

EU TRADE POLICY AND CIVIL SOCIETY: DIFFERENT CHANNELS, SAME SUCCESS?

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Abstract Following the recent stalemate in the global trading system, the European Union (EU) has eschewed its insistence on multilateralism and spearheaded the signing of bilateral free trade agreements (FTAs) with various states across the world. Furthermore, with the passage of the Treaty of Lisbon in 2009 the European Parliament (EP) now has to ratify all EU FTAs. How has civil society in the EU adapted to these changes? This paper explores the preferences and strategies of labor groups with regard to EU FTAs before and after these changes. It argues that the ability of civil society actors to influence EU trade policy remains limited, owing to the entrenched institutional factors which limit the participation of civil society in setting the trade policy agenda, despite the greater role of the EP. It also shows that EU civil society actors have been increasingly using bilateral FTAs as a new window of opportunity and a way to create institutionalized transnational linkages with their counterparts in FTA partners. These linkages have become a persistent feature of the EU approach towards FTAs. They have also allowed mutual learning among civil society actors in the EU and its trading partners. Yet, the effectiveness of these institutional channels remains limited and conditioned on the organizational capacity of civil society in EU FTA partners.

1. Introduction

Civil society in the European Union (EU) has traditionally played only a minor role in trade policy-making, both in terms of influencing the overall policy agenda and making its voice heard throughout the negotiation of trade deals. Scholars have explained this weakness by the overall design of EU trade policy-making institutions in Brussels which are unsuited for a strong input of civil society actors and favor executives in the European Commission, particularly Directorate General (DG) Trade, as well as organized businesses (e.g. Dür 2006; Dür and Mateo 2012). The Commission is responsible for the overall conduct of EU trade policy, including its strategic direction and the negotiation of trade agreements. It plays the role of the agenda-setter for trade policy (Meunier 2005) and is often viewed as a powerful bureaucracy insulated from the influence of societal actors and the Member States alike. This insulation allows Commission officials from DG Trade be policy entrepreneurs who strategically select interest groups they want to engage with, as well as manage the Member States' interests when setting the trade policy agenda (Meunier and Nicolaïdis 2006).

Various civil society groups, aside from the powerful and well-organized business interests, have not had much success trying to gain access to and influence the decision-makers in the Commission. The issue of labor standards in EU free trade agreements (FTAs) is one such instance where the weakness of EU civil society is well documented (ETUC 2006a, 2006b). Labor unions in the EU, acting through an EU-level umbrella organization, the European Trade Union Confederation (ETUC), have long demanded stronger labor standards to be included in all EU FTAs and have been particularly dissatisfied with the lack of proper enforcement mechanisms for these standards. The EU has been adamant in resisting sanctions as a means of enforcement of FTAs' social provisions, unlike the approach taken by the United States toward

all of its trade agreements. Labor unions and NGOs have been vociferous critics of the EU's approach which they perceived as ineffective and diluting the overall mission of the EU as a "social manager" of globalization (Abdelal and Meunier 2010).

Recently, EU trade policy has gone through major institutional change. With the ratification of the Treaty of Lisbon in 2009, the European Parliament (EP) became one of the key actors in EU trade policy-making that now has to ratify all FTAs, assuming a role similar to the U.S. Congress in the making of American trade policy. The increased significance of the EP potentially provides interest groups with a very effective lobbying channel and control over the actions of the Commission when setting the EU trade policy agenda. Furthermore, all EU FTAs now include the Civil Society Dialogue mechanism which allows civil society groups from both the EU and its FTA partners to work together on some of the key social issues, especially at the implementation stage of these agreements, including labor standards, but also during the negotiation process. Time is ripe now to assess the possible impact of both the EP and the FTAs' Civil Society Dialogue on the effectiveness of civil society. Has the addition of these two channels resulted in a stronger influence of civil society over EU trade policy?

This paper will argue that, surprisingly, the addition of these new channels has not changed the overall state of affairs in EU trade policy and did not give more influence to civil society actors. It will seek to explain this puzzle by taking a closer look at the institutional dynamic of the EU trade policy-making process. In doing so, it will use the issue of labor standards in FTAs as a yardstick to assess the effectiveness of civil society in trade policy-making. The paper will proceed as follows. The second section will describe the old and new institutional channels for civil society organizations engaged in EU trade policy-making. The

third section will focus on the path-dependent dynamic and deficiencies of these channels. The fourth section will conclude.

