



What social face of the new European Union trade agreements?

Transcripts

Lunch debate on 23 June 2015, Hotel Silken Berlaymont, Brussels

Summary

This lunch debate aimed to assess **the social commitment of the new generation of European Union trade agreements**. The event brought together practitioners, representatives of civil society and scholars who discussed three interrelated issues concerning the social content of recent EU trade agreements: **(i) the cooperative** nature of the EU approach, **(ii) the involvement of civil society** in the implementation of labour provisions and **(iii) the effectiveness** of the EU's trade-labour linkage.

It was organized by the Centre for EU Studies (CEUS) from Ghent University (Belgium) in collaboration with the European Trade Union Institute (ETUI) as part of the latter's 'Monthly Forum'. Speakers included **Pascal Lamy** (former WTO and European Commission), **Monika Hencsey** (DG Trade), **Tom Jenkins** (ETUC) and **Lore Van den Putte** (CEUS). The debate was introduced by **Philippe Pochet** (ETUI) and moderated by **Jan Orbie** (CEUS).

General conclusions from the debate include (but are not limited to) the following. First of all, it was argued that apart from trade agreements, non-state actors and private initiatives are expected to play a more important role in 'the new world of trade'. Secondly, the European Commission sees itself as dealing with the 'root causes' of labour problems in third countries (as opposed to the US that would be dealing with the 'symptoms' only). However, this was disputed by trade union representatives in the room who pointed to the lack of results of the cooperative approach. Third it was mentioned that EU delegations need more expertise on labour issues. Fourth, more coherence is needed between the fields of trade, social and development policy.

The meeting was not a stand-alone project. It greatly benefitted from earlier research conducted by the CEUS. A **background document** discussing the above mentioned issues can be consulted on the CEUS website¹. On the basis of the insights gathered during this debate an **ETUI policy brief** will be published on the CEUS (ceus.ugent.be) and ETUI (etui.org) websites.

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¹ For the background document please visit http://www.ugent.be/ps/politiekewetenschappen/nl/onderzoek/CEUS/actueel/agenda/copy_of_ceusbckgrounddocumentlunchdebate23june2015final.pdf. For more information about CEUS research on this topic please check www.eu-sdg.ugent.be.

Interventions by speakers

Philippe Pochet (ETUI)

It is my pleasure to introduce this lunch debate that we have organised together with the Centre for EU Studies of Ghent University. The title is: “What social face of the new EU trade agreements?” When preparing this event I thought that we would have perhaps 15 to 20 experts in trade. But there is a lot of discussion about the role of trade agreements, certainly about the negotiations on the Transatlantic Trade and Investment Partnership (TTIP) with the United States. So I think that this lunch debate arrives at the right moment. Today we aim to analyse both the EU strategy and EU trade agreements of the past decade. Indeed, since then we have seen more and more bilateral agreements. Our colleagues from Ghent University have produced some excellent studies on this topic.

We believe it is important to have maximum time for debate. First, we will have a key-note speech by Pascal Lamy and then brief interventions from the discussants. Finally, we will have a debate with the room because I am sure that there will be a lot of questions.

Let me now introduce Pascal Lamy. He was in the cabinet of Jacques Delors and played an important role in the Delors Commission. After that, he was the EU Trade Commissioner and Director-General of the World Trade Organisation (WTO). Currently he is President Emeritus of the Jacques Delors Institute. He is also the Honorary President of the Notre Europe think tank in Paris. Dear Commissioner, I give you the floor.

Pascal Lamy

Thank you for the invitation. I will try to briefly introduce this topic and try to look, from a European point of view, at the bigger picture and at the context of social standards in future trade agreements. As you all know, the issue of interconnection between trade opening and social conditions has been there for a long time. Remember the International Trade Organisation (ITO) Treaty which emerged from the Havana Conference in 1947, where social issues were very much part of the articulation of trade opening. We all know that the ITO was aborted in Washington and then morphed into the more flexible GATT where social objectives were downgraded as compared to the initial ambitions of the ITO. These issues are here to stay, simply because of the way trade opening impacts social systems.

In a nutshell, and I won't go into theoretical details, trade opening is efficiency creating. These efficiencies stem from the reshuffling of economic and social production systems

and the way these efficiencies impact on welfare is very much dependent on social systems. This is a point I developed in a book I published when I left the WTO, called 'The Geneva Consensus' as opposed to the 'Washington Consensus'. The basic idea of the Geneva Consensus is that trade opening can provide important welfare results, but with a number of conditions to be met. As such it is opposed to the Washington Consensus, the basic stance of which is: open trade and God will take care of the rest. To put it extremely simply, maybe too simply: the fundamental problem is that opening trade is painful. It works because it is painful and it is painful because it works. That is the theoretical base of this problem.

This has of course a number of consequences both in politics and economics. In politics, because we all know that there is an asymmetry between the winners and the losers in this game. In the global market, the capitalist system, the odds are in favour of the stronger. Hence leading to the view that trade opening can lead to a race to the bottom as these efficiencies result from a degradation of previous existing social conditions, whether these concern wages, working conditions, or labour rights. The economic side of this is also extremely complex, because, as we know, social conditions are connected to the level of productivity. It is not enough to say that Chinese workers are paid ten times less than Western workers if their productivity is ten times lower than Western workers. This is not an economic problem, although it may be perceived as a political problem.

The EU stance on this has been, for a long time, that there should be a better connection between on the one hand the rules, the systems and disciplines that govern trade opening and on the other hand the rules, the systems and disciplines that govern social conditions. This is of course due to the fact that these two issues belong to different specialized institutions because of the way in which our international system works. But, quite naturally, the European Union is, seen from the moon, the place where social conditions are the best on this planet. The Europeans have had a natural tendency to try and project these conditions to the outside world with what I think should be recognised as a constant ambiguity. I think this needs to be part of the discussion.

