

SOCIAL NORMS IN EU BILATERAL TRADE AGREEMENTS: A COMPARATIVE OVERVIEW

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I INTRODUCTION

In 2001, the EU committed itself to promoting social norms through trade agreements.¹ It was clear from the outset that trade would be the most important instrument at the EU's disposal to promote social norms. Trade is generally considered the most powerful instrument in the EU's external relations, because the EU can use access to its large market as a leverage towards external partners.² By including social and environmental goals into its trade policy, the EU could become a global role model in managing possible negative effects of globalisation. However, explorative research has shown that the level of commitment to these goals differs between the trade agreements.³ While the number of EU bilateral trade agreements has proliferated in recent years, with many others currently being negotiated, no comparative and systematic research has been conducted on the scope, enforceability and the promotion of these social norms.⁴ In this paper, therefore, we provide a descriptive overview of the incorporation of social norms in trade agreements and examine whether any evolution can be observed in the EU's commitment to include social norms.

Studying the EU's social commitment through trade policy is all the more interesting in light of two contradictory tendencies that are currently noticeable in EU trade policy-making. On the one hand, in the EU's latest trade strategy, 'Trade, Growth and World Affairs', normative goals are pushed towards the sidelines, bearing little resemblance with the 'harnessing globalisation' discourse introduced under Trade Commissioner Pascal Lamy (1999-2004) and continued

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¹ European Commission, 'Promoting Core Labour Standards and improving social governance in the context of globalisation', COM (2001) 416.

² M. Smith and S. Woolcock, 'Negotiating globalization: the foreign economic policy in the new Millennium: a leadership role for the European Union?', 4 *European Foreign Affairs Review* 1999, at 439; S. Meunier and K. Nicolaïdis, 'The European Union as a Conflicted Trade Power', 13 *Journal of European Public Policy* 2006, at 906.

³ R. Peels, 'The inclusion of labour provisions in EU's bilateral trade and investment agreements: What about dialogue and disputes?' (Leuven: Research Institute for Work and Society 2011), available at <https://hiva.kuleuven.be/resources/pdf/publicaties/R1377_PeelsMay2011.pdf>.

⁴ Except for an exploratory special issue of 5 *European Foreign Affairs Review* 2009 and J. Orbie, 'Promoting Labour Standards Through Trade: Normative Power or Regulatory State Europe?', in R. Whitman (ed.), *Normative Power Europe: Empirical and theoretical perspectives* (Basingstoke: Palgrave 2011).

– albeit in a markedly reduced form – under his successor Peter Mandelson (2004-2008).⁵ On the other hand, the link between trade and social issues has received a new impetus with the Lisbon Treaty, which states that the common commercial policy shall be conducted in the context of the principles and objectives of the Union’s external action.⁶ These objectives include equality and solidarity.⁷ It also establishes the aim of ‘fair trade’ besides free trade.⁸ Furthermore, the European Parliament (EP), a strong supporter of social norms in trade agreements, can influence the debate more than before because of its new competences in trade policy.

The first part of this paper conceptualises the EU’s commitment to include social norms in trade agreements. It does so by making a distinction between the scope, the enforceability and the promotion of these norms. Next, we analyse EU trade agreements concluded over the past 18 years, starting with the EuroMed Association Agreements (AAs) and ending with the most recent agreements. We conclude by summarising the findings, and highlight how the EU’s commitment to social norms in EU bilateral trade agreements has changed over time.

II SCOPE, ENFORCEABILITY AND PROMOTION

In order to systematically and comparatively categorise the inclusion of social norms in EU trade agreements, we draw on the work by Abbott *et al.*,⁹ and Goldstein *et al.*,¹⁰ on legalisation. They see legalisation as a concept that expresses to which extent institutions have obligatory and precise rules that can be interpreted by neutral arbiters. Each institution can be defined along three dimensions: obligation, precision and delegation. *Obligation* refers to the degree to which rules are obligatory.¹¹ *Precision* depends on the extent to which the rules are precisely defined, so that actors know what they are expected to do in a certain situation.¹² The more precise the rules are, the less room for interpretation is left. An important element is furthermore that the rules are coherent. *Delegation* concerns the delegation of the interpretation, monitoring and implementation of the rules to a neutral third party. All combinations of these three characteristics are possible.

