers and the impact of (illegal) migration on these working conditions. Just like in the agreement with Croatia, the declarations attached to the agreement only made reference to the commercial aspects of the agreement, even though one declaration of the Community concerned the chapter on cooperation in the field migration (art. 44 EMAA Algeria). This declaration however, did not touch upon issues related to migrant work.

The ratification process of this agreement in the Belgian federal Parliament followed a similar course as the Croatian agreement. In February 2003, the proposal to ratification was introduced in the Senate, accepted by consensus (51 in favour against 5 abstentions),[37] and transmitted to the House of Representations. In this House, a representative of the Green Party (AGALEV-ECOLO), member of the Committee on

[34] In the UK, no classical ratification process takes place. Instead the agreement is submitted to the Parliament for discussion during a certain period. After, all provisions of international treaties need to be translated into national law.
[35] Lords Hansard Debates, 8th of July 2004, The United Kingdom Parliament
[36] EMAA Algeria, art. 67
[37] Annalen van de Senaat, 27/3/2003, 2-279

External Relations, made a reference to a previously adopted parliamentary resolution on the situation of human rights in Algeria. Hereby, the Green Party urged the European Union to monitor the implementation of reforms in the field of protection of minority rights aimed at in the Association Agreement. Nevertheless, the agreement was almost unanimously adopted in this Chamber too (127 in favour against 1 abstention).[38]

In the UK Parliament, discussions on the EMAA with Algeria were held in December 2003. During the interventions and questions and answer sessions concerning these agreements, representatives of Labour and the Liberal Democrats, on the one hand, were especially critical about the European Union's mechanisms of political dialogue with Algeria as established by the agreement. The effectiveness of these mechanisms for the protection of human rights was questioned.[39] Conservatives, on the other hand, expressed support for trade liberalisation with Algeria and applauded the agreement's provisions on cooperation in the field of counterterrorism and the fight against illegal immigration.

It should be noted that here again labour standards did not seem to stand out in the position of the political parties with respect to these bilateral agreements. The collective interests of illegal migration, counter-terrorism cooperation and the protection of human rights in Algeria prevailed to the disadvantage of other more locally based (economic) interests such as labour standards.

The Association Agreement with the European Union and Chile signed in 2002, has a distinct place in the web of bilateral agreements negotiated by the European Union. Different from other agreements, the motivations behind the Chilean agreement were more of an economic nature than based on foreign policy objectives (Mc Queen, 2002). Chile was seen as a strategic growth market in Latin America with an important potential for investments. In the Chilean agreement, art. 44 includes the commitment of both parties to promote fundamental social rights as included in the relevant conventions of the ILO. Just like in the other agreements, however, the declarations attached to the agreement did not touch upon the issues of labour standards but focused on the commercial aspects of the agreement.

[38] Integraal Verslag CRAB 50 PLEN 357

[39] Lords Hansard Debates, 17/12/2003, House of Lords, United Kingdom Parliament. Delegated Legislation Committee Debates, 11/12/2003, House of Commons, UK Parliament.

Both the Belgian House of Representatives and the Senate adopted the proposal to ratification of the Chilean agreement in December 2003 without really having discussed the matter at any moment.[40] No majorities had to be constructed for this agreement, as it was unanimously accepted in both Chambers (59 against 0 in the Senate and 113 against 0 in the House[41]).

Discussions in the UK Parliament were richer than in the Belgian case. When the order of approval was submitted to both the House of Commons and Lords in May 2003, representatives of Labour and the Liberal Democrats highlighted the need for judicial cooperation between the EU and Chile when dealing with cases of torture committed by former members of the Chilean dictatorial regime of the 1970s and 1980s.[42] Conservatives from their side expressed concerns about Chile's financial stability and its impact on British investments, and raised questions about the possible impact of the agreement on the negotiations of the EU with Mercosur. Nonetheless, the order of approval passed without major problems, just like in the Algerian and Croatian case.

The Chilean case leads us to conclude that, despite of the mentioning of internationally recognised labour standards in the text of the agreement, such standards are a non-issue when Member States are to ratify bilateral free trade agreements with third countries. This seems to be the case both when the trade agreements are clear foreign policy tools (cf. the SAAs and EMAAs), and when these trade agreements are almost exclusively guided by economic concerns. As labour standards do not seem to survive the aggregation mechanisms of the political parties involved in the national parliamentary ratification of these bilateral agreements, labour activism is not expected to pressure government representatives at the Council of Ministers when negotiating with developing countries to the extent that these social clauses would become more than mere cosmetic additions to a trade or foreign policy agenda.

[40] With the exception of one question by a Socialist representative in the House on the conclusion of similar agreements with other Latin American countries.

[41] Annalen van de Senaat, 27/3/2003, 2-279, p.37; Integraal Verslag van de Kamer Nr.357, 4/4/2003, CRAB 50 PLEN 357, p.45

[42] Lords Hansard Debates, 12/5/2003, House of Lords, UK Parliament and Delegated Legislation Committee Debates, 20/5/2003, House of Commons, UK Parliament.

Conclusions

This paper's ambition was to describe and to explain the different approaches the European Union and the United States use on the inclusion of labour standards in (bilateral) trade agreements. With this objective in mind, we particularly focussed on the prominent role played by representatives in the U.S. Congress and Member States' governments in the negotiation of these agreements where they act as *principals* who delegate the power to negotiate to their respective *agents* (United States Trade Representative and the European Commission). In this respect, an attempt was made at identifying which factors determine the differences in the behaviour of these *principals* in both decision-making contexts. The analysis led to the conclusion that differences in the role political parties play in the United States and the European Union when constituency interests (in this case: labour interests) are aggregated, have resulted in different positions taken by these *principals* with regard to the bilateral trading arrangements. While in the European Union, a genuine aggregation process takes place where general, national interests seem to supersede sectoral, more locally based interests, the dynamics of logrolling in the United States have permitted labour activism to penetrate the negotiation agenda in a more effective way. Hence, labour standards and particularly their enforcement mechanisms are given more weight in the United States' agreements relative to the bilateral free trade agreements concluded by the European Union.

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