2. Civil Society Lobbying in EU Trade Policy

The EU trade policy-making process has traditionally favored business interests and gave little representation to other civil society actors, including NGOs. The weakness has been well described in the literature (e.g. De Bièvre and Dür 2007; Jarman 2008, 2011). In 1998, to address the deficiency of interest groups' input in the trade policy-making process, the Commission created a novel multi-stakeholder institutional mechanism, known as the Civil Society Dialogue (CSD),¹ which allowed civil society groups to formally participate in the making of EU trade policy. It includes various civil society actors, such as public and private actors' associations, NGOs, and businesses that regularly meet with Commission officials and receive updates about the course of trade negotiations and can bring their concerns directly to the attention of DG Trade officials. Interest groups are encouraged to use this mechanism to provide their input in the negotiation process. However, the CSD plays only a consultative role, and societal actors are not able to directly influence the course of negotiations and are not given access to the negotiation texts, which makes it largely ineffective in terms of civil society lobbying (Jarman 2011). Furthermore, through the CSD, the Commission can give preferential access to various groups, which only enhances further its role of the agenda-setter in EU trade policy. Thus, unsurprisingly, De Bièvre and Dür (2007) found that despite the inclusion into the policy-making process, NGOs have largely failed to influence EU trade policy outcomes.

¹ The CSD created by the Commission to manage the trade policy-making process in the EU should not be confused with the implementation mechanism in FTAs analyzed below also called the Civil Society Dialogue.

Civil society actors' demands over labor standards in EU FTAs can be viewed as one instance where civil society's ineffectiveness has been particularly acute. The ETUC has long advocated for a more socially oriented EU trade policy which would give priority to labor conditions in the developing world and insisted on making all social standards enforceable through sanctions. Following the re-orientation of EU trade policy toward bilateralism after the signing of Global Europe communication in 2006, it expressed its "disagreement with the proposed general reorientation of European trade policy in favour of an extremely aggressive liberalisation agenda in the developing countries, without consideration for possible social and ecological implications, both positive and negative" (ETUC 2006b). It wanted bilateral agreements to protect workers' rights, following the EU's own Charter of Fundamental Rights (ETUC 2006a). It also insisted on the inclusion of social dimension in all bilateral agreements, making them the vehicles for improving workers' conditions in EU trading partners, and lamented the absence of this dimension in the Commission's new agenda. In terms of the agreements scope, it also insisted on the inclusion of not only the ILO core labor standards but also additional social rights, such as the right to employment and protection of maternity and health and safety, stating that "Europe should seek to project its standards outside the Union through all its policies" (ETUC 2006b).

Deficiencies of EU civil society representation in trade policy explain why trade policy executive preferences and not those of societal actors are largely reflected in the old generation of EU FTAs signed before 2010.² The EU-Chile Association Agreement is the first EU FTA that includes labor standards but does it in a non-legally binding and non-enforceable fashion, generally reflecting the preferences of European Commission officials in DG trade and not those

² The new generation of EU FTAs begins with the signing of the EU-South Korea agreement and follows the approach outlined in the Global Europe communication in 2006.

of labor unions. These preferences are well captured by the “social dimension of globalization” approach promoted by then EU Trade Commissioner Pascal Lamy. It emphasizes the importance of the ILO core labor standards and social cooperation in a non-binding, non-coercive fashion (European Commission 2001). This approach is directly mirrored in the texts of old EU FTAs and does not go far enough to address the demands of the ETUC, signifying the weakness of organized labor on the issue of labor standards in EU FTAs.

