

The illusion of choice: the European Union and the trade-labor linkage.

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Abstract

Why has the European Union refrained from pushing for economic sanctions in the promotion of labor standards? In this paper we argue that a cost-effectiveness approach is not fully capable to grasp this decision. The effectiveness of the different instruments the EU has at its disposal are constrained by the internal and external context where decisions on labor-standards have been taken. The internal context suggests that what we observe is the emanation of the 'lowest common denominator' on which a consensus could be found, i.e. the normative underpinnings on which all member states can agree. Alternatively, the EU's decisions are shaped by the perceptions that negotiating partners hold on the motivations behind such decisions. In this paper, we focus mostly on the discussions held at the multilateral level.

Introduction

Why hasn't the European Union pushed for trade sanctions to ensure compliance with labor standards? With the exception of the Generalized System of Preferences (GSP), the EU has abstained to do so. Moreover, given the formidable power the EU harbors in trade and the integrated nature of this policy-domain, one could expect that the EU would be especially prone to the use of such power in its foreign policy.

In the case of labor standards, two issues can be studied in this context. One is the choice for linking labor-standards to trade and a second is the inclusion of economic sanctions to ensure compliance. Building on the logic of choice suggested by Baldwin (2000), we will try to explain why the EU took an apparent incoherent stance in this debate. The main argument we wish to make here is that this choice is not just the subject of a cost-benefit analysis but is to a large extent constrained by the internal and external context wherein a policy-maker operates. The internal context features most prominently on the cost side of a cost-effectiveness analysis.

The EU can be seen as a conflicted trade power, conflicted not only with regard to the internal distribution of costs and benefits, but also with regards to the goals to be pursued with such power (Meunier and Nicolaïdis, 2006). The extent to which the EU is capable of obtaining an internal consensus is therefore tantamount to an effective use of its power. As the EU can obtain such a consensus more easily on the underlying norms upon which the EU is built, in this case social solidarity, we can observe a more resolute, coherent policy position when applying soft power.

In addition to its effects on the costs, we wish to emphasize the impact of the external context on the effectiveness of such a soft approach. The odds of brokering a deal are conditional on the perception of the EU as a ‘force for good’. A perception that is not improved through coercion by imposing economic sanctions in case of non-compliance. In this paper we argue that the choice for the EU to apply soft power for the advancement of labor standards is determined by its lack of an internal consensus and the perception of developing countries who see this linkage as a form of hidden protectionism.

In a first section we present the debate on the trade-labor linkage and highlight the position taken by the European Union in the many fora where this topic has been discussed. The second section introduces the theoretical framework. In the third part we will undergird our theoretical arguments with additional empirics. We round up with a conclusion.

I. The European Position on the trade-labor linkage

Contrary to countries, such as the US or India, which have maintained a strong consistency in their labor linkage positions throughout the previous two decades, it is hard to pinpoint “the” EU’s position on labor, even in a snapshot, due to the multiplicity of relevant institutional actors with diverging points of view (Commission, Council Parliament). We solve this by addressing both the general views of the main instance charged with trade policy (the European Commission), and to the particular actions undertaken by the EU as a whole (i.e. mainly Commission and Council¹).

As stated by the Commission, the inclusion of the labor topic in the EU’s trade policy occurs through different means: the promotion of “core labor standards” (freedom of association and collective bargaining, the prohibition of forced labor, the prohibition of child labor, and non-

¹ Note that the Lisbon Treaty gives enlarges the competences the European Parliament, which becomes a full-fledged actor in the negotiation of trade agreements thanks to the application of the ordinary legislative procedure (Art. 294, Treaty of Lisbon).

discrimination) and Decent Work among its trade partners through “cooperation initiatives and incentives to better working conditions”, cooperation with the ILO, the encouragement of Corporate Social Responsibility (CSR) and the conduction of sustainability impact assessments previous to trade negotiations (European Commission, 2010c).

From a more concrete perspective, labor elements can be found in the EU’s trade policy at three levels: unilateral (GSP), bilateral (PTAs) and multilateral (WTO). In the first place, there is a trade-labor linkage in the EU’s General System of Preferences (GSP), a scheme of unilateral, non-reciprocal trade preferences designed to give priority access to developing countries’ products to the EU market². Ever since 1994, the GSP has featured a component of labor conditionality, containing both sanctions and incentives based on compliance with labor standards. On the one hand, developing countries can benefit from a “special incentive arrangement for sustainable development and good governance”, in which *ad valorem* and specific duties are fully suspended for *quasi* all products originating in a country applying for the arrangement. In order to obtain these benefits, the applicant country needs to ratify and implement a series of international treaties, among which the eight ILO conventions containing fundamental principles and rights at work. The implementation will be subject to monitoring³.

On the other hand, the special arrangement’s benefits may be withdrawn if the ratification, implementation and monitoring conditions mentioned above are not met, and the GSP benefits as a whole (that is, also for countries and products outside the special arrangement) may also be suspended if any goods exported⁴ are made by prison labor (European Union, 2008).

Secondly, labor provisions are present at the bilateral level in the EU’s Preferential Trade Agreements (PTAs) with non-EU countries. Given the complexity of the EU’s economic relationships⁵, it becomes difficult to characterize their labor components under a single

² The GSP is essentially an exception on the WTO’s Most-Favored Nation (MFN) clause, adopted by the GATT in 1979. The EU is not the only developed market with a GSP: other notable schemes include the US’, Japan’s and Canada’s.

³ However, for a country to be eligible for the scheme it must be considered as “vulnerable”. For a country to be classified as “vulnerable”, it may not have been classified as “high-income” by the World Bank for three consecutive years. Furthermore, its GSP-covered imports must be concentrated in few products (5), and its GSP-covered imports must amount to less than 1% of the total EU GSP-covered imports.