For the purpose of our research, we call the first dimension the *scope*. The scope ranges from low precision with general references to social cooperation to precise social human rights. The more precise norms are, the more likely it

⁵ European Commission, ‘Trade, Growth and World Affairs’, COM (2010) 612.

⁶ See Art. 207 Treaty on the Functioning of the European Union (TFEU).

⁷ See Art. 21(1) Treaty on the European Union (TEU).

⁸ See Art. 3 TEU.

⁹ K.W. Abbott *et al.*, ‘The Concept of Legalization’, 54 *International Organization* 2000, at 401.

¹⁰ J. Goldstein *et al.*, ‘Introduction: Legalization and World Politics’, 54 *International Organization* 2000, at 385.

¹¹ *Ibid.*

¹² See K.W. Abbott *et al.*, *supra* note 9.

is that they will be legally enforceable.¹³ This means a clear connection can be expected between the ‘scope’ of social norms on the one hand and their ‘enforceability’ on the other hand. Our second dimension deals with the *enforceability* of these social norms, which consists of the two dimensions previously called ‘obligation’ and ‘delegation’. Here we investigate to which extent the social norms are obligatory and to which extent disputes over them are delegated to third parties. In the third part of our analysis, we include a fourth dimension, not taken up by the authors on legalisation, which we will call *promotion*. This element is added because this is a new trend in EU trade agreements, which is aimed at extending the promotion and monitoring of social norms towards other actors, in our case companies and civil society organisations.

1. Scope: how ambitious are the social norms?

‘Social norms’ is a general term, which can be distinguished in three distinct categories and levels of ambition. A first category concerns any kind of *general social norms* aimed at social cooperation. For norms in this category, no reference has to be made to labour standards of the International Labour Organization (ILO). In practice, almost all agreements concluded by the EU include some commitments to social cooperation. These references are mostly general. Their precision is low and, as a result thereof, not legally enforceable.

For our second and third category, we draw upon the Decent Work Agenda of the ILO.¹⁴ Our second category consists of the four Core Labour Standards (CLS): (a) the freedom of association and the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation. Since the CLS are increasingly seen as human rights, we label them as *human rights-based social norms*. If these are incorporated in an agreement, it means that the social commitment is high.

Our third category consists of *social governance norms*. While the goal of social dialogue in the Decent Work Agenda is focused on the relations between workers’ and employers’ organisations and their dialogue with each other and with their government, we will broaden this social dialogue in our analysis to include all dialogue on social issues between the Parties themselves as well as between societal actors of the respective Parties, including civil society organisations. Social protection and social dialogue are categorised under the term ‘social governance norms’, and this for two reasons. Firstly, the term ‘social governance’ was coined by the European Commission (EC) in 2001 to

¹³ See also H. Horn *et al.*, ‘Beyond the WTO? An anatomy of EU and US preferential trade agreements’, in VII *Bruegel Blueprint Series* 2009.

¹⁴ This agenda comprises four strategic objectives: creating jobs, guaranteeing rights at work, extending social protection and promoting social dialogue. What we have termed ‘human rights-based social norms’ refers to the second strategic objective. And our ‘social governance norms’ refer to the two last strategic objectives. The objective of job creation is not taken up in our analysis because we see no sign of this being an element in trade negotiations.

label commitments to social development more generally.¹⁵ Furthermore, the aims of social protection and social dialogue are pursued in a non-hierarchical and cooperative way, which is reflected in the term ‘governance’. We thus make a clear distinction between CLS as fundamental social rights and other social goals.

In sum, the scope of social norms consists of a continuum ranging from general social norms over social governance norms to CLS as fundamental human rights at the other end. It is difficult, however, to determine which category is the most ambitious one in terms of social commitment: social governance norms or CLS? Both the EP¹⁶ and the EC¹⁷ see respect for CLS as a minimum requirement, while they see the Decent Work Agenda as the ultimate social objective to be pursued. This may seem logical, since, if a country adheres to the CLS, its citizens are in the possibility of negotiating other objectives such as minimum wages, pension schemes and safety at work. On the other hand, it is possible for a state to provide social security schemes without giving the citizens the right to join a trade union. Therefore, we consider CLS as the most ambitious category. This will be confirmed in our analysis, which shows that the EU first promoted social norms as governance norms before it framed them as fundamental social rights.