The Treaty of Lisbon has expanded the EP’s role of co-legislator in the EU, granting it the authority to ratify all EU trade agreements through the consent procedure which previously has been exclusively a prerogative of the Council of Ministers. EU trade policy has experienced a notorious shift towards bilateralism in the early 2000s, making the EU the leader in terms of signing bilateral trade agreements (Sbragia 2010). Beginning with the EU-Mexico FTA concluded in 2000, all EU FTAs contain the institutional provision for dialogue between civil societies in the EU and its trading partners, known as the Civil Society Dialogue, akin to the EU’s internal mechanism described above. With the creation of such mechanism, the EU has fully embraced a consultative approach towards the implementation of social standards in FTAs (Postnikov and Bastiaens 2014). The EU seeks to engage various stakeholders from civil society and the dialogue provisions stipulate that these stakeholders must convene at least once a year to discuss agreement implementation and that these meetings need to be inclusive and representative, providing a platform for all the main players from the EU and its partner states.

Has the addition of the EP and the FTAs’ Civil Society Dialogue led to more civil society influence over the EU trade policy? In line with the literature on societal actors as rational venue-shoppers, claiming that “interest groups will seek to exploit new opportunity structures or venues as a means of maximizing their capacity to shape public policy to their own advantage” (Mazey

and Richardson 2006), we should expect that the addition of new venues for interest groups will allow them to maximize their lobbying efforts, magnifying their influence. Interest groups act as rational venue shoppers (Baumgartner and Jones 1991) and the EP and the FTAs' Dialogue can provide them with a new window of opportunity for making their voices heard better in the EU trade policy-making process. Previous studies have clearly shown that for many societal actors in the EU proliferation of lobbying venues led to the increase of their effectiveness (e.g. Pollack 1997).

The EU trade policy-making process has undergone major institutional change which could lead to a shift in the balance of power between the Commission, the EP, and the Council. The EP and its Committee on International Trade now assumes a role similar to the U.S. Congress which acts as the single most powerful actor in the making of U.S. trade policy, mandating the policy agenda, as well as serving as the main aggregator of societal interests (Kerremans and Gistelinck 2009). Moreover, the Dialogue provisions in EU FTAs have a potential to become a viable transnational advocacy mechanism, allowing interest groups in the EU to join forces together with their counterparts in EU trading partners and augment their influence during both the negotiation and implementation stages of FTAs. It is well-known that civil society actors have rather limited resources and rely on transnational linkages to compensate for this weakness (Risse 2007). Thus, with the addition of the two channels mentioned above we should also expect to observe that the EU trade policy would now better reflect the demands of civil society actors which would, in turn, indicate their lobbying effectiveness and success in shaping policy outcomes. The analysis in the next section reveals rather unexpected developments that contradict the conventional wisdom found in the literature cited here.

3. Civil Society and the New Dynamic of EU Trade Policy-Making

The European Parliament as a New Venue

As mentioned above, with the Lisbon Treaty in force, the EU trade policy is characterized by a greater involvement of the EP that now has the power to ratify all EU FTAs, using the consent procedure, akin to the U.S. Congress.³ Nine new generation FTAs have been ratified by the EP since the entry of Treaty of Lisbon into force in 2009.⁴ All of them contain labor standards and civil society demands for stronger, more comprehensive and enforceable labor standards remained constant during the negotiation of these agreements. For example, on the eve of signing the EU-South Korea FTA, the Parliament's Committee on International Trade advocated for the establishment of a comprehensive social development chapter and complained about the lack of enforcement of labor standards in the agreement, simultaneously referring to the example of U.S. FTAs and their sanctioning mechanisms as a model for this chapter. It stated that

effective enforcement also requires that the Sustainable Development chapter is subject to the same dispute settlement treatment as other components of the agreement. The US Administration and Congress having agreed that 'all of our FTA environmental obligations will be enforced on the same basis as the commercial provisions of our agreements – same remedies, procedures, and sanctions,' it is hard to see why Europe should settle for less (European Parliament 2010: 9).

³ Previously, EU FTAs had to be ratified only by the Member States in the Council, acting through the Article 133 Committee.

⁴ These agreements are EU-Korea, EU-Columbia, EU-Peru, EU-Costa-Rica, EU-Nicaragua, EU-Honduras, EU-Panama, EU-Montenegro, and EU-Serbia. More FTAs are being negotiated with the involvement of the EP's Committee on International Trade.