⁴ The Relevant Council regulation does not specify whether those goods have to be GSP-covered or not.

⁵ The agreements signed by the EU containing a PTA component in the sense of Art. XXIV GATT can be classified in several groups, often determined by the geographical and/or historical ties between the partner country and the EU. They cover those agreements establishing a customs union with Andorra, Turkey and San Marino; a free trade zone with the European Free Trade Association (Norway, Iceland, Switzerland, Liechtenstein); Stabilisation and Association Agreements with potential members from South-East Europe (the Former Yugoslav Republic of Macedonia, Albania, Serbia, Montenegro, Bosnia-Herzegovina and Croatia), the Euro-Mediterranean Agreements with North African and Middle Eastern countries (Algeria, Morocco, Tunisia, Egypt, Israel, the Palestinian

denominator. A division can be made, however, between the Caribbean EPA and other trade agreements. On the one hand, the bulk of EU's trade agreements have never included any concrete linkage between labor and trade⁶, and often contain cooperation provisions on social issues (Euro-Mediterranean Agreements) or general references to the improvement of labor standards in the preamble (EU-South Korea PTA). The EU-Chile and EU-South Africa agreements, which can be considered the most explicit of all EU PTAs with regard to labor, only mention respect for the ILO standards in the context of social cooperation, loose from any trade provision (European Commission, 2010b; European Communities, 2000; European Union, 2008b, 2009; Grynberg & Qalo, 2005).

On the other hand, the EPA with the Caribbean countries (European Union, 2008) contains labor provisions that go beyond the general preamble and cooperation references included in the first category⁷ (cf. supra). In the first place, the parties to the agreement engage, in Art. 71 (b) of the agreement, to engage into cooperation to ensure that investors' behavior respects the standards contained in the ILO's 1998 Declaration (cf. supra). Second, Arts. 191-196 contain an elaborate structure for cooperation on labor issues. In Art. 191, the parties to the agreement recognize the importance of labor standards and fair trade, and denounce their protectionist use. They further recognize their respective right to establish their own standards (Art. 192), but simultaneously agree not to foster trade or direct investment or to maintain their comparative advantage either by lowering standards or by failing to apply them (Art. 193). The above provisions are subject to a limited enforcement procedure, contained in Art. 195. The article provides for consultations, ILO advice and, as a last resort in case of disagreement, a Committee of Experts that may present a report on the issue at stake. Third, Art. 224,1,(a) regards "the measures necessary to combat child labor" as part of the measures necessary to protect public morals and health that could theoretically constitute a valid reason for the suspension of trade benefits (cf. supra note 6).

Authority, Jordan, Lebanon and Syria); PTAs and Association agreements with other countries (Mexico, Chile, South Africa); and the Economic Partnership Agreements (EPAs) under negotiation with the African, Caribbean and Pacific (ACP) countries which previously fell under the unilateral system of preferences known as the Lomé Convention. Of the six foreseen EPAs only one, for the Caribbean region, has entered into force, whereas some of the countries from the remaining five regions have signed interim agreements as negotiations continue (European Commission, 2010).

⁶ Grynberg & Qalo (2005) suggest, however, that the Euro-Mediterranean agreements contain a possible exception for trade preferences on the basis of "public morals", similar to the one contained in Art. XX, GATT, which might be interpreted as covering some aspects of labor standards, such as child labor.

⁷ Conversely, in the case of the remaining (provisional) EPAs that have been signed, references to labor are limited to the mention of prison labor, the agreements' preamble, or cooperation activities. In the case of the Ivory Coast EPA, the preamble reference goes further than the other agreements to state that labor legislation, alongside with occupational health and safety, environmental and cultural diversity standards, will not be lowered in order to attract foreign direct investment.

The third level at which concrete EU action on the trade-labor linkage has taken place is the multilateral one, where it has been discussed whether the WTO should conduct any work on labor standards. It is, however extremely difficult to pin down the EU's position on the issue due to the fact that, even though intense debates on a multilateral trade-labor linkage took place at the WTO during the 1990s, they stalled after the 2001 Doha Ministerial meeting. In general terms, the talks pitted the US against the Informal Group of Developing Countries in a highly polarized discussion on whether or not to include a labor component in the trade regime. Whereas the United States, under pressure from its domestic trade unions, fiercely supported the establishment of a working group on labor issues at the WTO, the developing countries, led by India, Pakistan and ASEAN, rejected that proposal on a principled basis, by arguing that such a working group would derail in protectionist attempts by the developed countries (Hughes & Wilkinson, 2005; Wilkinson, 1999, 2002; Wilkinson & Hughes, 2000).

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 (cf. *infra*). The entity attempted to adopt an intermediate position by proposing a joint ILO/WTO working group at the Seattle Ministerial Meeting. During the Doha discussion, Trade Commissioner Pascal Lamy made a statement in favor of discussing trade and labor standards, supported by the governments of Italy, Sweden, France and Austria, but did not advocate a working group any more (WTO 2001, 200b, 2001c, 2001d, 2001e).

The Council conclusions on the issue (Council of the European Union, 2003), adopted by unanimity in July 2003, followed that line and proposed that the EU focused on achieving coherence in policy-making in "all relevant international organizations, including in the WTO and in the ILO". Furthermore it agreed to pursue the status of observer for the ILO at the WTO⁸, and to "encourage discussions (...) on the respect of core labour standards during the review of a country's trade policy in the WTO (...)". This translated into the continuous defense of the linkage of trade and labor standards both at the GSP and the FTA level against the questioning of developing countries, and into posing questions on other members' labor standards compliance during the discussion of the Trade Policy Reviews (WTO, 2003, 2006, 2009).