The European purpose has been and is to build a better connection and interaction between trade opening and social systems and standards. However, is the objective to raise the level of social standards elsewhere, or is the objective to reassure Europeans, notably European workers, trade unions and civil society, who might fear social dumping? These two objectives are quite different, but they have always been mixed in the European discourse, which shows the intrinsic ambiguity of what can be called "fair trade" or "juste échange" for my French socialist friends. Whether calling such trade "fair", or "juste", already reveals this ambiguity. We are all in favour of fair trade (or juste échange), but of course we don't agree on what "fair" or "juste" means. In order to agree on what fair or "juste" means, we need to narrow preferences which are, let's say, ideologically, reasonably coherent on benefits of trade opening, but which have for

ideological, cultural, philosophical, religious, and historical reasons, a much wider spectrum in terms of social preferences. So that is a fundamental problem that Europe has had to deal with, and that has very often created a reaction of non-Europeans, especially developing countries. Because the latter have for obvious reasons much weaker social standards than the ones we have in Europe, or in the western world generally. This has created a sort of syndrome of social protectionism. Anything that looks like Europe exporting its own social standards by various ways, and I will come back to that, is seen as a way to prevent the sort of “normal game” of comparative advantages, the sort of Ricardo- Schumpeterian interaction.

In the past, the EU has been playing this on multiple levels. First on the multilateral level, where trade standards are governed by WTO and labour standards are governed by the International Labour Organisation (ILO). In the nineties, there was a clear request from the EU to build a better articulation of international labour rules from the negotiation of trade rules, and notably a better connection between the WTO and the ILO. I remember that very clearly because I was European Commissioner at the time. This attempt stayed at the level of declaratory language. It failed basically because these Westphalian actors refused a sort of in-built coherence. It is still there, if one recognises that WTO members have given a mandate to the WTO secretariat to attend ILO meetings, whereas ILO members have refused to give a mandate to the ILO secretariat to attend WTO meetings. This is a typical Westphalian incoherence. Both organisations have the same members who decide on the one side, but refuse on the other side, which tells us something about where the problem really lies. So not much on this ground, except for one step forward, which was the 2008 ILO Declaration which didn't come from the trade side, but came from the ILO side. The ILO Declaration establishes a better doctrinal framework, but still uses very declaratory language. And if you look at the way the ILO itself governs these issues of multilateral labour standards, you will see that there is still a large spectrum of preferences evidenced by the fact that there has never been a serious dispute settlement setup in the ILO whereas the mandate exists. The reason why this has not been done is because some nations don not want this to happen.

Where the EU has been more forthcoming is, unsurprisingly, on unilateral systems, and notably trade preferences. The systems of the Generalized System of Preferences (GSP) and GSP+ are part of EU doctrine of pro-development trade policy. At the time I tried to beef up these systems and I succeeded to some extent. By the way the US also have their preferential systems. These systems probably worked, somehow, in the old world of trade, where preferences would exist in the way protection of domestic production systems is concerned, with tariffs and subsidies. But it will not work in the future, where, in my view, the main issue is about precaution. You might be able to have a specific trade preference for Rwanda on tariffs for roses but you will never have a specific preference for Rwanda if the issue is about the maximum level of pesticides.

So this world of preferences is dying in a way. This leaves us with the third option, which is the classic bilateral option, which means that the EU introduces social standards and related issues within bilateral trade agreements. I did that for the first time in a sophisticated way in the EU-Chile agreement. Since then, the EU has been going in the good direction with the next step being the TTIP. The issue there being that there is a very big difference between a trade agreement between the EU and Morocco, Egypt or Colombia on the one hand, and an EU agreement with Japan or the US on the other hand. It is a different *problematique*. In one case it is about trying to raise the standards on the other side. In the other case, it is about trying to create a multilateral benchmark, which will then be hopefully referred to by others. This is the big game about the transatlantic partnership, in many areas, by the way. Whether it is a precaution as opposed to protection, or whether it is a way to create a bilateral benchmark. The latter is probably doable with the EU and US quite easily, which then would be used as a reference to pull up the rest of the international system.

This is how I see this issue moving forward. And whether or not a substantial result will come, if the TTIP ever comes to fruition, which as you know is a matter of debate. What's for sure is that it is not for now. So we have a bit of time to try to fix it properly. So that's the way to go.

One final remark drawn from my past experience and my present experience, as I still spend roughly about 80% of my time outside Europe, is the big change which is taking place in this area. I am referring to the disproportion between the potential efficiency of the Westphalian system, (treaty- and convention-based, like bilateral treaties for instance) on the one side, and on the other side the sort of bottom-up value chain based inclusion of social standards in trade. If I look at what has happened in the past five years, and it probably tells us what could happen in the next five to ten years, including social and environmental standards along global supply chains is probably more important for the conditions of workers than the classical international system. Look at the reactions for instance after the Rana Plaza disaster in Bangladesh, and the impact it has had on consumers' perceptions and behaviours, the constraint it has created on a number of textile and clothing producers, having to justify the social conditions where they source a large part of the production. This is on the move.

If I had to bet for the next five to ten or fifteen years, I would bet more money on this horse than on the classical Westphalian horse. Some of us work with the European Trade Union Confederation (ETUC) on this. Trade unions and civil society have gotten a leverage thanks to this unbundling of production systems which result in multilocalisation. The global supply chain is in my view a better contamination instrument than classical international hard law. If you look at this and if Europe wants to keep moving in this direction, looking at this part of the equation is probably as important as looking at the old part of the equation.

Jan Orbie

Thank you very much, Mr Lamy. It is always a delight to hear you talking about these issues, and it is also very important to have you in the debate on the social dimension of trade policy. You sketched the historical evolution, going back to the ITO in 1947, but of course you were also a part of the history of social issues in EU trade policies. I think it was in September 1999 when you became the Trade Commissioner and put these issues on the agenda, and then two months after you took office, there was the famous 'battle of Seattle'. Fifteen years after that, these issues are still, and even more, debated, as Philippe Pochet said in his introduction. There is of course TTIP, Rana Plaza,... these are all the issues which make the debate even more topical than fifteen years ago.

This is the topic of the debate today. We have three panellists who will speak from different perspectives. They will each talk for five minutes and finally, we will give the audience the opportunity to ask questions.

We will start with Tom Jenkins, who is senior advisor at the ETUC and also (co-)chair of the Domestic Advisory Group under the Korea agreement and other civil society forums established under EU trade agreements. This makes it very relevant to hear his perspective on these issues. Mister Jenkins, I understood that ETUC is in general in favour of free trade and free trade agreements. So my questions would be: is this indeed still the case and, second, what are the red lines from the European trade unions' perspective?