Following this categorisation, we explore the scope of the social norms for each trade agreement as summarised in Table 1.

Table 1. Scope of social norms

General Social norms	Social Governance Norms	HR-Based Social Norms
Social cooperation	Social protection Social dialogue	4 CLS

2. **Enforceability: are social norms obligatory and how are disputes managed?**

The enforceability of these social norms concerns, first of all, the extent to which the social provisions are obligatory. The question here is to which extent a Party can take measures in case it believes social provisions incorporated in the agreement are not respected. The second element of enforceability regards the above mentioned delegation to a third party.

In assessing obligation, one needs to consider whether social norms are part of the ‘essential elements clause’. Since 1995, every cooperation and association agreement concluded by the EU should mention the need to respect democratic principles and fundamental human rights.¹⁸ There has been a ma-

¹⁵ See European Commission, *supra* note 1.

¹⁶ European Parliament, ‘Human rights, social and environmental standards in International Trade agreements’, 2009/2219/INI.

¹⁷ See European Commission, *supra* note 1.

¹⁸ *Idem*, at 12.

major debate on whether social/labour rights are part of these fundamental rights¹⁹ and thus whether the essential elements clause can be interpreted to also include core labour rights. Following a narrow approach, social rights tend to be separated from civil and political rights, which have a more solid legal basis. This is presumably the common interpretation of the EU's trade partners, and the EU's sanctioning practice is in line with this.²⁰ However, there is a growing consensus that social/labour rights are part of fundamental human rights. Some argue that this question is already answered in practice,²¹ given that so many states are a member of the ILO. According to the EC, CLS are indeed a part of the essential elements clause.²² They are fully in line with UN Conventions such as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political rights, both adopted in 1966.²³ However, it is quite unclear then why the Cotonou Agreement explicitly mentions all fundamental freedoms and human rights, 'be they civil and political, or economic, social and cultural'. If the CLS are in fact already included in any essential elements clause, there is no need to mention this explicitly.

In some agreements, there is a possibility for the Parties to take 'appropriate measures' in accordance with international law in case another Party violates the essential elements. These measures should be in accordance with international law and should be proportionate to the violations. As an ultimate resort, the Party can suspend the agreement. If an agreement contains an essential elements clause and a suspension clause, it is theoretically possible that a violation of CLS could lead to suspension of the agreement. This has been acknowledged by the EC, although there is a consensus that this would only be done as a matter of last resort.

Delegation concerns the extent to which the interpretation, monitoring and implementation of the rules are delegated to a neutral third party. This third party can consist of arbitrators, courts and administrative organisations. Delegation is low if the Parties to the agreement can bargain politically about a dispute, where they can accept or reject proposals from the other Party without

¹⁹ J. Fudge, 'The New Discourse of Labour Rights: From Social to Fundamental Rights?', 29 *Comparative Labor Law and Policy Journal* 2007, at 29; I. Manners, 'The Social Dimension of EU Trade Policies: Reflections from a Normative Power Perspective', 14 *European Foreign Affairs Review* 2009, at 785; P. Alston, *Labour rights as human rights*. (Oxford: Oxford University Press 2005).

²⁰ The violation of CLS by ACP countries has never been used by the EU to impose sanctions. See J. Orbie and O. Barbarinde, 'The Social Dimension of Globalization and EU Development Policy: Promoting Core Labour Standards and Corporate Social Responsibility', 30 *European Integration* 2008, at 467. Also in the analysed bilateral trade agreements the violation of CLS has never been used by the EU for a suspension of the agreement.

²¹ E. Lee, 'Globalization and labour standards: A review of issues', 136 *International Labour Review* 1997, at 173; G. Tsogas, 'Labour standards in international trade agreements: an assessment of the arguments', 10 *International Journal of Human Resource Management*, at 351.

²² See European Commission, *supra* note 1. Also see authors' interview at DG Trade, Brussels, 25 February 2013.

²³ G. Rodgers *et al.*, *The International Labour Organization and the quest for social justice, 1919–2009* (Geneva: International Labour Office 2009).

legally justifying this. Delegation is high when dispute settlement is delegated to a third Party which is authorised to interpret and apply rules.