The Council's document referred to above is the only formal document explicitly addressing the relation between trade and labor standards at the multilateral level. The EU Declaration on

⁸ There is to date no formal link between the two organizations.

Globalization of the December 2007 European council (Council of the European Union, 2008) only emphasizes “strategic cooperation” within multilateral organizations to shape globalization based on the European common values and principles.

From a general point of view, it can be stated that, even though it is difficult to assess the EU’s approach to trade and labor as a whole due to the plurality of arrangements, when looked at it from the outside it is characterized by a strong normative character. Policy documents and treaties highlight, in other words, the universal value of labor rights as human rights and the value of cooperation and positive incentives above sanctions. This is especially the case when the EU is compared to United States’ policy, which strikes as a) harder (i.e. more sanction-based) and b) less focused on a normative universal conception of labor standards. Even though the PTAs signed by the United States do not contain any sanctions to enforce labor standards, they have established an important enforcement machinery in which, following NAFTA side agreements’ blueprint, citizens (as opposed to only countries) may file complaints against the governments party to the agreement before instances especially created to administer the treaties’ labor provisions. Those complaints, if successful, may lead to consultations and, ultimately, to the imposition of monetary fines. Some of the agreements (e.g. US-CAFTA) go even further by bringing labor-related disputes into the general treaty’s dispute settlement mechanism. The US’ unilateral preference schemes, the GSP and the Africa Growth and Opportunity Act, also contain more strict provision than the EU’s, and are more frequently used. Furthermore, the US uses its own definition of relevant labor standards, which do not only include the four ILO’s fundamental standards, but also “acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health”. Conversely, the EU emphasizes the ILO’s core labor standards and the human rights dimension of labor standards, and attaches importance to the ratification of ILO conventions (Aasen, 2009; Grynberg & Qalo, 2005; Bourgeois, Dawar & Evenett, 2007).

II. Power and the logic of choice

From the above one may wonder why the EU has chosen not to pursue sanctions and a fortiori why it is advocating the linkage of trade with labor increasingly less. Here the ‘logic of choice’ provides a useful tool. In Baldwin (2000), the author asserts that the use of sanctions harbors an element of choice. In his work, the alternatives to be chosen from were formulated in terms of economic and military sanctions as a means to pursue foreign policy goals. But more importantly the argument which he put forward was that in analyzing power, one should apply

a comparative approach and incorporate different influence techniques. While the eventual choices made by the European Union might appear as ineffective, he argued that such a judgment can only be made in reference to the alternative means a policy-maker had at his disposal at the time of decision. Or as Baldwin convincingly writes:

“If the menu of choice includes only the options of sinking or swimming, the observation that swimming is a “notoriously poor” way to get from one place to another is not very helpful. . . . In the context of the logic of choice, the evaluation of one policy alternative in isolation from others makes little sense.” (pp.84)

In this paper we take a similar approach in the assessment of the European Union’s choices in the debates around labor standards. Starting from the observation that the EU represents a formidable power in trade with a relative low capacity for exerting influence through other means, we will elaborate on the constraints that led to the policy decisions as observed above.

To start an assessment of the policy choices available, we have to look at the means the EU has at its disposal. Baldwin (1985) distinguished between military means, economic means, diplomatic means and symbolic means as different channels through which influence can be exerted. Traditionally, scholars have looked at military and economic power as the most potent resources. Over the last decades this view has been broadened to incorporate softer forms of power (Nye, 1990). For the study of the trade-labor linkage from a European perspective it is quite clear that the EU’s military capacity is not an important factor to take into account. The absence of military resources and the capability to deploy and use these as the EU sees fit, severely constrains the utility of such power. Moreover, it behooves the question whether –for the purpose of enforcing labor standards- military power is cost-effective (see infra). In this paper, the focus will therefore be more on the choice between using economic or more softer forms of power⁹.

The logic of choice focuses on the efficiency of policy decisions, indicating a calculation of the costs associated with certain policy options with their effectiveness in obtaining the policy changes desired.

II a. The baseline model

There has been a long-standing debate on the effectiveness of economic sanctions. Notwithstanding the large increase in use of such measures since the nineties, the results have

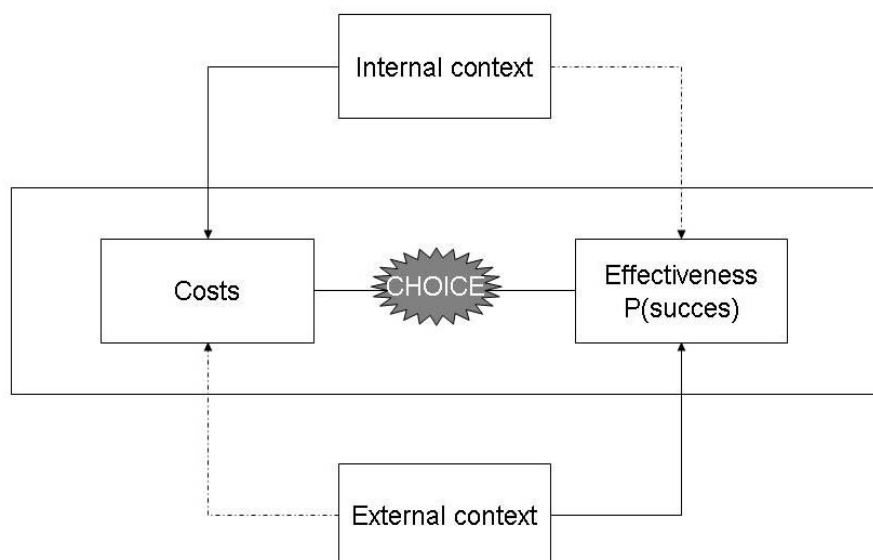
⁹ We interpret soft power in line with Nye (1990) in its primary use being the power to convince the target country that the compliance with labor standards is in their own interest.

been contested severely. Pape (1997) argued that in most cases where sanctions were imposed, these did not lead to actual compliance. In response to this claim, Drezner (1999,2003) argued that it is rather the threat than the actual sanction that leads to compliance. Countries subject to sanctions rarely comply after the sanction has been imposed as they will have foreseen such costs and are willing and able to bear them. This selection bias, Drezner argues, is responsible for the bad track record of economic sanctions.