Tom Jenkins

Thank you very much, Jan. I am glad you mentioned Seattle, because, in a way, that's where the consciousness of the trade union movement focused on trade. I don't think that in the International Confederation of Free Trade Unions (ICFTU), up to then, we were that much involved. But the battle of Seattle, and really the objective of linking the WTO and the ILO –trade and labour rights- was one of the key objectives. I am sure that Pascal Lamy remembers the attempts to produce joint reports and institutional links.

Are we in favour of free trade? We are in favour of fair trade. Overall we, as European trade unions, have not been protectionist. You mentioned the EU-Korea agreement. The ETUC's main problem with that agreement was that the record of the Korean authorities towards their trade unions was appalling. We saw that Korea was allowed into the Organisation for Economic Cooperation and Development (OECD) on the promise that they would improve this situation, but they reneged on that. We felt that the same would happen under the EU-Korea trade agreement, even though they signed up to the sustainable development chapter. And we still have many problems with Korea on that matter. If we have time later, we can talk about the mechanisms which I think are very interesting, because EU-Korea is in a way the first of the so-called new generation of bilateral agreements that the EU signed up to. I think that is a step forward from the EU-Chile or EU-Mexico agreements, which Pascal mentioned previously.

On our general view on trade; if it has to do with market access, as we have said on Korea, we are quite open. In fact most of the problems in that negotiation came from the employers' side. The automotive lobby in particular was very concerned on duty drawback, rules of origin and similar issues. We held back from getting involved in their campaign because we recognised a lot of double talk from the employers. The problems which have arisen nowadays, when you look at TTIP, CETA, even Japan (although that is a different case) are no longer about market access. They have more to do, as Pascal said, with setting standards. It is also about aligning our approach towards the rest of the world. I always say, when you are talking trade, think China. When you are talking about trade in TTIP, you are also thinking about China. I think there is perhaps an opening if the EU and the United States could agree on a real basis for good, strong and enforceable labour standards based on those of the ILO. The problem with the United States, which is different to Japan and maybe Canada, is that they are averse to joining international rules. Dragging the United States into signing ILO conventions, or any conventions, any international treaties, is very difficult. I think this is one of the key issues.

Accusations of protectionism are wrong. When we try to get all the parties in such trade deals to agree to observe international conventions, these standards are not European although, of course, Europe does see itself quite reflected in ILO conventions - in the rights of freedom of association, collective bargaining, strikes, no child labour, no discrimination, no forced labour, etc. - These are international standards and human rights, and we expect all our trade partners to observe them too. I think that EU bilateral agreements now have more or less developed a template which attempts to translate this aspiration into legal language. But, as I said, the United States have only signed up to two ILO core conventions and even Canada, which we all think of as Europe on the other side of the Atlantic, has not ratified many of the core conventions either. Given this it becomes difficult when we go to the Chinese in an investment agreement and say: "You have got to ratify and implement this." And I think the implementation and enforcement of labour standards is key.

One approach we've insisted on is that we do not want the chapters on sustainable development, which include labour and environmental provisions, to become the only 'ghetto' where these core social concerns are mentioned. We also want to include, for example in the investment chapters, the social responsibilities of investors. That is where for example OECD guidelines and various other Corporate Social Responsibility (CSR) instruments can be brought in. Also in the chapters on public procurement, there are ILO conventions that could be inserted. So we want to mainstream social policy throughout the agreements. That is one of the ideas that we are putting forward.

Finally, I agree with Pascal Lamy that the Bangladesh accord is something new, something to be pursued. But, in a way, that was prompted by a mass revulsion after a particular event. I am not sure to what extent the big brands are going to be brought into that kind of CSR approach, especially if it is voluntary. From our point of view, we

need to get more teeth into these agreements. That is where, perhaps, using both approaches, through trade instruments as well as the other forms of cooperation, would be a way forward.

Jan Orbie

Thank you very much. We will then shift to the second speaker, Monika Hencsey. Ms Hencsey works at the European Commission, Directorate-General for Trade, where she is head of the unit working on trade and sustainable development. So she really is a key figure of the European Commission to talk about these issues. Monika Hencsey, we just heard Pascal Lamy saying that there is an intrinsic ambiguity when it comes to the real objectives of social standards in EU trade agreements. Do you also see this ambiguity? What are actually the objectives of this social dimension of European trade agreements?

Monika Hencsey

Thank you very much for giving me the word after Mister Lamy. The European Commissioner, Cecilia Malmström is at this very moment speaking in parallel to some of these issues. She is having a trade day talking about the new trade strategy. She just tweeted, stating: “people must be confident that trade policy supports values which are at the heart of EU: human rights, labour rights, the protection of the environment and development of poor countries and regions.” So I would argue that the EU approach is very much driven by the value-based agenda, rather than the competitiveness one. Since the Treaty of the European Union specifically recognizes sustainable development as an overarching principle to be followed in external and internal policies, there has been a real drive in order for the new generation of trade agreements to recognise that trade can actually positively contribute to sustainable development objectives in particular labour rights, but also environmental protection. It is that positivism that is at the heart of the EU’s cooperative approach. I think in your background paper you asked about the EU’s cooperative approach versus the North American kind of hard approach. We do believe, when we negotiate these trade agreements - and by the way this is not only a DG Trade affair, I am happy to see colleagues from DG Employment as well here - that more trade itself can actually contribute to enhancing these values, bring about more contact between people, exchange best practices... Companies that are exporting and that are trans- or multi-national actually often tend to treat their workers better. So often the challenges are: how to bring the rest of the companies, the sub-contractors and the local and informal economy to the same level. And we also believe that this Westphalian system mentioned by Mr Lamy, so binding things in treaties and agreements, can help. But it is clear that trade agreements cannot by themselves improve things. You need a willing government already undertaking the necessary social reform. Trade agreements can give an impetus and bind some of that commitment. That is true, by the way, for investment, for business climate, for rule of law, and I think that it is also true for labour rights.

So, what is in these EU free trade agreements (FTAs) and how is this cooperative approach reflected? Well, there are provisions to ensure, as I mentioned, that labour rights are not harmed by more trade, but there are also provisions that talk about respecting them and even enhancing them. And these are embodied in what I call the substantive obligations. There is a lot of talk on dispute settlement, but I would beg to focus an equal attention in research, in analysis, on the substantive provisions, because I think that is where the EU agreements go beyond any other partners' trade agreements. There are also cooperative mechanisms established in the institutional arrangements. For instance Tom mentioned how he is chairing the Domestic Advisory Group (DAG) for the EU-Korea FTA. This gives civil society a permanent, a structured and a transparent role to advise on the implementation and to contribute to the monitoring.