The EP ratification requirement should have provided interest groups with more influence, which, in turn, should have led to more politicization of the FTAs agenda and stricter labor standards. Indeed, the scope of social standards in, for example, new EU agreements with South Korea, Peru, and Columbia has broadened. There are new provisions for civil society participation, such as domestic advisory groups with the goal to oversee agreement implementation that could provide new institutional space for governments and civil society actors to speak with each other where previously such opportunities might have been absent.

However, importantly, the no-sanctions approach has remained intact, largely reflecting the preferences of the Commission rather than interest groups' demands. The Commission's preferences towards the new generation of FTAs stem from the "global Europe" approach advanced in 2006 with the publication of "Global Europe: Competing in the World." The EU Trade Commissioner Peter Mandelson (2006) has nicely summarized this approach in the following way:

The EU has always rejected a sanctions-based approach to labour standards – and that will continue. But equally, we can do more to encourage countries to enforce basic labour rights, such as the ILO core conventions, along with environmental standards - not simply in principle, but in practice. Cooperation and social dialogue are certainly important. Transparency, through an independent mechanism, will also help us highlight areas where governments should take action against violations of basic rights. We are also considering an incentives approach.

The persistent absence of sanctions, despite the continued calls to introduce them expressed by EU labor groups, highlights the powerful path-dependent dynamic in the EU trade policy-making process. The Commission is still able to play the role of a policy entrepreneur and set the agenda for the EU external trade policy, unlike the United States Trade Representative

(USTR), its counterpart in the United States whose hands are fully tied by the Congressional mandate at the negotiation table.⁵ The proliferation of lobbying venues has been noted to hinder the effectiveness of EU interest groups, especially those with limited resources, such as NGOs and labor activists (Woll 2009). These groups have already invested substantial efforts into the CSD, cultivating their direct relationship with Commission officials from DG Trade. Adding another venue can make their efforts more diffuse, potentially exacerbating the collective action problem and undermining their lobbying effectiveness, as argued by the scholars of EU lobbying (Coen 2009; Klüver 2013).

Furthermore, in order to assess the potential effectiveness of the EP, one must look into the patterns of societal interest representation within it. Unlike legislators in the U.S. Congress who are linked very tightly with their key constituents through a direct electoral relationship, legislators come to the EP from a variety of ideologically similar national parties, forming the so-called party groupings. These groupings aggregate a much wider range of societal interests across the Member States which means that MEPs in Brussels are further removed from their constituents than their counterparts in Washington, D.C. It is not surprising then, that labor groups have a much better success in the U.S. Congress when trying to influence the American trade policy agenda. It is, thus, not surprising that all U.S. FTAs, beginning with NAFTA, contain labor standards enforceable through sanctions, reflecting the preferences of American labor groups that are similar to their EU counterparts (AFL-CIO 2003).

Additionally, the veto players' theory (Tsebelis 2002) can further shed light on the new institutional dynamic of EU trade policy-making and help us understand why civil society actors

⁵ The Congress mandates that all U.S. FTAs must contain labor standards enforceable through sanctions for an agreement to be ratified.

did not have better success, despite a greater involvement of the EP in the making of EU trade deals. The EU policy-making system has been notorious for its stability and tendency towards incrementalism and the number of party veto players is larger in the EP than in the U.S. Congress. According to the veto players' theory, this should make policy change even less likely. Party groupings have to adopt to the lowest common denominator decisions, reflecting various societal interests, including those of organized businesses, which do not view strict labor standards very favorably.⁶ In this institutional environment, any FTA becomes a package deal, opening the possibility for negotiation among the diverse set of interests and various side payments. Furthermore, the uncertainty among EP legislators allows the executives in the Commission to act strategically in shaping the agreement agenda, especially when the agenda-setting rules are already conducive to it, as predicted by the veto players' theory.⁷ Thus, it is not surprising that the new generation of EU FTAs still largely reflects the preferences of the Commission, and to a lesser extent of organized businesses, rather than those of labor groups. The dominance of executive preferences and business interests has been noted by previous studies (Dür 2006; Dür and Mateo 2012) and the case of labor standards analyzed here reveals a strong path-dependent dynamic of the EU trade policy-making process even after major institutional change.

