

Involving Civil Society in Social Clauses and the Decent Work Agenda

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ABSTRACT

The United States (US) and the European Union (EU) are two of the biggest proponents of the trade–labour linkage. While US practice is characterised by a ‘conditional’ approach, the EU’s approach is rather more ‘promotional’. Nonetheless, both foresee the possibility of civil society organisations such as unions, business organisations, non-governmental organisations (NGOs) and academics participating in the monitoring of the implementation of labour provisions. By focusing on the trade agreements of the US and the EU with South Korea, this article assesses to what extent these civil society monitoring mechanisms differ *de jure* as well as *de facto*. Methodologically, the paper combines expert interviews with an analysis of the legislative texts of trade agreements and of official documents produced by the mechanisms. This exploratory study shows that while such mechanisms are intended to be promotional, they do have the potential to contribute to respect for labour standards. However, in order to concretise this potential, the institutionalisation and accountability of the mechanisms should be strengthened.

KEYWORDS

Labour, trade, civil society, European Union, South Korea

Introduction

Recent years have seen an increase in the incidence of free trade agreements (FTAs) and of labour provisions therein (International Institute for Labour Studies, 2013). Thus trade policy has become a means to promote respect for the International Labour Organization’s (ILO) standards in third countries. Two of the best-known proponents of this trade–labour linkage are the European Union (EU) and the United States (US). There are discernible differences between these two actors with respect to the normative content and design of their approaches to fostering compliance with these labour commitments (Vogt, 2014). While the EU is known for its ‘promotional’ or cooperative approach – which is characterised by consultations and dialogue – the US applies a ‘conditional’ approach in which the respect for labour rights is seen as a condition for economic advantages on the US market (International Institute for Labour Studies, 2013; Oehri, 2014). While this difference in their overall approach is widely noted in the literature, scholars and practitioners are less likely to be aware that both provide an opportunity for civil society to monitor the implementation of labour provisions. One of the strategic objectives of the Decent Work Agenda is the promotion of social dialogue. In this regard the involvement of civil society in the monitoring of labour provisions in trade agreements may be vital to achieve the objectives set in the Decent Work Agenda. This involvement is achieved via domestic as well as transnational mechanisms.

Domestic mechanisms involve the establishment of a national committee of civil society representatives or granting additional competences to some existing structure which then advises its own government on the implementation of the labour provisions. Transnational mechanisms include civil society representatives from both state parties who meet to advise both governments on the implementation of social provisions.

The involvement of civil society in trade agreements can be traced back to three principal causes: the expansion of issues covered by trade policy that have a far-reaching impact on peoples' daily lives (Maes, 2009); the increasing importance that is given to norms such as democratic participation in the framework of international trade policy (ECDPM, 2011: 1); and the complexity of trade policy which requires input of actors traditionally not involved.

While a significant amount of research exists on the role of civil society during trade negotiations (see for example Del Felice, 2012; Dür and De Bièvre, 2007; Spalding, 2008), little research has been conducted on the role of civil society in the implementation of trade agreements. There are at least three reasons why this notable gap in the literature needs to be filled. Firstly it is striking that while the involvement of civil society in complaint mechanisms¹ (Banks, 2010; Dombois, Hornberger and Winter, 2003) and their contribution to the establishment of transnational advocacy coalitions had been studied (see for example Nolan García, 2011), transnational civil society mechanisms have not been the subject of study. This is surprising because it could be expected that they would provide even better opportunities for transnational advocacy building, given that they provide an explicit forum for civil society to meet. In this regard recent research has suggested that the dialogue and consultation mechanisms of EU trade agreements contribute to an improvement of labour standards in partner countries because the civil society organisations involved learn from their European counterparts in their advocacy for improved labour standards (Postnikov and Bastiaens, 2014). Secondly, from a more policy-oriented perspective, the inclusion of civil society in the implementation of social provisions has been proposed by the International Institute for Labour Studies (IILS) as a possible avenue to increase the effectiveness of the social dimension of bilateral trade agreements (IILS, 2013: 97–113). Not only can trade partners benefit from the expertise of civil society representatives, involving them can in itself increase the legitimacy of social provisions. Thirdly, while many academics and policy makers stress the differences between the US and the EU approaches in the labour–trade nexus, in practice these differences are less marked, with both actors employing a cooperative approach towards their trade partners (Oehri, 2014). Via a comparative assessment of the involvement of civil society in the implementation of labour provisions, a new and understudied topic, this article contributes to the debate on the supposed differences between the EU and US approaches. Even though this research topic is a moving target, it is important to investigate it now in order to draw some early lessons that may inform current practice. Among other areas, empirical research is especially needed on whether and how civil society representatives can raise issues effectively within the mechanisms recently set up by the EU (Campling, Harrison, Richardson and Smith, 2014).