So the EU trade agreements are driven more by the value based agenda than by the competitiveness agenda. They focus on the root causes of the issue. The root causes are often lack of capacity, or lack of engagement, lack of knowledge. We try to establish, if you wish, a dialogue and framework for foreign governments, not to ensure that they copy EU social standards (because I don't think we can ask other countries to do so, that is not the objective of a trade agreement), but to learn a little bit from our experience and equally we learn from theirs. I give the example of social dialogue. The EU has a history of social dialogue. We have different member states, we have had different problems, and I think that the social dialogue in Europe is less conflictuous than in many of our partner countries. This is certainly something that we can bring to the table in discussions.

Let me then also talk about the dispute settlement, because I think that is one of the key issues in which our agreements differ from the North American agreements. And in fact North American agreements do have trade sanctions that can be used if there is a quantifiable impact on trade of lowering labour rights. So I would argue that they deal more with the symptoms than the root causes of the issue. The EU trade agreements also have a legally binding enforceable dispute settlement system. If it was not legally binding or enforceable, it would be easy to agree upon, and it is usually the last thing we close in negotiations. But it again focuses on root causes, on civil society involvement and cooperative ways.

Your background paper also posed the question how we should engage further with civil society, the European Parliament, and Member States. I do think that we need a partnership working on the implementation and make sure that those binding obligations are respected. I do not think that the governments can leave this for civil society to do alone. I think we Governments are responsible for the implementation of our trade agreements, and we should monitor progress, but we can seek advice, we can accept input. There was something in the paper about petitions: we can receive submissions, and we will do the follow-up on those.

So I am thankful for this discussion today, because I think it is very helpful, as we are about to start implementing new trade agreements – we have such provisions in Korea, Colombia, Peru, Central America and we now have in the Caucasus and in the Neighbourhood, so Georgia, Moldova – , but equally we are negotiating with Vietnam, we are negotiating TTIP of course which we do hope will become a goalpost. So I look forward to an active debate.

Jan Orbie

Thank you, Monika Hencsey. If I hear you talking, I would say that there is not only a Washington consensus and a Geneva consensus, as we've heard, but also a Brussels consensus perhaps focusing on these root causes as opposed to the North American model. This will also be discussed I guess by Lore Van den Putte, who is our third panellist. Lore is a researcher at the Centre for EU Studies (CEUS) at Ghent University. She has researched this area and has specifically done field research on the EU-Colombia and –Peru agreement. Lore, what are, according to you, the main challenges in this area?

Lore Van den Putte

Thank you for giving me the floor. As Jan said I will be talking today about the research that I have done here in Brussels and about the interviews I did in Colombia and Peru. There I mostly talked to civil society organisations, business organisations, as well as government representatives. I would like to structure my five minute presentation along the background document.

First, on the so-called soft approach - or cooperative approach, I know that the European Commission doesn't like it to be called the soft approach - the European Commission often says that it chooses this approach because the hard approach doesn't work. Sanctions do not deal with the root causes. However, let us take a look for example at the US-Guatemala case that is now under dispute settlement. There was a petition in 2008. Today we are seven years later, and we don't know what the outcome of this will be, whether there will be sanctions, or what these sanctions will be. But I think that merely the fact that civil society could file a petition was already very important. Ms. Hencsey said that also in EU agreements a petition can be filed, but I think for example for unions in Colombia and Peru, it is not clear how they can do this. So I think there is also something good about the US approach, because since the petition, there has been an enforcement plan that was negotiated between the US government and the Guatemalan government. Also, Guatemalan and US labour unions have worked together to file this petition and the Guatemalan government was held accountable for this. So I think there might also be some positive aspects about this approach. Now it is true that EU trade agreements also foresee government consultations and a panel of experts that can be started if a labour dispute arises. However it is not clear to what extent the EU is really willing to engage in this and really

start up government consultations, for example. So, as I said, I think it would be good to give civil society really an explicit voice in filing a petition.

This brings me to my second point; the involvement of civil society in the implementation. As was already touched upon, there is a very specific mechanism; the civil society forum, or sometimes it has a different name, in which the civil society of the different parties of a trade agreement come together to discuss the implementation of labour provisions. Now, I think this is a positive development, but there are a lot of challenges. For example, in the Korea agreement, it was difficult to get trade unions of the other side. The accountability of the governments towards this mechanism is also not very clear.

Finally, let me turn to the third aspect; the effectiveness. As Mr Lamy said, the way you judge the effectiveness depends on what you want to achieve with it. Do you want the trade agreements not to infringe on labour rights or do you want the trade agreements to have a positive impact on labour rights in these countries? I want to make two points in this regard, one related to legitimacy, and one related to resources. Because the EU has a social model, which is of course different in every country, we really have the legitimacy to talk about these issues with third countries. Member States have ratified the core labour conventions, we have the practice of this EU social model, so at least in Colombia and Peru, we have much more legitimacy than for example the US, to talk about these issues with the governments and civil society there. But, and then I come to my last point, if the EU really wants to exploit this legitimacy, many more resources are needed. For example, we have to be aware about what is going on in these countries. For now, to me this does not seem to be a priority. Of course it could change with Commissioner Malmström, who, in my view, sees labour issues more as a trade issue than as a non-trade issue.

Jan Orbie

Thank you very much, Lore. So, on a positive side, a lot of legitimacy for the EU, but perhaps not fully exploited. I think that many issues for debate have been raised. We've talked about TTIP, of course, inevitably, but also the EU-Canada Comprehensive Economic and Trade Agreement (CETA) has been mentioned, the agreement with Canada, Rana Plaza/ Bangladesh has been mentioned, Guatemala, Korea, and Peru and Colombia of course. There are many more issues going on than the EU-US agreement. Let's open the floor and collect a few questions from the audience.

Q&A-session

Renaat Hanssens (ACV-CSC)

There has been a lot of debate on the cooperative approach. I have a simple question. Could you give some concrete results of the cooperative approach? With respect to Korea, as trade unions we don't see many results. This belief in the cooperative approach is good, but what are the results of the cooperative approach?