A similar ambiguity can be found in the trade-labor debate. Brown (2001) presented a number of arguments why he believed economic coercion was not an effective policy tool to further the implementation of labor standards. Empirical research by Elliot (2000) confirmed that the cases where sanctions were imposed never led to significant concessions, however –and in line with the argument presented above- the threat of sanctions were successful in 57% of the cases investigated.

The costs for the EU when applying sanctions can be considered rather limited due to the asymmetries in trade between the EU and most of the target countries subject to such sanctions. The costs –as measured by the trade forgone – are a function of the size of the partners and their strategic value, economic or otherwise, for the EU. Most of the countries with a poor record on labor standards do not represent significant markets for the EU with India and China being the notable exception (see *infra*).

Figure 1: The conditioned logic of choice model



The cost-effectiveness of pursuing a more soft approach in this respect is weaker. Whereas there are no substantial costs involved in such an approach, it can be argued that the effectiveness cannot offset these benefits.

Here a puzzle presents itself: Why would the EU 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? In the following two subsections we will highlight two factors that severely constrain such choice. These are respectively the internal capacity to effectively wield the power resources over which the EU disposes, and the external context wherein the EU operates.

II.b the internal decision-making process

Whether power resources represent effective means to influence other actors' behavior 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 have featured prominent in the study of EU foreign policy (Hill, 1993). Hill pointed out that this divergence was due to three primary components: the ability to agree, resource availability and the instruments available at the EU's disposal.

Over time, the European Union has largely bridged the gap with regards to the resources and instruments available, but still faces difficulties to obtain internal consensus. Toje (2008) therefore speaks of a “consensus-capabilities gap” and argues that this represents the main hindrance in the pursuance of an effective EU foreign policy¹⁰. In the area of trade, Meunier and Nicolaidis pointed to this phenomenon -albeit in different wordings- when they conceptualized the EU as a conflicted trade power (Meunier and Nicolaidis, 2006). They argued that the EU's capability to transform its ‘formidable power in trade’ to real influence is contingent on the extent to which the EU is able to speak with one voice. An assumption that is particularly stringent when it comes to issues that go beyond trade. Here the potential for conflict is not limited to the content of the agreement but also with regards to the goals pursued. Member states who 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.

¹⁰ When referring to consensus we make abstraction of the different voting procedures by which ‘trade-and’-issues are being regulated in the Council. The reason for doing so is that, even under Qualified Majority Voting, a consensus is often pursued, particularly on major issues (Baldwin, 2006).

The requirement of consensus leads to a ‘lowest common denominator’ approach when assessing policy choices. Moravcik (1991) considered this as one of the three underlying principles of intergovernmentalist institutionalism. The policy outcomes here reflect the policy choice on which all (large) actors could agree. In case the water between the member states is too deep, consensus will only be found at the most basic level, being the normative underpinnings of foreign policy goals¹¹. Toje (2008: 139) captures this idea when he writes:

“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.”

In the context of the cost-effectiveness analysis suggested earlier, this would translate itself in including costs associated with obtaining an internal consensus. Assuming that any consensus can be brokered through side payments or compromises on other domains, the further the positions of the member states lay apart the higher the costs associated to a specific policy option.

The dotted arrow in figure 1 visualizes the impact of the internal context on the effectiveness of a specific policy tool. To see how this relation works we need to borrow the idea of credible commitments. In case there is a weak consensus on the application of economic sanctions, the chance that other countries can thwart an effective sanction being applied is non-negligible.

II.c The external context

The choice of the means used to pursue labor standards, is also affected by the external context. Relational approaches to power, have long ascertained that the question of influence is intrinsically linked to the question of scope and domain. The relevance of power for analytical purposes depends on whom it tries to influence and on which topic.

Krustev (2010) incorporated the external perspective when assessing the choice of whether or not to incorporate sanctions and effectively enforce them in case of non-compliance. The author started from the observation that the United States under the Clinton administration

¹¹ 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 regards 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.

imposed sanctions on Taiwan for its failure to counter the illegal trade in rhinoceros horn and tiger bones, but refrained from doing so against China. Therefore he suggested to include the size and importance of a target country in the analysis of sanctions. In a similar fashion it was argued that the EU restrained itself from sanctioning China over their poor labor standard compliance (Orbie, 2006).

The decision not to apply economic sanctions to 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 seeing that these are correlated with the amount of trade between the countries concerned. On the other hand it affects the effectiveness of such sanctions. In this sense De Nevers (2007) argued that whether a country acts through coercion or attraction depends on the size of the opposing partner. Larger more powerful countries are persuaded rather through softer versions of power whereas weak nations can more readily be the target of coercive forms of power.

What we wish to emphasize in this paper, is that there is an additional factor to take into account i.e. the perception by external actors. Nye (2002) argued:

... for most of today's great powers, the use of force would jeopardize their economic objectives. Even nondemocratic countries that feel fewer popular moral constraints on the use of force have to consider its effects on their economic objectives. Pp.550

In a similar way as the use of military force can undermine the economic objectives, so too should the effects of using economic coercive force for the effectiveness of soft power be taken into consideration. Etzioni (1961) suggested that coercive power leads to a negative perception, whereas it invoked a calculated logic (which can be slightly negative or positive) in the case of remunerative power. Finally in the case of 'normative power' it led to a positive perception. These perceptions matter for the ease by which the power resources used, can accomplish the desired effect. This is especially the case if one aims to apply soft power. It is indeed rather difficult to portray the policy proposed as attractive, or your proposition as benefiting the general interest, when you are being perceived by your negotiating partners as pursuant of your own interests.