In the US case the involvement of civil society in the implementation of labour provisions began at the beginning of the 1990s with the side agreement to the North American Free Trade Agreement (NAFTA), the North American Agreement on Labour Cooperation (NAALC). In 1994 an advisory body comprising civil society organisations was set up to advise the US government on the implementation of the NAALC. In the EU case the practice of involving civil society is more recent but nevertheless has become a standard element of the so-called new generation of EU FTAs (Van den Putte, Bossuyt, Orbie and De Ville, 2013). The EU practice originated with the EU–Chile Association Agreement (signed in 2003). However, while civil society bodies are envisaged in many agreements, in most cases they have yet to be formally established. Only in the case of the Korea agreement, which entered into force in July 2011, have these provisions been implemented.² Given

that South Korea is the first case in which both the US and the EU have in practice set up monitoring mechanisms, it provides an ideal case for our purposes. Furthermore, the South Korean case is one in which trade agreements with very high commercial significance are being struck with a state with a questionable labour standards record. For example, freedom of association problems are frequently reported in South Korea. Last year the legal status of the Korean Teachers' Union was withdrawn and there was a raid on the headquarters of the Korean Confederation of Trade Unions (KCTU) (Jenkins, 2014; The Hankyoreh, 2014). Migrant workers also face discrimination and exploitation, even to the extent of experiencing forced labour, especially in the agricultural sector. (Amnesty International, 2014; Amnesty International USA, 2013). In January 2014 a mission from the International Trade Union Confederation (ITUC) and the Trade Union Advisory Committee to the OECD (TUAC) was sent to South Korea to examine anti-union government policy and the repression of Korean trade unions (TUAC, 2014). Given that South Korea is usually seen as a developed economy, this article also contributes to the debate on the trade–labour linkage in agreements between developed economies.

Given that domestic and transnational monitoring mechanisms are an understudied topic with promising expectations, this article is a first attempt to systematically and comparatively assess the way in which the US and the EU involve civil society in the labour aspects of their bilateral trade agreements. The central question addressed is how civil society is involved in the implementation of labour provisions, both from a *de jure* and a *de facto* perspective. In other words, how is civil society involvement dealt with on paper in the agreements themselves and how does it play out in practice? It is important to note that this article by no means aims to give a holistic or permanent evaluation of the effectiveness of these mechanisms. Rather, this research is exploratory. Note also that this article is written mostly from a US and an EU perspective. Therefore, we encourage research that looks into the South Korean perception of this issue.

The article consists of three parts. The first gives a short overview of the negotiations and the difficulties that the labour aspects of the US and EU agreements with South Korea raised within the US and the EU. The second part systematically compares the way in which the civil society monitoring mechanisms are set out in the trade agreements and implemented in practice. The third part draws some tentative conclusions as an inspiration for the further development of the currently existing mechanisms.

The central argument put forward in the paper is that while civil society monitoring mechanisms are often described as 'promotional' (IILS, 2013: 77) or 'soft' because they do not amount to precise, enforceable conditions for the maintenance of trade preferences, they might nevertheless contribute in the long run to an environment that is more conducive to high labour standards. In order for this to materialise, this paper suggests that mechanisms should be better institutionalised and the duty of governments to respond to issues raised by civil society representatives should be strengthened. With regard to the scope of the mechanisms, a circumscribed scope guarantees the discussion of all issues, but might become unfeasible in the long run.