Grigor Gradev (ETUI)

I want to shift the focus to the agreements in the Eastern Partnership. These agreements contain quite interesting annexes on the social side, in particular regarding specific directives that are earmarked for implementation in the respective countries. There are more than 40 directives of this type, which basically describe a new system of labour relations. Now these agreements have to be implemented, and here, the governments are under heavy pressure by their economic and financial groups. The question is, how is the reshaping of the internal system expected to work? If the governments don't do it, then what? I am referring to Moldova, Georgia and Ukraine. On the monitoring side, of civil society, these kinds of agreements set up a whole range of structures. There are the national platforms, there are the domestic advisory groups, there is the annual civil society forum, where everybody is present. These structures, except for the Domestic Advisory Groups, are of unclear composition. And then there are also the official structures of which it is not clear how they will interfere. This endangers the normal tripartite process of trying to build actual labour relations in a country. So there may be a conflict between civil society and other social partners. And then, last Tuesday, in the OECD, the deputy prime minister of Ukraine clearly defined the programme of the new government, or the new type of government. The programme is very simple: deregulation, decentralisation, minimum state, privatisation and small and medium sized companies (SMEs). He put it like this: "we don't want a middle class based on workers and other people who are employed in big state companies. We want freedom of money, active self-dependent people in our country." I find this very difficult to reconcile, and then it is said that this is the best government Ukraine has ever had and even the best government in Eastern Europe. That is actually very ridiculous. Thank you.

Herman Michiel (ABVV)

I have a question for Ms Hencsey. Why should we believe that the European Commission or European Union promotes labour rights in other parts of the world, whereas in Europe, the Commission does all that is possible to weaken the bargaining power of trade unions? Look at the recommendations for different countries, you will always find a plea for lowering the level of negotiations from interprofessional, sectoral

to company level. And I think the limits are just agreements between a boss and a worker.

Jan Orbie

On this note I think we can go back to the panel. I have the impression, Monika, that most of the questions were directed towards you.

Monika Hencsey

Thank you for the great questions.

Regarding the question on how the cooperative approach works, first of all let me be a bit modest about it. I did not say that we have a lot of experience on how it worked. We do think that this is a credible approach and we are working on implementing it. We have only implemented the Korea FTA for a few years and we have really just started with Central America, Colombia, and we will be starting with Moldova and Georgia. But I would say that there are already some achievements that one can see.

First, already during the negotiation one can make an impact. There are examples where during the negotiations of this chapter, our partner countries that were already in the process of considering ratification of certain multilateral environmental agreement, have been encouraged to ratify these and did so prior to the conclusion of the negotiations

When it comes to the implementation, I think one of the main elements we focused on in the earlier years was the establishment of the institutions including those ensuring the civil society participation. So that is where we see the most results. The Korea example was mentioned for instance, where, originally, the Korean government set up a domestic advisory group which is to ensure a balanced representation of labour groups, environmental groups and businesses; a civil society body that is to advise the government on trade and sustainable development under the free trade agreement. Originally, it was well balanced but lacked some representation. I do believe that, through government-to-government dialogue where the EU repeatedly raised this issue, active involvement of the European domestic advisory group, in particular in trade-union-to-trade-union engagement between Europe and Korea, we have contributed to the Korean Government's decision to enlarge the membership of the Korean domestic advisory group and today it includes some of the most vocal trade unions in Korea. This of course makes the Korean DAG's work more complex and it may take more time to conclude and agree on things among the members. But we do think that this is a very important element, and it is thanks to our FTA that we have given a voice to those trade unions in the trade context on labour rights.

On Central America, what I can mention as a positive example is that, when we look at the trade flows from the region to the EU, which mainly covers agricultural products, there has already been an agreement on a work programme with the Central American side to share experiences on and try to enhance, for instance, sustainability and fair trade issues in the agricultural sector. We organised a very interesting first discussion with them, including both Government and civil society representatives, and we are going to continue that work.

On Colombia and Peru, we have just had the second Trade and Sustainable Development government-to-government meeting last week. I would similarly mention our desire, and this actually originally came from the Colombian side, to engage more together on sustainability issues and responsible business conduct in the mining sector (again a sector that is actively exporting to the EU).

These sorts of cooperation can bring together the binding trade agreement with the bottom up approach that was mentioned by Mr Lamy. Companies realise that addressing these issues is necessary, as they are important in global supply chains, and actually, the EU is an important importer of many products where such issues are critical (e.g. sustainable management of fisheries and fight against illegal fishing, labour rights in the ready-made garment sector etc). There is an increasing need to match those two and to work together on improving the labour rights and also the environment protection in very concrete sectors. These are small steps, but I would say that, without the free trade agreements and the sustainable development chapter, we would not have those channels to start working on those together and raise the profile of labour rights, environmental protection and CSR in our trade relations.

On the Eastern Partnership question, I admit to you that, indeed, there is a variety of civil society platforms set up and we probably need to have a close look and see how to streamline the work and coordinate between them. The challenge of course is that, as you know, with regard to the legal agreements, some of them are in force, some of them are not yet in force, or provisionally applied, hence not all institutions and civil society platforms are created at the same time. But we would very much welcome your views on how to ensure that there are no overlaps, on the contrary that complementarity is ensured.

Tom mentioned the importance of mainstreaming some of these ideas throughout the trade agreement, not just in the sustainable development chapter. I am not sure it is legally very sound to repeat the same articles in several chapters on for instance not weakening labour rights protection to attract trade and investment. I can confirm however that the sustainable development chapter is horizontally applicable, so for instance the right to regulate on sustainable development does also apply to market access or investment protection provisions. But I do think that there is a possibility to learn from what we have now started to do in the sustainable development chapter by creating civil society institutions. We can reflect whether we could have civil society

structures in a more cross-cutting manner especially in agreements like TTIP where clearly civil society interest have been very strong. I think in the Eastern Partnerships as well as under other Associations Agreements, this could be an interesting example where some of the debate is moved away just from the trade and sustainable development chapter and broadened up into the entire agreement since also in the political and cooperation pillars there are provisions on labour rights, environment, climate change. So we're very much welcoming concrete ideas.

I had the first meeting with the future domestic advisory group for Moldova where unfortunately only very few representatives from civil society were able to participate. So I would very much encourage civil society to come to those meetings and to give us very concrete ideas, because we are just starting up. We have the first government-to-government meeting in Moldova still before the summer. We can make great use of the ambitious provisions in the chapter, but we need your active involvement.