We discern three types (and, in the same way, three gradations) of delegation.²⁴ In the case of rather weak enforcement mechanisms, Parties can resort to *government consultations* where matters of mutual interest (often under the trade and sustainable development chapter) can be discussed at governmental level. The aim is to arrive at a mutually satisfactory solution. In some cases, the Parties have the possibility to ask for information or views of bodies such as the ILO.

In this first type of delegation, the Parties only consult each other. If, in the eyes of one of the Parties, these consultations have not lead to a satisfactory outcome, a *panel of experts* can be consulted in a second phase. Many safeguards are included to ensure neutrality. Examples are strict deadlines for each step in the procedure and strict rules for the composition of these panels.²⁵ However, delegation is still weak because there is no provision on what will happen if the Parties do not follow or implement the recommendations.

Further up the delegation scale, agreements can contain a *dispute settlement mechanism* (DSM), through which all provisions in the agreement can be discussed following a lengthy procedure. The aim of this mechanism is to come to mutually agreed solutions between the Parties. If needed, they will request a ruling of an arbitration panel, which is binding. Procedures for this dispute settlement mechanism are extensively discussed and many efforts are foreseen to make the Parties comply with the rulings of this panel. This can therefore be considered a rather strong enforcement mechanism. In practice, however, legal enforcement mechanisms in EU trade agreements focus mostly on pure trade issues, and exclude social provisions. The three types of delegation are shown schematically in Table 2.

Table 2. Delegation

Government Consultations	Panel of Experts	DSM
Consultations between Parties Not binding	Neutral Not binding	Neutral Binding

3. Promotion: do non-state actors promote social norms?

The supervision and promotion of social norms can also be extended towards other actors, in our case companies and civil society organisations. More in particular, we look at the promotion of *Corporate Social Responsibility* (CSR)

²⁴ In the agreements examined here, there is variation in how the types of delegation are called. For our analysis we have chosen for a general term.

²⁵ In the agreement with Colombia and Peru, for example, the experts have to be chosen already at the entry into force of the agreement and each Party submits a list of at least 15 persons of whom at least 5 are not a national of one of the Parties. Furthermore, it is explicitly stated that these persons should be real experts in the field and should be independent and not take instructions from any of the Parties.

and *civil society dialogue*. CSR refers to the voluntarily adoption by enterprises of socially and environmentally responsible conduct.²⁶ By complying with CSR, enterprises demonstrate that they are working towards sustainable development, although they are not bound to it by law. Recently, the EP has argued that the inclusion of social clauses in trade agreements has to be complemented with CSR to guide the behaviour of corporations since they are major players in international trade.²⁷

Another recent evolution is that trade agreements include provisions for civil society dialogue, referring to the involvement of civil society actors in the monitoring of the implementation. Whether these dialogues can contribute to the effective implementation of the agreement is beyond the scope of this paper. In the long term, such 'soft' implementation mechanisms might positively contribute to the advancement of social norms in third countries and to increasing the legitimacy of social organisations (e.g., trade unions) within these countries.²⁸ We distinguish between two levels of civil society involvement (see Table 3). It is rather low if civil society cannot advise the Parties, and it is stronger if it is institutionalised (i.e., when it has a formal name and/or if the meeting times are set).

Both evolutions, CSR and civil society dialogue, are important since the Parties of the agreement (*in casu*, the EU and the third countries) have only limited abilities to guarantee and oversee the respect for social norms in trade.

III A COMPARATIVE ANALYSIS

Based on this conceptualisation, we will now analyse the social norms in EU trade agreements concluded between 1995 and 2012.²⁹ In defining what we consider trade agreements, we use similar criteria as Horn *et al.*,³⁰ except that we exclude pre-accession agreements. We distinguish between two periods: agreements of which the negotiations started before the EU's commitment to the social dimension of globalisation in 2001 and agreements negotiated since 2006, i.e., the so-called new generation of trade agreements.

1. The early phase: from EuroMed to Chile

Scope

What is clear from the beginning is that all trade agreements analysed have some references to social cooperation. All the EuroMed agreements incorporate social governance norms. They contain a commitment to a dialogue on social matters and cooperation in the social field. In most of them, improving the

²⁶ European Commission, 'Promoting a European framework for Corporate Social Responsibility', COM (2001) 366 final.