1. Some Background on the Labour Provisions of the US and EU Agreement with South Korea

This part focuses on the role of labour provisions in the negotiation of the trade agreements, which was not without controversy. However, we should note that most of the concerns voiced in relation to the trade agreements were related to the automobile sector.

1.1 The Korus Agreement: Social Provisions Adapted to Domestic Democratic Demands

Negotiations between the US and South Korea started in 2006 and were concluded in 2007. However, the Democratic Party in the US House of Representatives wanted to include labour and environmental provisions in trade agreements.³ As such the South Korean side accepted modifications to the commitments made in the 2007 agreement in return for American concessions on other issues⁴ (Inside U.S. Trade, 2007c). As is usually the case for trade agreements negotiated by the US, the labour issues were included in a separate chapter.

The agreement did not enter into force until 2012. Among other reasons, this delay was due to differences between Republicans and Democrats over the automotive sector and the beef industry (Cooper et al., 2013). The labour provisions in the agreement were also contested.

In March 2007, sixteen House Democrats sent a letter to the Korean president complaining that Korea was not implementing ILO recommendations (Inside U.S. Trade, 2007b). In April, the US Labor Advisory Committee⁵ complained that the advisory procedures were not being respected by the US Trade Representative (Inside U.S. Trade, 2007a). Not only did they have insufficient time to investigate the agreement, the text they were provided with was incomplete. On the substantive issues, the Labor Advisory Committee complained that the agreement did not foresee that the Parties would respect the ILO's Core Labour Standards (CLS), nor did it contain adequate dispute settlement mechanisms (Labor Advisory Committee, 2007). The Committee advised the President not to sign the agreement as it stood and warned that if the agreement were to be sent to Congress in its current form, Congress should reject it. AFL-CIO, the largest federation of unions within the US, was also opposed to the trade deal with Korea, especially because of concerns about the freedom of association and the right to organise and bargain collectively (AFL-CIO, 2010). Lobbyists argued that this was a partial reason why 'only' 59 Democrats (31% of the Democrats) in the House (instead of the expected 70) voted in favour of the agreement (Inside U.S. Trade, 2011). Despite the 'low' Democratic support, the trade agreement was passed with 278 votes in favour (of which 219 were Republican) and 151 against.

1.2 The EU–South Korea Agreement: A Template for Civil Society Involvement?

Negotiations for an EU–South Korea trade agreement started in 2007 and were concluded in 2009. The agreement entered into force in July 2011. As such it was the first of the new generation FTAs announced by the EU in its Global Europe Strategy (European Commission, 2006). At the time it was the most comprehensive FTA ever negotiated by the EU.

Current EU practice is to include labour and environmental provisions in a separate chapter called 'Trade and Sustainable Development'. Given that the EU aims to take a holistic approach to sustainable development that combines its social, environmental and economic aspects, the mechanisms set up to advise on labour provisions are also intended to cover environmental provisions. Further detail on the social provisions of agreements is included in the Rules of Procedure.

As in the US case, concerns were raised about the labour aspects of the trade deal. As early as 2007, in a resolution on the Korea agreement the European Parliament asked for the adoption of an ambitious approach to sustainable development and the incorporation of binding social clauses (European Parliament, 2007). In this regard it explicitly referred to the role of the US Congress in pushing for stronger social and environmental provisions in the US–Korea agreement. Furthermore it asked that the agreement should foresee the establishment of a 'Trade and Sustainable Development Forum' in which employers, employees and NGOs could work together to ensure that market opening was accompanied by rising social standards. The parliament also organised a hearing on the Korea agreement in 2010.⁶ Most of the discussions on the South Korea agreement focused on the economic benefits and disadvantages of the agreement.⁷ Its social provisions,

however, were applauded by the European Parliament and its committee on International Trade. The inclusion of civil society in the Domestic Advisory Group (DAG) was seen by the legislative arm of the EU as an important innovation (European Parliament, 2011).

In South Korea, civil society organisations were in general less opposed to the EU agreement than to the US agreement (Kim, 2013). Given the long-standing anti-American sentiment among the population, the agreement was perceived as being mostly beneficial to the US. The EU agreement was less controversial, given that relationships were not very well developed yet and that the EU is not regarded as a major player in the region. However, these sentiments were not based on an objective evaluation of the costs and benefits of the agreements for the South Korean economy.