Jan Orbie

There will be more opportunities for more questions from the audience. But, indeed, does the cooperative approach work or not? Is there some sort of an internal benchmark for measuring success? You mentioned giving a voice to civil society. That is an objective in itself, or are there some more tangible benchmarks?

Monika Hencsey

As you all know we do have a sustainability impact assessment during negotiations, even an impact assessment before we launch negotiations. We are starting to have ex-post reviews of some of our older trade agreements, so we do hope that we will have more information on impact from these studies. Of course having some baseline data is always a challenge. We rely on some of you, academics, to help us with the challenge, even with just case studies. It's not easy to distinguish what is due to the trade agreements as opposed to other factors, of course. But I would very much welcome of course any further statistics and data collected through universities for instance.

Jan Orbie

It is indeed a challenge we are also facing. You mentioned the Korea agreement as the first one in this generation and the oldest one having civil society dialogue. I think that this is indeed, as you said, the place to look when you're interested in the impact of this cooperative approach and I think it would be very interesting from that perspective to hear from Tom Jenkins on how this exactly works and how he thinks about the cooperative approach in the EU-Korea context.

Tom Jenkins

Well to put it very simply; it is a mixed bag. I do think we have made some advances. As Monika said, when the monitoring mechanism was first set up, the Korean authorities only nominated one of the two main trade unions and one from a yellow organisation. After a fair amount of pressure, they actually agreed to nominate members from the various trade unions which are representative and independent in Korea. So that was something positive though it took a long time. On the other hand, I must say that ever since this agreement was reached, the attacks on trade unions have increased in Korea. I think it has more to do with a change of government there than an effect caused by the agreement. But certainly the situation there is getting dire. There is a procedure within the agreement aimed at encouraging respect of labour standards: first there are government consultations, then you can set up an expert group. The expert group produces reports. The reports are then published or not published. But then what? That's where we want something more tangible, material consequences if this whole process leads to the conclusion that one of the parties isn't doing what it signed up to.

There is also, I must say, a problem we have with the Commission more generally. They are not very keen on engaging the tools they have. The GSP was mentioned by Mr Lamy before. The GSP does have the possibility of sanctions or withdrawal of preferences. But, quite honestly, apart from Burma, Belarus and Sri Lanka, the GSP enforcement mechanism hasn't been used. There are some countries in Latin America where, I think, the Commission should have done more on that. And on Korea, we haven't yet even gotten to the first stage of having a consultation. Now I know that there is progress, there is talk, and it is up to Monika to tell you all about it. But, for example, we're going to have a meeting of the two domestic advisory groups, the Europeans and the Koreans, in a few months' time. The Koreans, after pressure from the Commission, agreed to indicate some kind of timeline towards implementing the core conventions, or at least give us an idea of how they are going to progress. Now we are still waiting for a piece of paper from Seoul telling us exactly, or even not exactly, giving us an indication of what kind of progress can be done. So, it's hard work. I know they are tough cookies and not easy to negotiate with. But at least with those countries where there is an independent trade union movement, you can get into the machinery. I do have questions on what kind of machinery can you have with China or Vietnam, where there are no social partners independent of the state. I think that means that we need to start looking at that again. And, in the United States, the words "social partnership" do not compute with the (American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) or the Chamber of Commerce. I mean, let's face it, trying to sell social partnership in North America, though it's a laudable experience and we're doing our best, is not going to be that easy.

A couple of points on the other questions maybe. Grigor [Gradev] is right that there is a total confusion about all these monitoring groups. One of the problems is that the European External Action Service reaches agreements; cooperation agreements, association agreements etc, which have certain rather wishy washy, kind of, civil society

institutions. Then, you have the civil society mechanism of DG Trade, which I think is much better (I mean more the European DAG than the Korean one). Now, how do you get those two systems to work efficiently but without duplication? This is not that easy. But certainly, one final point, and this is a plea on behalf of DG Trade and on behalf of the Economic and Social Committee, we are having a multitude of agreements being set up, with a multitude of institutions, but there is no budget line to do this. Even for the Korean one, they cut in the number of people who can attend meetings. This might become a gigantic problem. God knows how many agreements are going to be trundling down the road. When governments and the parliaments sign these agreements, they should attach a budget line showing that they are serious about civil society and social partner involvement.

Jan Orbie

Thank you very much. I think there are indeed some fundamental issues on the representativeness of civil society. Also some practical, perhaps organisational issues on, what you mentioned, the budget for having these meetings. I also heard from the room some issues about transparency. From a trade union perspective, how easy is it to actually find allies in the partner countries? Also, in relation to the cooperative approach, is there not more pressure from the partner countries' sides for a more sanction-based approach or do they basically support the 'Brussels model'?

Tom Jenkins

In terms of finding partners, there are trade unions, independent unions in most countries of the world, and we work with the International Trade Union Confederation (ITUC), who can give us contacts. There were meetings in Bogotá recently, Daniele [Basso] was there, where we had good talks with the Colombians. Grigor [Gradev] was involved in talks with the Ukrainian unions in the context of the agreement with that country. As long as there are independent trade unions, we have the contacts. It's when the unions can't even exist independently, that there is a problem.

In terms of enforcement, I must say that there is reluctance amongst many countries, not just in the so called emerging countries. Although I think that, if you look at the development of social chapters in trade deals, there is an increase. I do realise that there are some technical problems on enforcement, especially if it is just trade related. But we believe that human rights should apply to public sector workers as well as export-manufacturing workers. So, we are quite flexible on discussing how exactly that can be done.

Lore Van den Putte

I believe it is true that the EU can really have an impact on promoting social dialogue within these countries. The South Korean example proves it to some extent: at least all these trade unions sit at the table with the government. But, and I am speaking again from my experience in Colombia and Peru, the trade agreement mentions that they can set up domestic advisory groups, or that they can use groups they already have. But when I talked to people, they didn't know about it. They didn't know that the government chose this already existing mechanism to talk about these trade issues. They didn't know that they were supposed to talk about it. I am not saying that Europe should tell these countries how to organize social dialogue because we have the best model, but I think that, again, as I said in my previous intervention, there is a lot of legitimacy that the EU can exploit. You just have to make the people aware that they can talk about these issues and inform how they can use the trade agreement.