²⁷ European Parliament, 'Corporate social responsibility in international trade agreements', 2009/2201/INI.

²⁸ See J. Orbie, *supra* note 4.

²⁹ We also include the agreement with Ukraine, although it has not been signed yet.

³⁰ See H. Horn *et al.*, *supra* note 13.

social protection system and enhancing the health coverage system are mentioned as two priorities. Jordan (1997)³¹ and Algeria (2002) are the only EuroMed AAs already slowly moving to include HR-based social norms.

In the EU-Mexico Agreement, signed in 1997, no strong commitment to social governance norms can be discerned, apart from a reference to social dialogue and civil society. This contrasts considerably with the very strong commitment in this agreement to democracy and human rights.³² While it has a different name,³³ the agreement with Mexico is in essence also an AA. AAs are special in the sense that the scope of the agreement goes beyond purely trade, and also covers political dialogue and cooperation in a broad range of areas. Therefore, the contrast with the commitment to social governance norms of the EuroMed AAs is high.

In the Trade, Development and Cooperation Agreement with South Africa (1999), there is no real reference to social protection and only to social dialogue. However, it is the first time that the CLS are mentioned. They are specified in the preamble, but are also explicitly mentioned as ILO standards in the agreement itself. Therefore, the agreement can be considered a mile stone with regard to labour rights.

At the time of the conclusion of the above mentioned agreements, the EU was also negotiating the Cotonou Agreement (2000), which provides the legal basis for cooperation between the EU and the ACP (African, Caribbean and Pacific) countries for the period 2000-2020.³⁴ Here, apart from Article 2, a clear commitment to trade and labour standards is also given in Article 50, where the four CLS are mentioned. Cooperation areas in the social field include social dialogue and the development and implementation of systems of social protection and security (albeit without referring in this context to the ILO). The reference to HR-based social norms and social governance norms is remarkable under the Cotonou Agreement.

The Chile Agreement (2003) dedicates an article to social dialogue, and other references related to social protection are also mentioned. The four CLS are summed up and a reference to the ILO is made.³⁵ Concerning social norms, it seems that this agreement, along with the agreement with South Africa, heralds a new evolution towards more concrete social objectives in line with the ILO. This is not surprising, considering that the 2001 Communication had been published in the meantime.

³¹ The date between brackets refers to the year in which the agreements were signed.

³² M. Szymanski and M. E. Smith, 'Coherence and Conditionality in European Foreign Policy: Negotiating the EU-Mexico Global Agreement', 43 *Journal of Common Market Studies* 2005, at 171.

³³ It is called 'Economic Partnership, Political Coordination and Cooperation Agreement'. The reluctance of the Mexican side to call it an AA can be attributed to its membership of NAFTA.

³⁴ The revised versions of Cotonou (in 2005 and 2010) do not include important changes on the social aspects.

³⁵ Although the actual term 'CLS' is not used, we label them as such (see Table 3), because the HR-based social norms here are as ambitious as in the case of South Africa.

Enforceability

In assessing the enforceability of these agreements, we first look at the obligation aspect. It becomes quickly apparent that there is strong obligation only in the Cotonou Agreement. The essential elements clause³⁶ under the political dimension of the Cotonou Agreement explicitly states that fundamental social rights are part of the fundamental human rights and freedoms. Since these fundamental social rights are explicitly described in Article 50 as the CLS, the social ambition of the agreement is very strong. While we remarked earlier that in fact CLS are always part of these essential elements, in the Cotonou case they are stronger than in other cases since they are mentioned explicitly. Article 96 of the agreement foresees the possibility that if one Party considers the other Party not to fulfil the obligations stemming from these commitments, it might start a consultation procedure and take appropriate measures if the matter is not resolved. The commitments refer explicitly to paragraph 2 of Article 9. In other words, not respecting fundamental social rights can have grave consequences. This finding confirms our expectation that the more precise norms are, the better they can be enforced.

The fact that only the Cotonou Agreement contains fundamental social rights in its essential elements clause does not mean that the other agreements lack an essential elements clause. All agreements in our analysis contain such a clause. Although, according to the EU, the essential elements clause also covers above-mentioned fundamental social rights, the latter are considered less obligatory if they are not explicitly mentioned (see Table 3).