2. *Comparative Overview of the Implementation Mechanisms*

Having shown that the labour aspects of trade relations with South Korea are not uncontested, we continue with a systematic comparative analysis of the monitoring mechanisms included in both agreements. As mentioned earlier, the two trade agreements discussed here both include domestic and transnational monitoring mechanisms, but there are some significant differences between the provisions of the US and the EU. We begin by setting out the criteria on the basis of which the mechanisms are compared.

2.1 **Criteria**

The criteria used to compare the design of the four mechanisms were developed on the basis of an analysis of the literature on the involvement of civil society in trade policy and expert interviews conducted by the author.⁸

Our first criterion, *institutionalisation*, measures the extent to which the mechanism enables the involvement of civil society representatives to become 'normal practice' within and between the countries concerned. It consists of two aspects: obligation and precision (Abbott et al., 2000). Obligation refers to whether civil society consultation is obligatory in the sense that the establishment and functioning of these mechanisms (for example, the schedule of meetings) is not left to the discretion of the parties. Precision relates to the level of detail in which the operation of consultation mechanisms is specified. The more precise the formulation, the higher the level of institutionalisation (Abbott et al., 2000). If the trade agreement is imprecise, it is more likely that reluctant governments will find a way not to establish a functioning mechanism. In Table 1, institutionalisation can be high (+), intermediate or unclear (/), or low (-).

The second criterion, *scope*, refers to whether the mechanism is set up for one agreement specifically (as is the case for EU agreements) or whether it is designed to monitor the labour provisions of more than one trade agreement. If civil society organisations have to discuss the labour provisions of a range of trade agreements, it is likely that less attention will be devoted to cases perceived as less urgent, for example South Korea in comparison with Colombia. Interviews with members of the Labour Affairs Council in the US, for example, showed that little attention is indeed devoted to the labour situation in South Korea. In Table 1 the scope of consultation mechanisms is classed as either specific (+) or broad (-).

The third criterion, *accountability*, concerns the degree to which the comments and criticisms of civil society representatives find their way into the policy process. Accountability depends on whether the outcomes of the mechanism are defined (in the form of resolutions or recommendations) and on the extent to which the Parties are obliged to take their views into account. Muguruza (2002) suggests that accountability may be enhanced if there is a formal feedback mechanism by which the Parties remit information on how the outcomes of the mechanisms have

been used (or not). In order to influence the policy process, transparent and accountable structures to channel input and receive feedback have to be put in place (ECDPM, 2011). If participants feel that their views are not taken into account by the respective governments, satisfaction might be low among participants, as is the case for some participants in the Civil Society Dialogue organised by DG Trade in the EU (European Commission, 2014: 62–64), which might in turn lead to ‘consultation fatigue’ (Muguruza, 2002). In Table 1, accountability is classed as high (+), intermediate or unclear (/), or low (-).

Table 1 presents a qualitative comparison of the EU and US approaches. For the *de jure* categories, scoring is based on an assessment of the legal texts of the agreements. For the *de facto* categories, addressing the practical functioning of the mechanism, scoring is based on the analysis of meeting documents, rules of procedure (where these exist) and interviews. Note that the domestic mechanisms only refer to those established in the US and the EU.

Table 1: Comparative Overview of the Monitoring Mechanisms

		Domestic mechanism			Transnational mechanism		
		Institutionalisation	Scope	Accountability	Institutionalisation	Scope	Accountability
US	De jure	-	-	/	/	+	/
	De facto	+	-	/	-	+	-
EU	De jure	+	+	/	/	+	/
	De facto	+	+	+	/	+	+

As the table shows, the EU domestic mechanism is more firmly institutionalised *de jure*, within the text of the agreement. However, when it comes to *de facto* implementation, both the US and the EU domestic mechanisms demonstrate a high level of institutionalisation. However, implementation of the US mechanism remains dependent on the political constellation in place at any given moment. In terms of the scope of each mechanism, the US domestic mechanism is very broad. The labour aspects of *all* US trade agreements fall within the remit of the National Advisory Committee. In the EU case, by contrast, the domestic mechanism is focused specifically on the agreement with South Korea. While the text of both the EU and US agreements is silent on the question of government accountability to the consultation mechanisms, in the EU some guidance is provided by supplementary rules agreed upon after the entry into force of the agreement itself.