In sum, the addition of the EP's consent to the EU trade policy-making process had a potential to open new lobbying venues for societal interests. However, surprisingly it did not. The nature of interest representation in the EU trade policy-making process is not conducive to big policy changes and allows the executive with the power of agenda-setter shape policy

⁶ The opposition of BUSINESSEUROPE towards labor standards has been noted (BUSINESSEUROPE 2006).

⁷ In trade policy, the Commission drafts the negotiating mandate that then has to be approved by the Article 133 Committee, which makes it effectively the agenda-setter, including on FTAs social provisions.

outcomes. Overall, in accordance with the veto players' theory expectations, the policy-making system of the EU tends to prioritize stability and incremental adjustment over large-scale policy change and labor standards in EU FTAs are a further case in point. Thus, the EU trade-policy making system exhibits a strong path-dependent dynamic, despite important institutional changes recently introduced to it.

The Civil Society Dialogue as a New Venue

As described above, EU FTAs' now also include the Civil Society Dialogue mechanism which could potentially augment the effectiveness of societal demands by creating transnational links between various civil society groups in the EU and its trading partners. Civil society actors on both sides establish links during the negotiation stage of FTAs and work together even more during the implementation stage when formal meetings begin to be held. These dialogues have been a constant feature of all EU FTAs since the EU-Mexico agreement signed in 2000 and could have provided EU civil society with a potentially effective tool to influence the EU trade policy-making by allowing them to join forces together with their counterparts in partner countries. This, in turn, could have led to the improved implementation of labor standards, in addition to civil society demands being taken more seriously during the negotiation stage. It must be also noted that the existence of such mechanism and its growing institutionalization since 2000 should have given civil society actors enough time to organize and learn how to use it most successfully, especially since the pace at which EU FTAs are signed has been accelerating and social issues have been ever more prominent on the new trade agenda. As civil society actors learn from their previous interactions with their counterparts in partner states, one could expect

that the effectiveness of EU interest groups should increase in the new generation of FTAs. Furthermore, the Dialogue mechanism has been augmented quite significantly in the new generation of EU FTAs, potentially providing even more opportunities for civil society groups concerned with the FTAs agenda and the implementation of social standards.

In order to trace the evolution of EU civil society strategies with regard to the Dialogue mechanism and its corresponding effects, I will examine the patterns of interactions between EU civil society and its counterparts within the framework of both old and new generations of EU FTAs – the EU-Chile Association Agreement (AA) signed in 2003 and the EU-South Korea Free Trade Agreement signed in 2010.⁸

The EU-Chile AA is the first one in the series of EU trade agreements to include labor standards in a separate chapter. However, chapters containing social provisions are not legally binding, including the implementation of labor standards, and are only enforceable through very soft measures, as described above. Yet, despite this “legal deflation,”⁹ there has been some limited progress made in terms of implementing these standards. For example, Chile has begun conducting successful dialogues with the EU in the area of employment which resulted in the transfer of some technical knowledge. It is not surprising then that after the 2010 mining accident, the Chilean authorities considered using the EU’s health and safety regulation as a template for domestic reform. However, this reform has not yet occurred, owing to the lack of political will among the Chilean authorities.

⁸ The discussion here is largely based on the interviews conducted by the author in Santiago and Seoul in the summer of 2013 and in Brussels in the summer of 2012.

⁹ This term refers to the phenomenon of “legal inflation” of other issues on the EU FTA agenda, in striking contrast to social issues, noted by the scholars (Horn et al. 2010).

Importantly, the Civil Society Dialogue meetings only occurred twice since the EU-Chile agreement went into force in 2003, despite the stipulation that such meetings should be held annually. This has been seen as very frustrating by civil society groups in the EU whose main goal has been to convince the Chilean government to establish a functional equivalent of the European Economic and Social Committee (EESC) in Chile, a tripartite body that brings together civil society, businesses, and EU policy-makers. This goal is stipulated in a separate chapter of the agreement and is yet to be achieved. Overall, the progress has been hindered by the lack of organizational capacity of the Chilean civil society, as well as the lack of administrative capacity of the Chilean government. Chile, as a country with an institutional legacy of dictatorship, has a fragmented civil society, which undermines its effectiveness. For example, the labor movement suffers from the lack of strong leadership, as the leaders of the major trade union, have been split across party lines and paralyzed by distrust of each other (Pallacios-Valladares 2010). Furthermore, they do not view the agreement's social provisions as important. Thus, EU civil society groups were troubled by the inability to identify a competent interlocutor on the Chilean side. This fragmentation of Chilean civil society, along with the lack of interest from the government, has not allowed the Civil Society Dialogue to be exploited to its full extent.