If we then turn to delegation, we notice that all agreements contain some kind of 'Association Council', which examines any major issue that might arise within the framework of the agreement. This Council meets at governmental level and can take decisions by agreement between the Parties. These decisions are binding, but nothing is mentioned in case of non-compliance. In the Mexican case, the Association Council is called the 'Joint Council', while under the Cotonou Agreement, it is called the 'Council of Ministers'. The South African case is special in the sense that its 'Cooperation Council' works in the same way as an Association Council, except for the fact that the Parties can also appoint arbitrators. In this way, it is slightly stronger than the other agreements, but not to the extent that we can call this a neutral panel of experts. Therefore, it is not mentioned in Table 3.

Promotion

In the early agreements there are no references to CSR yet. Civil society is mentioned only in the Agreements with Mexico and Chile and in the Cotonou Agreement. The EU-Mexico Agreement states that 'Parties shall hold periodic consultation regarding cooperation activities involving civil society'.³⁷ This cooperation is focused on social affairs and poverty. So while this is the first time that civil society is mentioned in a trade agreement, the possibilities for involve-

³⁶ See Art. 9.

³⁷ See Art. 36.

ment are not strong enough to speak of a true civil society dialogue. In the Cotonou case, the Parties commit themselves to hold regular contacts with civil society actors of both Parties to get their view on the attainment of the agreement's objectives. The agreement with Chile foresees the establishment of a Joint Consultative Committee to promote cooperation and dialogue between civil society actors of both sides, where all social and economic aspects of the relation between the Parties can be discussed. Although the intervals when it should meet are not set, we can say that a civil society dialogue is starting to be institutionalised. Chile is a 'milestone agreement' for two reasons: not only does it mention the four CLS, it also makes a first step towards including civil society in the monitoring of an agreement. Therefore, with respect to social norms, Chile can be considered a transition case towards a new generation of trade agreements.

2. The new generation of trade agreements

In the most recently concluded agreements, we find a larger commitment to social norms in the form of a broad scope, more elaborate enforcement mechanisms and more possibilities for non-state actor involvement.

Scope

The agreement with CARIFORUM (2008) is the first Economic Partnership Agreement concluded with a regional group³⁸ and its social scope is very ambitious. Not only does it include Decent Work, but also the four CLS. Both objectives are often mentioned throughout the agreement. The agreement starts with a chapter on sustainable development and one of the cooperation priorities under this chapter is internationally recognised labour and environmental standards. The agreement also mentions that labour standards should not be lowered in order to attract more foreign direct investment. In addition, the Parties recognise that labour standards should not be used for protectionism. When this agreement was concluded, many supporters of 'social trade' hoped that this strong social dimension would be a blueprint for future agreements.

Indeed, references to CLS and Decent Work can also be found in the case of Korea (2010). Apart from the fact that it explicitly excludes the aim to harmonise labour standards, we can say that Korea follows the path set out by CARIFORUM of increased social norms.

For the trade agreement with Colombia and Peru (2012) we can argue that in terms of scope this agreement is as ambitious as the one concluded with CARIFORUM. The agreement with Central America (2012), in turn, is an AA. Dialogue and cooperation on social norms are spread throughout the agree-

³⁸ The 'CARIFORUM' states are Antigua and Barbuda, The Bahamas, Barbados, Belize, The Commonwealth of Dominica, The Dominican Republic, Grenada, The Republic of Guyana, Haiti, Jamaica, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

ment. Apart from these provisions for cooperation, there is an actual trade and sustainable development chapter that is taken up under the trade part. Here multilateral labour standards and agreements are mentioned extensively. There is an explicit reference to the CLS. The agreement also puts emphasis on the need for implementation of the fundamental ILO Conventions contained in the ILO Declaration of Fundamental Principles and Rights at Work of 1998, which are even explicitly listed. The Parties will also inform each other about the ratification process of other ILO Conventions. Again, labour standards should not be lowered to attract trade or investment. On the other hand, the Parties stress that labour standards should not be used for protectionist trade purposes and that the comparative advantage of any of the Parties should never be questioned.