Jan Orbie

Thank you. I suggest we can go for a second round of questions.

Deborah Martens (Centre for EU Studies – Ghent University)

I have a question for Mr Lamy. If you would bet on the horse of private initiatives, do you think that there is a role for governmental actors in handling that horse? At the same time I am curious about Monika Hencsey's view on private initiatives.

Jan Orbie

Ok, so two questions on the post-Westphalian horses.

Samantha Velluti (University of Lincoln)

I have a question for the whole panel. This concerns the Everything But Arms (EBA) in Cambodia, in particular the negative impact that the implementation of EBA has had on the industry in Cambodia. In fact there have been various activists and NGOs who have expressed serious concerns of abuses of human rights, in particular in relation to small farmers, who have been forced to leave their land. I just wondered, what should the EU do about this? Is there any responsibility when there is indeed a clear intent to breach human rights, but the outcome is actually a series of breaches on human rights?

Jan Orbie

You are referring to a situation where Cambodia could lose its Everything But Arms preferences?

Samantha Velluti

Yes. They received the preferences, there have been investments in the industry, but this has led to a worsening of the situation of small farmers.

Jan Orbie

OK. I saw at least one more hand? Yes, Rudi?

Rudi Delarue (European Commission – DG Employment, Deputy Head of External Relations)

DG Employment cooperates with DG Trade on these trade and labour provisions. An important issue is that these trade agreements are of course evolving. For example there will be more attention on issues that were previously less present, like health and safety at work or global supply chain. A second element is related to the impact. You should not take these issues in isolation from one trade agreement to another, or the two parties. What we see is also that in, for instance, global settings, like ILO or the UN, or even in regional meetings between the EU and Asia, it is now much more accepted to have serious discussions about labour issues. To have it also included in the post-2015 framework. All these issues are not just coming from the sky. There are relations between them. Of course the implementation is very important.

It is important to provide training to EU delegations, because trade should not be seen in isolation from labour issues, and it goes beyond the only economic dimension. There could also be labour attachés in the EU delegations, but of course there are resource constraints, or at least people trained on labour issues. This is why we are working on the training aspect. Another issue is the need to have a coordination across the work of the delegations, bringing together the different aspects like programming, trade or political issues. This also links to development cooperation. We are working together with EU development cooperation in actively taking up these issues. When it comes to development cooperation, labour is included in some of the programming, but more is still needed.

Jan Orbie

So you are referring to the coherence between trade policy, development policies and on the ground policies of the EU. Another question?

Daniele Basso (ETUC)

I would just like to go on about what was said on Colombia and Peru. I am part of the domestic advisory group on Colombia, Peru and Central America, and I just went to Colombia for the civil society meeting. What was a bit striking to see, was that, there

was no participation of trade unions on the other side, because they were not informed by the government. The government said that the monitoring of these agreements is done by special committees already existing in Colombia, but when we talked to the trade minister, these committees only exist on paper. So there is a problem there. In Central America I think there has also been a bit of inconsistency between the US agreements and the EU agreements. In the case of Guatemala, the US is now starting a complaint against Guatemala under their agreement. But the EU, which has an agreement with Central America, is not taking that into consideration. So there is also an inconsistency there.

Member of audience who wants to remain anonymous

As a trade unionist in such countries your life is between brackets. Never forget that. We see it in many countries. I have two questions for the panel. What about investors? You never speak about investors' responsibilities. It is not clear to me, because if there is land grabbing, I think that is a question of international law, and access to law for these countries. What is your vision on that? About sustainability, concerning enterprises self assessment, did you plan to have an audit?

Jan Orbie

Thank you, we always tell our students that good questions are more important than answers, so I leave room for one final, very brief question.

Daniel Waterschoot (European Commission – DG Employment)

I have a question for Mr Lamy. I read the very interesting study from Ghent University on the rising profile of labour standards in the EU trade agreements. I was wondering, in your experience, also on the multilateral level, what role can Europe have, or EU free trade have on the multilateral governance, and also on others, namely the US, who is negotiating with its partners? What is the role of Europe in these agreements, not just for us, but also on a global level?

Jan Orbie

Thank you for that. We've got plenty of interesting questions but also interesting information and insights from the audience. So I suggest that you just pick up the most important message that you want to leave here, and I am sure that some of you will want to continue the discussion afterwards. Monika, would you like to start?

Monika Hencsey

Thank you very much. Actually, I realised I didn't answer a question that was raised in the previous round, so I will try to answer how we have a legitimate role in promoting labour rights when we also face issues of labour rights in the European Union. I would say, yes, we face issues, there is an economic crisis and in fact not everything is perfect. These are bilateral trade agreements. So we are as much scrutinized by our partners as they are scrutinized by us. The situation in the European Union is also always on our agenda. We have explained several times what is happening in Europe, what the ILO is saying about it and how we engage with the ILO to improve the situation as needed. But we do think it is actually a positive message we bring, because we are engaging the issues in the ILO and this is how we are trying to solve them. I think we should not portray ourselves as perfect. Indeed, actually, it is quite important to show how we deal with situations where there are concerns on labour rights in Europe. Live by example and bring that experience to trade implementation.

There were a lot of questions on our EBA, GSP and GSP+. Maybe I just clarify a few things. First of all, yes indeed, the GSP (and GSP+) allows us to withdraw preferences from countries which seriously or systematically violate human or labour rights. And this has been done in a number of occasions; Belarus, Sri Lanka, Myanmar/Burma. The experience is mixed. In some cases, the situation improved and we managed since then to reinstate Myanmar to the GSP. We also went one step further and we just launched, actually with the ILO, the government of Myanmar, the US and Japan, a specific labour rights initiative in Myanmar to ensure that these things won't happen again and to engage in the labour reform process. However, in Belarus and Sri Lanka, I would say that while suspending the benefits was the right decision given the seriousness of the situations, in a way, we lost an important channel towards those countries. They are no longer in the system and so our leverage through GSP is no longer there the same way. You can't use the structured dialogue under GSP+ or you cannot use the GSP card in overall economic discussion. So it is a delicate balance. We are ready to live up to our trade agreements and GSP law and we will act, but we need to be extremely careful when and how.