Moreover, 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 endeavor, the more likely any sanctions imposed will be questioned. Retaliatory action is more likely and

thus it increases the costs of pursuing a coercive, economic approach. This is indicated by the dotted arrow in figure 1.

III. The accidental origins of the EU's position on the trade-labor linkage: soft power by default?¹²

The trade-labor linkage at the multilateral level may be in principle regarded as a typical field where the EU has chosen to apply its soft power: so far, the entity has never explicitly pushed for the coupling of labor standards to economic sanctions at the WTO, but rather emphasized the normative dimension of labor standards and their relation to universal human rights. However, based on the theoretical arguments presented above, we argue that this choice did not emerge as such in a consciously and intentional manner, but was shaped by two developments that do not strictly belong to Baldwin's cost-benefit analysis: the lack of a consensus within the EU, which ended in the "lowest common denominator" of a soft power approach -based on the consensus over the underlying norms- to the trade and labor subject (Point III.a), and the strong opposition of the developing countries, which originated changes in the linkage rhetoric both at the EU level and at the ILO towards a more universal, rights-based perspective (Point III.b).

III.a The EU's lack of consensus

The lack of a European consensus on the trade-labor linkage at the multilateral level becomes evident from the confrontation among EU member states and between the member states and the commission, that became clear during the multilateral discussions on trade and labor at the WTO, which was masked at the unilateral and bilateral levels by the institutional environment.

The EU's position on linkage at the multilateral level can be related to a cleavage in EU politics, in which the positions of the member states and the Commission are radically different, going from a complete rejection of any linkage between trade and labor to favoring the establishment of formal relations between the WTO and the ILO, on either normative or economic grounds. That cleavage has been documented by Orbie (2006) for the GSP discussions, but is most clearly to be seen in the multilateral discussions that took place at the WTO between 1994 and 1999.

¹² 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.

Even though discussions on the trade-labor linkage had taken place at the GATT/WTO during the 1970 and during the 1980s¹³, it was not until the 1990s that the labor issue, and with it the intra-EU division, fully surfaced at the organization (cf. supra). This happened in three occasions: 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 at the internal level of the Council, and between the Council and the Commission, in the statements read both by the Commission and by the country holding the temporary Presidency in the name of the Council).

The Council's statement, read by Greece, underlined the fact that the discussion did not have a North-South character since, "even among industrialized countries, even in the European Union, points of view are not uniform". Furthermore, the presence of both pro- and anti-linkage arguments made the EU's ambivalent position clear. On the one hand, the statement did not seem to be entirely anti-linkage: the EU recognized the fears that "increased international competition" had arisen "among public opinion in certain countries", and it did not oppose a discussion ("constructive dialogue") on "social working conditions" or on competition policy¹⁴ (also addressed at the end of the UR, would become one of the SGP issues). On the other hand, two elements of the statement moderated the EU's openness towards a discussion. First, the EU did not make clear whether the discussion it favored should take place *at the WTO* or at the level of the UN system. Second, it made clear that the EU's intention was "not to impose a model of society", since "diversity of cultures is part of the world heritage, and each country is best capable of organizing its own structures to ensure social cohesion while upholding the universal principles of human rights and fundamental freedoms". It was thus, clearly, a compromise.

¹³ During the 1970s discussions, neither the EU nor its member states issued any statements. During the 1980s discussions, dominated by the US' and developing countries' statements, the EU kept a low profile and maintained a reactive rather than a proactive position, issuing general statements that were nevertheless slightly pro-linkage. It claimed, for instance, to "not have preconceived ideas" on the linkage, and to be ready to explore it (GATT, 1987). It added, in a later discussion, that it was pointless to discuss whether the GATT could or could not discuss the topic of labor standards, and that it "would have no objection to the establishment of a working party", proposed by the US. It furthermore tried to avoid confrontation by postponing the establishment of such a working party until the opposition of the developing countries were eliminated (GATT, 1987b, 1988). At that time, the member states did not intervene.

¹⁴ The topic was also introduced at the end of the Uruguay Round by the United States, and would later become one of the Singapore issues.

The EU's Member States' (MS) statements echo the Presidency's intervention: whereas Belgium, Denmark, France, Luxemburg, Portugal and Spain manifested themselves in favor of linkage, the United Kingdom's positioned itself clearly against it¹⁵. In this context, it should be noted that whereas most states favoring linkage only framed the topic from a normative (i.e. human rights) perspective, Portugal linked it directly to the performance of its textile industry. José Manuel Durao Barroso, at the time Portuguese Minister of Foreign Affairs, referred to "the problem of the textiles sector (...), which, more than any other sector, requires a just basis for competition and respect for the rules and disciplines of international trade"¹⁶.

Contrary to the Council representative, Trade Commissioner Leon Brittan showed himself unmistakably favorable to linkage: "This issue [(the linkage)] is a legitimate concern (...). The WTO must be actively involved on this issue, working with the International Labour Office and other organizations. The WTO must address problems such as child exploitation, forced labour or the denial to workers of free speech or free association"¹⁷.

By 1996, the discussion did not seem to have considerably progressed. As the polarization mounted between the between the United States and the developing countries increased¹⁸. The Commission, did not make any formal proposal, but seemed to lean towards the US approach, and in an internal document advocated for "a very progressive stance" on trade and labor issues and for the establishment of a working party on labor¹⁹. 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 labor-trade discussion at the WTO to forced and child labor, and freedom of association. France declared at the ILO that it would seek the inclusion of the topic into the WTO's agenda (Brazilian Delegation in Geneva, 1996).