In the agreement with Ukraine there is also a chapter on trade and sustainable development. Decent Work is mentioned and all the CLS are listed in here. As in the previous cases, labour standards should not be used for protectionist purposes and the comparative advantage should not be questioned.

What we see, is that some sort of blueprint has emerged from the recent trade agreements. These agreements tend to have a chapter on trade and sustainable development (as is the case for Korea, Colombia and Peru and Ukraine) or at least a special article on multilateral labour standards and agreements (as is the case for all but the CARIFORUM agreement).

Enforceability

Looking at the obligation aspect of enforceability, there seems to be a trend towards even less obligation. The CARIFORUM and Korea agreements do not have an essential elements clause as such. The FTA with Korea does not explicitly include an essential elements clause but the whole agreement should be seen in the light of the Framework Agreement for Trade and Cooperation between the European Community and its Member States, on the one hand, and the Republic of Korea, on the other hand, signed in 1996. Therefore, legally the agreement does not need a separate essential elements clause. The CARIFORUM agreement also does not explicitly include an essential elements clause, but refers for this issue to Cotonou. The other agreements do have an essential elements clause, but since it does not explicitly mention social norms there is room for interpretation whether both Parties agree that CLS are also covered in this clause.

With respect to delegation, it appears that the same provisions are incorporated in all five agreements. Starting with EU-CARIFORUM, there is a joint CARIFORUM-EC Council consisting of representatives at governmental level that can examine any major issue arising within the framework of the agreement. They can also take binding decisions, but there are no provisions in case of non-compliance. Specifically for social issues the Parties can consult each other and the CARIFORUM-EC Consultative Committee and they can seek advice from the ILO on these issues for best practices. If they wish so, the Parties can hold consultations and if this leads to no result, a Committee of Experts can write a report, which will be made available to the Parties. These

people should really be an expert in the social provisions in the agreement. The chair of this Panel cannot be a national of one of the Parties, which should guarantee some neutrality. The procedure is not further elaborated upon. The agreement also foresees an extensive DSM, but it explicitly excludes disputes concerning the interpretation and application of the chapters on environment and social aspects to be treated here.³⁹

In the Korea agreement, the Parties can resort to government consultations in case of any dispute under the trade and sustainable development chapter. If this does not resolve the issue, a panel of experts can be set up to examine the matter. This panel should write a report with advice and recommendations on how to implement the chapter, but advice is not binding in any way. This is in sharp contrast with the DSM provided for the trade issues.⁴⁰ It cannot be used for the sustainable development provisions.

The delegation mechanisms are more or less the same in the subsequent agreements with Colombia and Peru, Central America and Ukraine.

Promotion

From CARIFORUM onwards, CSR has become an integral part of any trade agreement, although the wording slightly differs between agreements. As for civil society, the EU-CARIFORUM Agreement foresees dialogue and cooperation between civil society representatives on the economic, social and environmental aspects of the agreement under the form of a Consultative Committee. Meeting times are not set and in this way it resembles the Joint Consultative Committee of the Chile agreement. It is only from Korea onwards that this is the case. To illustrate this we will elaborate on the civil society provisions in the Korea agreement.

The Korea agreement includes several ways for civil society involvement under the trade and sustainable development chapter.⁴¹ Both Parties shall establish a Domestic Advisory Group, which should comprise independent representatives of civil society organisations. These organisations should include environment, labour and business organisations and their task is to give advice on the implementation of the chapter. This dialogue should not be confined to the respective home countries, but it should also include a dialogue between the Parties. They will meet on a yearly basis in a Civil Society Forum. Basically, they will discuss the same issues as the Domestic Advisory Groups and they will be composed of the same people. The civil society dialogue forum as monitor of the agreement is in this case clearly present and institutionalised.

In the agreement with Colombia and Peru, civil society is involved through yearly meetings with the Sub-Committee on Trade and Sustainable Develop-

³⁹ There is, however, a possibility to use the consultation procedure within the dispute settlement mechanism if the matter has not been resolved within 9 months after its initiation.

⁴⁰ See Chapter 14.