Overall, then, it seems that some of the criteria are (partly) met with regard to the domestic mechanisms. However, the situation is different with the transnational mechanisms. Institutionalisation is quite low. The meetings are very focused with regard to their content, but they are not held on a regular basis, especially in the case of the US. In the EU case the government is in practice somewhat accountable towards the transnational mechanism.

2.2 The Korus Agreement

The domestic mechanism: The National Advisory Committee

The language establishing the US domestic mechanism is as follows: 'Each Party may convene a national labor advisory committee comprising members of its public, including representatives of its labor and business organizations and other persons, to advise it on the implementation of this Chapter.'⁹ This provision for a National Advisory Committee (NAC) is carried over in almost identical form from one US trade agreement to the next using text that first appeared in the NAALC.¹⁰

The NAC is composed of three groups with four people in each group: public representatives (in practice academics), labour representatives and business representatives. Meetings are also attended by staff of the Department of Labour and/or the US Trade Representative's Office. As such, the NAC is one of the few forums in which a tripartite dialogue takes place (interviews 5, 10). Representatives are appointed for a fixed term and recently most of them were reappointed for a second term.

The NAC was dormant at the time of the Bush administration, but was revived under Democratic leadership in 2011. This is no surprise given that the Democratic Party has always had more attention for labour issues in trade than its Republican counterpart. As such, its institutionalisation depends to a large extent on the political context. Since 2011 it has met at regular intervals, with six meetings in total lasting about four hours each. Thus institutionalisation is high for the moment. The NAC Charter specifies that the NAC should oversee the labour provisions of the following agreements: NAALC, Singapore, Chile, Australia, Morocco, Central America and the Dominican Republic, Bahrain, Oman, Peru, Colombia, South Korea and Panama (U.S. Department of Labor, n.d.). The implementation of the labour provisions of all of these agreements is discussed in this forum and little attention seems to be paid to the South Korean case. There seems to be much more concern about, for example, the agreement with Colombia or trade relations with Guatemala. What is more, most NAC members are more specialised in Central and Latin America (interview 3). For example, when asked about the establishment of a domestic mechanism in South Korea for the monitoring of the social provisions of the KORUS agreement, interviewees in the US generally replied that they were not aware of such a mechanism (interviews 2, 3, 4). None of the interviewees working on this topic were aware of the presence or absence of such a mechanism on the South Korean side.

The minutes of every meeting are kept, but the NAC does not serve as a way to influence the dialogue between governments on labour issues (interview 5). As one interviewee put it, it is more of an advisory committee with a small 'a' (interview 3). While the US Department of Labour seems open to receiving advice, it appears to be difficult for the NAC to make specific recommendations because of the conflicting views of labour and business representatives (interview 3). In this regard the same interviewee argued that a recurrent theme within the NAC is whether the burden should be put on companies (as the labour side argues) or on governments (as business argues). Indeed, a business representative argued that the biggest weakness is the lack of administrative capacity of governments (interview 5). These entrenched differences of view tend to lead to 'lowest common denominator' resolutions. An additional problem is that the role of the NAC is to advise the Department of Labour. The Department in turn has to negotiate a policy position with the US Trade Representative's office, whose approach is embedded in the broader strategy of the US State Department.

The transnational mechanism: The public sessions of the Labour Affairs Council

The US–South Korea agreement envisages a Labour Affairs Council comprising cabinet-level or equivalent representatives of both Parties.¹¹ Every meeting of this Council is supposed to include a meeting with the public to discuss implementation matters relating to the labour agreement. The composition of ‘the public’ in this case is not specified.