¹⁵ In February 1994, a British diplomat had informed the Brazilian Ministry of External Relations, during an informal meeting, that it that considered it "inappropriate" to include the labor topic into the WTO's working program (Brazilian Ministry of External Relations, 1994).

¹⁶ In the same vein, a high-ranking officer from the French Foreign Ministry assured his counterpart from a developing country that his country only looked for a "face-saving" solution before internal pressures in favor of the establishment of a social clause (Brazilian Ministry of External Relations, 1994b).

¹⁷ Nevertheless, the North-South Relations Director from the Commission had recognized, during an interview with the Brazilian Ministry of Foreign Affairs, that the solution for social problems did not depend on the incorporation of labor standards to trade agreements' disciplines, such as GATT. He admitted that progress in the social field depended less from the imposition of multilateral sanctions than on sensitizing national governments in favor of investment on human capital (Brazilian Ministry of External Relations, 1994c).

¹⁸ It would mount to such proportions that an invitation for the ILO Director-General to address the plenary at the Ministerial Conference was cancelled due to India's opposition.

¹⁹ The Commission had already adopted such a stance in 1978, when it proposed (in vain) to incorporate a labor clause to the GSP (Orbie, 2006).

During the Conference, no consensus seemed to have been found at the level of the Member States, since the Presidency's statement did not mention the topic, in spite of it being one of the most visible and controversial agenda points. Nearly all member states clearly manifested their will to discuss the issue at the WTO²⁰, embedding their requests whether in normative terms of universality and workers' well-being (Finland, France²¹, Italy, Austria, the Netherlands, Spain, Belgium) or in economic terms of competition for local industries (Portugal). The United Kingdom, whose position and formulations were practically identical to the developing countries opposing linkage, was the only member state that preferred to see labor standards issues discussed at the ILO. Simultaneously, and contrary to its visibility on the preparations, the Commission only gave its support in a veiled way, by underlining the importance of labor standards for the WTO's credibility, and by hoping that the Singapore Ministerial Declaration, which included some language on labor, would "provide the basis for some WTO continuity beyond Singapore" in the discussion. The relevant paragraph of the Declaration reads as follows:

"4. We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration".

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. 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

²⁰ 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.

²¹ Even though the French government emphasized its compromise with human rights and universal values, it also hinted at internal political motivations by referring to the public opinion's disapproval of competitive advantage built on "inhuman exploitation of the workers" and to the unemployment effects of globalization (TEL 1996/904).

supported the proposal, directly or indirectly, in their statements at the Conference plenary, the United Kingdom, in a clear expression of dissent, omitted any reference to it. The British representative did speak, however, against those believing that globalization would undermine social structures. Finland, which held the Council's presidency (Finland) at the time, did not issue any statement in the name of the whole EU membership.

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. The United Kingdom, Portugal and Spain did not mention the issue, but the Presidency's statement (Belgium) did ask for ILO-WTO cooperation in the name of the EU. This time, the Commission did not address the topic.

The above account makes clear several features of the EU's approach towards labor standards that are relevant to its evaluation as the exercise of soft power. First, if we assess the multilateral debate in the framework of both the unilateral and the multilateral initiatives, it seems unlikely that the confrontation between, on the one hand, most member states and the Commission and, on the other hand, the United Kingdom did not reproduce previous or later discussions in the framework of the GSP or the PTAs²². These discussions may have been masked by the fact that GSP and trade-related decisions are adopted, following Art. 133 TEC, by qualified majority voting as opposed to unanimity or consensus, what may have biased the final result towards the opinion of a potential pro-linkage majority²³.

The internal differences result in large discrepancies among the unilateral, bilateral and multilateral level. The economic component is the strongest at the unilateral level, where trade preferences are directly linked to the compliance of labor standards. At the bilateral level, divergences are replicated across the different agreements, but their general tone is softer than the GSP's, since no sanctions are foreseen and, in principle the furthest a disagreement on labor issues can lead to (in enforcement terms) are consultations (cf. supra, EPA). At the multilateral level, the EU's behavior on the linkage is even less pronounced (cf. infra): although it defended

²² The fact that that confrontation happened publicly, at an international forum, as well as its explicit character (the UK did not limit itself to not supporting the Commission's statement, but frontally rebated it) makes its importance manifest. It should also be added that such a confrontation was only made possible by the lack of institutional clarity regarding the right of the Commission to address non-trade issues. Even though the trade policy-decision making in general is an exclusive competence of the EU and therefore fully exercised by the Commission, it is unclear whether that competence extends to include labor issues in trade agreements, since social policy decision-making is subjected to the competence of both the EU and its member states (Novitz, 2002).

²³ The discussions on the introduction of a labor linkage to the GSP have been documented by Orbie (2006).

an ILO-WTO working group during the 1990s, it never advocated any conditionality, and its current position does not even mention any working group any more. In this framework, it is pertinent to draw a parallel (or a lack thereof) with the United States, where all three levels are much more focused on the use of trade power.

In this sense, until the Council conclusions of 2003, 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 common denominator but the *lowest* common denominator of the member states' and the Commission's interests, whether coercive or non-coercive, achieved by default rather than by means of a conscious analysis of the approach's effectiveness. From this perspective, we cannot argue that there was effectively an exercise of soft power at stake, at least at the multilateral level.