Has the existence of the Dialogue mechanism made civil society more successful in the new generation of EU FTAs? The EU-South Korea is the first such agreement concluded in 2010 and has more comprehensive provisions for civil society participation, such as the establishment of domestic advisory groups comprised of civil society members and governmental officials overseeing the implementation. Before the signing of EU-South Korea FTAs, ETUC voiced concerns over the state of labor rights in South Korea, especially the lack of freedom of association and non-ratification of four out of eight core ILO conventions. Despite these

concerns being brought by the ETUC during negotiations, little has been done by the European Commission to address them when the agreement was signed in 2010. A brief examination of the implementation process also reveals the lack of implementation, similar to the Chilean case discussed above.

To date, there has been only one civil society dialogue meeting between the EU and South Korea, and South Korean labor unions were suspiciously absent from it, much to the surprise of EU participants. The South Korean labor movement is quite disjointed and split across two major trade unions, KCTU and FKTU, with competing agendas. Furthermore, FKTU has been co-opted by the government, according to various observers. As a result of this fragmentation, Korean civil society does not view the agreement's social provisions as serious. It generally opposed the signing of the EU-Korea FTA, developing a very negative frame in the public discourse surrounding it, and has kept this frame intact after the agreement went into force. This negativity precludes civil society actors from constructively engaging with the FTA and its social provisions, including the civil society participation mechanism. Thus, the Dialogue in the EU-South Korea FTA is yet to live up to its full potential.

In sum, there has been a lack of implementation of labor standards, despite the inclusion of civil society through the dialogue mechanism and its increased institutionalization in the new generation of EU FTAs. However, in order to effectively use the Dialogue mechanism in FTAs, EU civil society must rely on its counterparts in the EU's trading partners in order to fully reap the benefits offered by potential transnational linkages. Thus, its effectiveness is mediated by the organizational capacity of civil society in EU partner states. In both cases examined here, EU civil society groups found their interlocutors incapacitated by weak organization, fragmentation,

and distrust.¹⁰ Unfortunately, these factors preclude the effectiveness of a transnational mechanism for civil society participation built in EU FTAs. Despite the fact that the Dialogue mechanism can lead to the improvement of labor conditions in EU trading partners in the long run (Postnikov and Bastiaens 2014), it is yet to fulfill its promise with regard to the civil society influence over the EU trade policy.

4. Conclusion

Multiplication of lobbying venues in a multi-level system of governance, such as the EU, has been identified as a source of weakness for interest groups, especially those representing diffuse societal interests (Coen 2010; Klüver 2013). The preliminary assessment of additional channels for interest groups provided in this paper further shows the malaise characterizing the relationship between the EU trade policy-making bureaucracy and societal interests. The weakness of civil society actors has become a recurrent feature of the EU trade policy-making process, despite the addition of new, potentially powerful lobbying venues, such as the European Parliament and the Civil Society Dialogue in EU FTAs. Some of this malaise is of the EU's own making and exhibits a path-dependent dynamic of state-society relations in the EU, typified by the stickiness of interest group representation in the multi-level system of governance with multiple veto players (Tsebelis 2002). But another crucial part of it hinges on the organizational capacity of civil society in EU partner states and highlights the complexity of increasing interactions among civil society actors across borders and the challenges that lie ahead of them if they want to use these transnational mechanisms to influence policy outcomes. Importantly, the

¹⁰ This finding is echoed by a study by Postnikov and Bastiaens (2014) showing that any improvement in labor conditions in EU trading partners depends on the degree of organizational capacity of their civil societies.

weakness of EU civil society analyzed here can have some real negative implications for the EU's role of normative power in world affairs (Manners 2002) in the age of increasing economic integration when the need to balance free and fair trade becomes ever more acute.

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