⁴¹ See the paper by G. Altintzis on civil society engagement in trade discussions earlier in this volume where he discusses in detail the institutional arrangements and working programme of the EU-Korea DAG and gives a preliminary assessment of the initial work of these Domestic Advisory Groups.

ment. This civil society monitoring possibility is not institutionalised, since no specific name (for example Civil Society Dialogue Forum) is given to the meeting, nor are the meeting times set. The rather low involvement of civil society (compared to the other recent agreements) here is remarkable, given the strong calls from the EP⁴² and civil society groups themselves to have a strong monitoring mechanism.

In contrast, civil society dialogue is institutionalised in the agreement with Central America and Ukraine. In sum, while recent agreements contain more enforcement mechanisms (government consultations and panels of experts), these remain rather weak compared to the enforcement of the trade provisions. On the other hand, a civil society dialogue is being institutionalised.

IV CONCLUSIONS

In this paper, we have given a systematic and comparative overview of social norms in trade agreements concluded by the EU in the last 18 years. Since our aim has explicitly been to be descriptive, explanations will be taken up in further research. Nevertheless, important trends can already be discerned from the table below.

Three broad conclusions can be drawn. Firstly, the scope of social norms has broadened from general references on social cooperation, to social dialogue and social protection to ILO standards (as human rights). Secondly, enforceability remains weak, but there is a tendency to delegate disputes to more neutral experts. Lastly, CSR and civil society dialogue seem to have become an integral part of any trade agreement.

So as it currently stands, it seems that CLS, a more professional delegation of social disputes and the inclusion of CSR and civil society dialogue are four integral parts of the current agreements. The first time that all these elements were taken up was in the Korea Agreement. That this agreement serves as template for negotiating agreements, has also been acknowledged by the EC. Whether this pattern will hold in the coming agreements with Asian countries and the US and Canada, is a very interesting question indeed. Especially the ongoing negotiations with Asian trade partners will serve as a test case for the social ambition of the EU. India, for example, was the strongest opponent of a social clause in the WTO and has a bad record in terms of child labour issues. However, the EC believes that the current template of the sustainable development chapter is acceptable for the Indian government.⁴³ If this turns out to be true, one may then question the real nature of the EU's social ambition in its external trade policy.

⁴² European Parliament, 'European Parliament Resolution on the EU trade agreement with Colombia and Peru', B7-0301/2012.

⁴³ Authors' interview at DG Trade, Brussels, 25 February 2013.

Table 3. Social norms in EU bilateral trade agreements⁴⁴

	SCOPE			ENFORCEABILITY			PROMOTION	
	General Social Norms	Social Governance Norms	HR-Based Norms	OBLIGATION	DELEGATION		CSR	Civil Society Dialogue
					Government Consultations	Panel of Experts		
Tunisia (1995)	X	XX			X			
Israel (1995)	X	XX			X			
Morocco (1996)	X	XX			X			
Jordan (1997)	X	XX	X		X			
Mexico (1997)	X	X			X			X
South-Africa (1999)	X	X	XX		X			
Cotonou (2000)	X	XX	XX	X	X			X
Egypt (2001)	X	XX			X			
Algeria (2002)	X	XX	X		X			
Lebanon (2002)	X	XX			X			
Chile (2003)	X	XX	XX		X			XX
CARIFORUM (2008)	X	XXX	XX		X		X	XX
Korea (2010)	X	XXX	XX		X	X	X	XX
Colombia/Peru (2012)	X	XXX	XX		X	X	X	X
Central-America (2012)	X	XXX	XX		X	X	X	XX
Ukraine	X	XXX	XX		X	X	X	X

⁴⁴ Here we give some guidance to understand Table 3. We describe what every cross (X) means within each column, which can be attributed a higher score than one cross. Two crosses do not mean that they are twice as strong as one cross. If there is no explanation on the column below, this means that only zero or one cross is possible. Regarding social governance norms, X means there is a reference to social protection or social dialogue. XX means there is reference to both social protection and social dialogue. When XXX is written, this means there is a reference to the whole Decent Work Agenda. Then turning to HR-based social norms, X means there is a reference to some kind of basic social rights while XX means there is a reference to CLS. Concluding with the civil society dialogue under promotion, X means that there is a civil society dialogue provision, but it is not institutionalised. XX means that the civil society dialogue is institutionalised (in the sense that the meeting times are set and a formal name is given).