A second relevant feature that can be extracted from the above account is the fact that the consensus on a common approach was not only encumbered by the presence of different views on the trade-labor linkage, but also by the confusion between normative and economic goals, and the questioned legitimacy of economic means to achieve economic goals implied by those views. Given the countries' statements, it is clear that motivation for linkage can be twofold: whereas several states, such as Finland, Denmark and Sweden, seem to support the linkage out of humanitarian reasons, the communications from France and Portugal suggest the intention to protect their import-competing sectors through eventual sanctions²⁴. When diplomats' and journalists' accounts of the Singapore and Seattle processes are assessed, it can be said that, in general, the public defense of the linkage, at least by Western governments was more of an instrument to placate domestic pressures than a truly normative instrument directed at the export of certain political institutions²⁵. It was, in other words, not clear in which terms (trade protection or humanitarian motives) the cost-effectiveness analysis should take place, and what were the alternatives for action (trade remedies or development assistance), what confirms the conflicted nature of the EU as a trade power that has already been pointed out by the literature (Meunier & Nicolaidis, 2006).

²⁴ Orbie (2006) has documented economic pressures on the Council to enact labor clauses in the GSP since the 1970s. He also relates the emphasis on sanctions to the fact that they primarily benefit EU producers, as opposed to incentives (i.e. trade concessions), which disadvantage them.

²⁵ The "cosmetic" character of the discussion is reflected, for instance, in the consideration of most developed countries, during a meeting, that the Singapore Declaration needed to be "a short document, of a markedly political and "forward-looking" nature", to give public opinion a positive evaluation of the implementation of the Uruguay Round's results and of the WTO's functioning as one of the fundamental vectors in the liberalization process" (Brazilian Delegation in Geneva, 1996b).

II.b The external context

The EU's choice to exercise a "soft power" approach with the multilateral trade-labor linkage was not only influenced by the lack of consensus at the EU level itself, but also by the entity's external context, which was mainly characterized by the developing countries' widespread and strong opposition to the linkage under any (even "soft") form. This obliged the EU to moderate its discourse, moving from an economic, coercive to a normative, "soft" emphasis. The discursive turn in the EU's approach can be related to both an attempt not to lose credibility as a norms-promoting actor, and as a product of the EU's cost-effectiveness analysis of potential sanctions against powerful trade partners.

The previous sub-sections have made clear that the trade-labor standards debate has been characterized, at all policy levels, by heated discussions. Even though the lack of consensus was pervasive among developed countries, the most visible confrontation occurred between the developing countries and mainly the US, mainly supported by France and Norway. The closed front formed by the developing countries as a whole in that confrontation had a strong influence in the overall labor standards discourse of both the developed countries and the ILO.

The developing countries' opposition from the very beginning of the linkage discussions, in 1994, had two main features. It was, in the first place, unrelenting: when the 1994, and even the 1978 developing country statements at the GATT/WTO (GATT, 1978) are compared to statements from 1999 on, their principled opposition does not move a tittle. The standard formulation consists in positing that the trade-labor linkage cannot be discussed at the WTO because it may (or will) lead to protectionist measures. There was, in other words, no substantial discussion on the issue (in that sense, it did not matter whether labor standards were or were not linked to trade), but only the unconditional denial to start a procedural one.

Secondly, the opposition was unanimous. Even though some South American countries (Argentina, Chile) and South Africa did make some attempts, previous to the Singapore Ministerial Conference, to lean in favor of a social clause, or at least of an ILO-WTO discussion²⁶, those efforts were soon overrun by the coordination efforts of mainly India and

²⁶ In the South American case, this was most likely motivated by a lobbying campaign started by a regional trade union. In South Africa, an agreement in favor of the social clause, promoted by the largest trade union (which also had institutional links with the governing party) had been reached in 1995 at the national body for tripartite dialogue.

Pakistan, which addressed the issue in numerous informal meetings previous to the WTO Ministerial Conferences, and lobbied other governments to form a common front against the discussion.

The developing countries' strategy proved extremely successful in influencing both the developing 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 (i.e. by default attempting to convince the developing countries of their non-protectionist intentions) rather than on neutrally 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 Lamy in a speech before the European Trade Unions (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”²⁷.

In its 1996 internal communication to the Council, the Commission promoted an incentive-based view of the trade-labor linkage as included in the GSP. In doing so, it did not discard the possibility of incorporating such a system to the potential outcome of the WTO-ILO discussion that the EU would formally propose in Seattle, (European Commission, 1996)

Later documents progressively dilute the emphasis on trade measures, universal labor standards and the circumscription of the dialogue to the WTO-ILO, and instead emphasize the need to “conciliate” and increase the coherence of international economic and social policy-making²⁸ in general, involving UN Agencies (including the ILO), the international financial institutions and

²⁷ The change does not seem to have always been of a purely discursive nature. In 2002, Pascal Lamy stated before the Trade-Union Advisory Committee of the Organization for Economic Cooperation and Development 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. In other words, commercial motives were also important (European Commission, 2002).

²⁸ Even though the Commission identified the Council conclusions of 1999, from which the ILO-WTO working forum proposal had originated, as the EU's position of labor standards, its 2001 position paper on the promotion of core labor standards (European Commission, 2001) downplayed that ingredient to emphasize “coherence”.

the WTO. Even the demand for an observer status for the ILO at the WTO, still present in 2003, disappeared from late documents²⁹.

The developing countries' strong opposition to the labor issue did not only affect the EU's approach directly; it obliged the ILO's secretariat to soften its language, what on its turn provided the EU with the rhetorical instruments necessary to embed its own consensus in a multilateral normative framework.

Through the mid-1990s, the ILO secretariat advocated a mildly economically oriented policy towards labor standards in the context of globalization. The topic was first addressed by the Director-General's Annual Report³⁰ that would be presented to the International Labor Conference (ILC) (the ILO's plenary meeting and highest decision-making body) in June 1994 (ILO, 1994). Even though that report discarded the use of trade sanctions in response to labor standards violations or the equalization of labor costs, it pleaded for a strengthened mechanism of enforcement for the most essential labor standards in view of the weakening of tripartism and the nation-state caused by the economic crisis and globalization (cf. *infra*). In that context, the Director-General spoke of the labor standards containing basic human rights (cf. *supra*) as the core of a potential social clause that would link them to the removal of already present trade barriers, given the fact that all countries – irrespective of their ratification status and level of development – are obliged to comply with them (Van Roozendaal, pp. 191-192). He also pleaded for cooperation with the World Bank, WTO and IMF in that framework.