Only one meeting of the Ministers of Labour has so far taken place, in March 2013 in Washington. Only very limited documentation of this meeting is available. There is no fixed participation given that any interested person can register for the meeting and seats are given on a ‘first come, first served’ basis. Given that no funding is available to pay for the participation of South Korean civil society representatives, there is no true ‘transnational’ civil society dialogue. However a South Korean union representative reported that they had been informed about the outcomes of the meeting by a US counterpart (interview 1).

While US labour organisations provide funding for some trade unions to come to the US to meet with the administration and with members of Congress, this money is not spent for the public sessions. This is telling for the expectation of effectiveness of these meetings. During these public meetings government statements are mostly very broad and formalistic. Although it is thought to be positive that Ministers of Labour (or their representatives) have to face the public, those taking part in the meeting are treated as an audience and not as people giving advice to the governments. They can ask questions, but the responses tend to be rather vague and as such the mechanism does not seem to be conducive to any improvement of the labour situation (interview 6). Given that no minutes are taken it is hard to hold the governments accountable to the advice they receive from civil society. It is also telling that an interviewee from the US Department of Labour was quite unaware of these meetings.

2.3 The EU–South Korea Agreement

The domestic mechanism: The Domestic Advisory Group

The agreement with South Korea foresees that the Parties shall establish a Domestic Advisory Group (DAG) on sustainable development (specified as the environment and labour) whose task is to advise on the implementation of the sustainable development chapter. Members of the group should be ‘independent representative organisations of civil society in a balanced representation of environment, labour and business organisations as well as other relevant stakeholders’.¹² Nothing is said about the way in which they are to be selected. In practice the European DAG in the Korea agreement consists of 14 members.¹³ Tom Jenkins of the European Trade Union Confederation is the chair of the European DAG of the Korea agreement.¹⁴ No environmental organisations are part of the DAG. However, concerning labour, the DAG includes representative organisations. The first meetings of the DAG and the Civil Society Forum (CSF – the transnational mechanism) were mostly concerned with setting up the Rules of Procedure. As was the case for the NAC in the US, in the beginning it was not very clear what the overall role of the DAG would be and what role the participants were expected to play (interview 8).

While the DAG provisions are quite precise, it is questionable whether the inclusion of both labour and environment in the same mechanism enhances the chances for an improvement of labour standards. Although these issues can often be intertwined, reluctant governments might use the forum to direct discussions to focus only on environmental issues. In practice the European side of the DAG is quite institutionalised. It has decided to meet four times a year (Altintzis, 2013).

Concerning accountability, it is foreseen in the agreement that two other parts of the institutional machinery, the Committee on Trade and Sustainable Development¹⁵ (TSDC) and the Panel of Experts,¹⁶ can or should seek the advice of the DAG, but it is not specified to what extent

they are required to reflect this advice in their final report. Nonetheless the TSDC has in practice agreed to consider all communications it receives from the DAG and from the CSF and also that in cases where it adopts operating conclusions it will communicate these to the DAGs.

Since its establishment, the DAG has produced two opinions – one on the Green Economy (Domestic Advisory Group under the EU–Korea FTA, 2013b) and one on the ILO Conventions (Domestic Advisory Group under the EU–Korea FTA, 2013a). So the output of the EU domestic mechanism is more concrete than is the case in the US. These opinions have gone to the European Commission and the Korean government. In addition, the chair of the DAG wrote to then Trade Commissioner De Gucht to express the DAG’s concern about the violation of labour rights in Korea (Jenkins, 2014). While the majority of the European DAG supported this move, the employers’ side believed it may have exceeded the role of the DAG. In his reply, De Gucht thanked the European DAG for its efforts in this regard and mentions that the European Commission would try to organise the CTSD in 2014 instead of early 2015 to ‘ensure effective and timely dialogue’. Some DAG participants also reported that although they believe that the European Commission does bring up DAG issues in its dialogue with the Korean government, it does not have enough leverage to have an impact (interviews 7, 8).