This brings me to the question on land rights. Yes indeed, there is a big problem with land grabbing, in the sugar industry, in Cambodia. We are engaged of course through a number of means including through the GSP, but of course, that is not the only one instrument. We have had specific missions there jointly with the European External Action Service (EEAS). We met Olivier De Schutter to discuss the concerns and provide ample development assistance to improve the situation. The least developed countries have duty-free quota-free access to the EU market. They have that because they need those revenues to develop and become able to improve. At the same time, they cannot seriously and systematically violate human and labour rights. But it is a careful balance again.

On GSP+. There was a question on how much we are actually ready to use this system. The GSP+ system is an interesting one because it is for countries who are richer, so they are not the least developed. Therefore they have higher requirements to actually ratify and effectively implement a number of labour and human rights, environmental and good governance conventions. And at the core of the GSP+ is monitoring, which was reinforced when the GSP system was recently reformed. We will be sending the first report of the monitoring exercise to the European Parliament at the end of this year. That will give us a good opportunity to see how that system is working.

On the question about private initiatives. Indeed private initiatives are extremely important and the governments have a role to ensure that there is an enabling environment for them, that we promote them, that we encourage audits and tools that check their credibility and can compare them. What we try to do, specifically in the trade agreement, is to have specific provisions on voluntary assurance schemes. So these our broadly speaking environment or labour schemes. We also have provisions on CSR. As Governments we can do a number of things to support the uptake of such good practices. We use our FTAs to ask our partners to sign up to the relevant international instruments, like the OECD guidelines on multinational enterprises. We have a role in encouraging our companies to be responsible and also adhere to these international instruments and encourage our partner country to engage with their private sector on these issues. We are also a big consumer of course, and can take these issues into account in public procurement.

Jan Orbie

Thank you. Lore, some brief final comments?

Lore Van den Putte

Yes, I just wanted to very shortly come back to what Mr Delarue said. I do think there should be more training on labour issues for people in the EU delegations. Currently some of them have a mindset that the sustainable development chapter is something which is actually not about trade and that this chapter has an opposite logic than the other chapters of the trade agreement. So I think that training these people on these labour issues would be a big step forward.

Tom Jenkins

I back that one as well. I remember that, when the ETUC started the idea of social attachés in EU delegations, and John Monks actually went to Catherine Ashton when she was new as a High Representative. She said yes, but then, unfortunately, her staff got on to her and it was never heard of again. But I do hope that we will be able to get some progress on that. There is one other point on Bangladesh and CSR. One thing that we were trying to do in the Korean domestic advisory group, is to get Korean firms to

also get involved into that kind of process. That's going to be a tough nut to crack, but we should try to lead by example and have this as part of the agenda, with Latin America, Eastern Europe, etc. I think, if we can get some progress, we would certainly be happy to contribute.

Jan Orbie

Thank you. I am very happy to give the final word to Pascal Lamy.

Pascal Lamy

Just on a few points that have been raised. First I think the expansion of trade provides for a menu of possibilities for actors to engage more on the issues, whether it is hard systems with dispute settlement, whether it is softer systems with monitoring, or whether it is supply chain influencing. My advice to the Europeans would be to construct this menu, so that there are various options possible and then it is also up to trade unions and civil society to engage on where they believe they can best leverage their objectives. I don't think the supply chain is only a corporate social responsibility, it is also a consumer responsibility. So, what I see is that the multilocalisation of production processes increases the opportunities for non-sovereign actors to engage. Which doesn't mean they will engage. But I think, if Europeans provide that, then it is also up to social actors to take their own responsibilities. One of the problems we have - this relates to the question on what we should do multilaterally, bilaterally, unilaterally - one of the problems we have in that construction is that the trade universe is quite simple. You have the WTO, the multilateral, least common denominator, and you can build WTO+ systems, in terms of trade opening, preferences and so on. On the labour side, it is much more complex, because the least common denominator is not even common. As Tom [Jenkins] said, the US haven't ratified some of the core labour conventions. Unless and until there is a bit more of a least common multilateral denominator in the ILO, and unless and until the ILO in itself gets a bit of teeth on the implementation of its own regulations, it's going to be very difficult to link these two areas in a multilaterally binding way, which I think should remain the horizon.

On the point which Tom [Jenkins] made, I have seen, for many years, including much more when I was outside the European Union, that, on the whole, EU trade unions are much less protectionist than elsewhere. That's a reality. The basic reason for that is very simple. On the whole, the EU social systems are higher than elsewhere. If you poll people, and you ask the question "are you in favour of international trade?", the correlation between the "yes" and the quality of social systems is 98%. The only exception is my own country. That's once more an exception. But on the whole that is, and that's not surprising, the basis of what I call the Geneva consensus, or it could be a Brussels consensus. But, I think this is a fundamental reality. Why are American trade unions so protectionist? It's simply because unionisation rules in the old economy are easy, and unionisation rules in the new economy are difficult. So, if I am the boss, if I am

Sweeney or Trumka and I open trade, I lose members because I am moving the system from the old economy to the new economy. And this is, again, one clear indication of the direct connection between social systems, including unionisation legislation, and trade issues.

The point that was made about the connection between inside and outside is a good one. Although, globally speaking, again, whatever problem there is within the European Union in the articulation on different levels of social protection and social standards, on the whole, Europe remains much higher than the rest of the world. The example of the detached workers directive, which is a domestic one, in a way shows that, whatever we do internationally, and we have to keep doing it, we still will have problems of this kind. Europe is a totally integrated economic and trade system, and yet, there are discrepancies of this kind. This is equivalent to what you find in some remits in mode IV service liberalisation, of the WTO, where the problem arises what the social status of a mobile worker is. And these are things for the next 50 years. These things grow, this sort of labour related migration will grow, globalization will keep connecting systems, reducing the cost of trade. So, if you look at what has happened within the EU on these detached workers directive you might have an idea of where we will be in this discussion 50 years from now. This means that there is still a lot to do, probably in my view in a bit more of a diversified way than we have done it traditionally, including when I was Trade Commissioner.

Jan Orbie

Well, thank you again, Mr Lamy for these insights, and also thank you to the panellist. I am afraid we are already a bit late, so we have to close the debate here. But I would like to thank wholeheartedly the whole panel for their very interesting contributions. Even more so the audience. I really appreciated the comments and the very active discussion we could have here. It was maybe not a real civil society dialogue, but I think, at least, we had a very interesting dialogue. I look forward to discussing more of these issues with many of you here present. So thank you very much.