The ILO's proposal awakened similar reactions to the ones in Singapore in the developing countries. After several embittered discussions, the ILO members adopted the 1998 Declaration on Fundamental Principles and Rights at Work (cf. *supra*) 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 labor standards” were intentionally replaced by the more neutral label “the social dimension of globalization”: the previously established Working Party on the Social Dimension of the

²⁹ It should be noted that the developing countries' influence on the European discourse was not unidirectional: the lack of consensus described above provided the developing countries' front with leverage in the discussions, since a disunited EU was by definition a weak rival, as well as with a justification for their own position. This can be clearly seen, for instance, in the Brazilian diplomatic correspondence, where the Brazilian opposition to the linkage is often justified by the fact that the developed countries, and more specifically the European Union, cannot agree among themselves.

³⁰ The Director General's annual reports, which express the Secretariat's priorities and intentions, provide constituents with guidelines to discuss the organization's general policy line to follow. The Report is traditionally provided to the delegations some months before the ILC takes place during the first half of June.

Liberalization of International Trade was renamed as Working Party on the Social Dimension of Globalization, which would later establish a World Commission on the Social Dimension of Globalization. This implied, as in the case of the ILO, a broadening of the policy focus from the narrow trade-labor relationship to the much broader impact of globalization on social conditions (ILO, 1998, 1998b; World Commission on the Social Dimension of Globalization, 2004).

The arrival of a new Director-General (Juan Somavía) to the ILO in 1999 meant the introduction of even more reforms, synthesized in the Decent Work paradigm. The concept, consecrated in the ILO's 2008 Declaration on Social Justice for a Fair Globalization, 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, 1999, 2001, 2008).

When the evolution of the EU's language on trade and labor standard throughout the 1990s and the early 2000s is assessed with the ILO's own evolution as background, it becomes clear that the EU's move away from the economic language of trade and labor 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 calls for a better distribution of the benefits of trade are made without making any concrete attempts to link the regime to the labor institutions, become ubiquitous in the EU's Commission and Council documents (European Commission, 2004; 2004b; 2006; 2006b). At the same time, the labor conditionality present in the GSP remained as such and, as it has been seen above, a new (albeit extremely weak) conditionality was introduced to the EPAs.

The evolution of the EU's discourse towards "soft power" should be seen, in the framework of its relationship with the developing countries, 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 (cf. *supra*) on the economic motivation of linkage undermined the "soft-power" or humanitarian objectives of human rights promotion, by making the EU appear as a "hypocrite power" pursuing its narrow protectionist interests rather than as a normative one³¹. On the other hand, the visible lack of consensus among the member states strengthened the developing countries' argument. By using the EU's

³¹ This argument is also valid, albeit in a much larger scale, for the US.

internal divisions as an example, the linkage opponents justified their own position: the UK's opposition³² to the linkage contributed to "mainstreaming" it beyond the group of developing countries³³. 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, and by portraying it as an entity truly compromised with the defense of universal values.

Second, cost-effectiveness elements are highly likely to have played a role in the EU's discursive change. The potential (threat of) labor-related sanctions entailed risks of a) cross-retaliation on the part of developing countries, or at least unwillingness to discuss other topics of the multilateral agenda crucial to the EU's liberalization strategy (investment, services) and b) a surge in the prices of (possibly labor-intensive) products subjected to sanctions due to a drop in their supply. Whereas those risks would be negligible in the case of small developing country markets, larger countries opposing the trade-labor linkage such as India, Pakistan or Brazil³⁴ did pose a larger risk. This rationale is further strengthened by the fact that the GSP suspension has so far been applied only to smaller economies, and by the prompt withdrawal of the labor components in the EU-India FTA negotiations after India threatened with pulling out of the talks.

Conclusion

In this paper we analyzed the strategy used by the European Union for the promotion of labor standards. Starting from the idea that a policy-maker has different instruments at his disposal, we compared their effectiveness and raised the question as to why the EU did not advocate sanctions. This choice, we argued, was not just driven by a comparative cost-effectiveness analysis but needed to be supplemented with the internal and external context that shape such decisions.

More specifically, we found that the EU's lack of consensus led to a lowest common denominator approach where the application of soft power prevailed over a harder –coercive– approach. Moreover, the external context, reinforced this choice as the EU was pushed towards a softer positioning due to the developing countries' opposition. They perceived the

³² Other developed countries, such as Japan and Australia, also played a role in this regard.

³³ This is to be seen, for instance, in numerous internal communications between the Brazilian delegation in Geneva and the Brazilian Ministry of External Relations, where Brazil often justifies its own position by stating that "even some developed countries are against the linkage". A statement by the Brazilian Minister is illustrative in this regard: "Even the European Union is very divided and its position will have to be the lowest common denominator" (Lamprea, XXXX):

³⁴ China also opposed linkage, but was not yet part of the WTO during the climax of the trade-labor discussion.

linkage as a hidden form of protectionism, reducing the chance of an effective inclusion of such standards at the WTO. Perceptions affect the effectiveness of different policy options.

Further research could strengthen these findings through the inclusion of an analysis of the approach taken by the EU in its bilateral trade negotiations. We have not been able to fully explain the positions taken by the EU in its bilateral and unilateral undertakings. Moreover, the way in which discussions at these different levels have an effect on each-other might also suggest a venue for further research.

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