The transnational mechanism: The Civil Society Forum

Recent EU trade agreements provide for the establishment of a CSF in which civil society representatives of both parties can meet.¹⁷ In the Korean case, the DAG of each Party selects representatives from among its members as a balanced delegation to the CSF. Normally, the CSF is composed exclusively of the members of the DAG of both sides but the rules of procedure also allow for observers to attend the meetings of the CSF in order to reflect the diversity of civil society of both Parties. The possibility of holding this kind of ‘open meeting’ parallels the US practice to a certain extent. However, attendees must be nominated by a DAG and accepted by the two co-chairs as well as paying their own expenses. The composition of the Korean DAG has been fiercely criticised by the European DAG because ‘... the Korean DAG – except for one or two members – was supportive of the government’ (ETUC, 2013). Indeed, most members of this DAG are Korean professors who are or have been affiliated with the Korean government.¹⁸ In response to these criticisms, the Koreans stated that they believe that professors who have specialist knowledge and a neutral view can be considered to be independent civil society representatives. As one interviewee put it, ‘part of the problem is that different parts of the world have a different perception of what civil society is’ (interview 9). The European side reiterated that it believed that the participation of the trade union KCTU was needed for the Korean side to be representative. Because of this and other pressure the Korean DAG was reorganised in 2014 and now also includes the KCTU.

According to the trade agreement, the CSF is supposed to meet once a year. However, the decision of the Council, which is a general institution of the EU composed of the member states, specifies that an extraordinary meeting may be held if one of the DAGs requests it (Council, 2012). The EU–Korea CSF seems to be quite institutionalised as it has already met two times (as foreseen by the agreement): the first time in June 2012 in Brussels and the second time in September 2013 in Seoul. However, no meeting was reported in 2014. Institutionalisation is potentially high given that the DAGs each have their own secretariat (for the European side, the European Economic and Social Committee) that will assist in the daily functioning of the DAG and the preparation of CSF meetings.

So while the Europeans see it as positive that participation is fixed, especially labour representatives in South Korea see the need for a more open meeting so that ‘true’ civil society can participate. Indeed, by putting some pressure South Korea agreed to a more open meeting. Apart from that, the Korean side of the CSF did not want the ILO being present. On this issue there was a

clear division among the South Korean members, with trade union representatives agreeing to it while academics represented the South Korean government's point of view. Despite these problems, European participants in the CSF reported that the second session of the Forum improved significantly on the first, with a better common statement and more constructive atmosphere.

The practical functioning of the CSF is specified in its own rules of procedure (Civil Society Forum under the EU–Korea FTA, 2013). Here the possible impact of the CSF is broadened in the sense that it is intended to play an advisory role for other bodies established in the trade agreement by supporting them with expertise and knowledge. As mentioned before, the CTSD also agreed to take communications of the DAG as well as of the CSF into account. Concerning these communications, one frustration for European participants was that the opinion that they had written on the labour rights situation was diluted after discussion with their Korean counterparts, who did not want to make any reference to the ILO.

For CSF members, the costs of participation are borne by the Parties. Meetings alternate between Brussels and Seoul, and the costs of organising each meeting are met by the host country. As such the civil society dialogue truly has a transnational character.

3. Conclusions

While these mechanisms (especially in the European case) are still very much in the process of being developed, we can draw some tentative conclusions about their functioning. First of all, there seem to be advantages as well as disadvantages associated with mechanisms with a clearly circumscribed scope. Although agreement-specific mechanisms ensure that every agreement is discussed, it might become a challenge for the EU to find enough representatives to take part in all these meetings. This problem might be less pressing for NGOs, but more so for unions given that international union (con)federations are fewer and have less staff. In the US case, on the other hand, where the focus is quite broad, it is questionable whether enough time can be devoted to each of the agreements, given that the NAC has to deal with more than ten of these.

Second, the fixed participation of a limited number of representatives seems to be a precondition for participants to get to know each other and to determine and understand the role of the mechanism they are in. However, this implies that participants must be selected and in some cases (such as the CSF), it might be advisable for governments to avoid selection in favour of inviting the participation of all interested organisations. For example, the members proposed by one government might not seem representative from the point of view of the other. We saw above how this problem arose in the context of the Korean DAG, which initially only included one genuine union, at least as far as this was understood by the EU. A more open workshop was organised in the context of the CSF meeting in Korea. Nonetheless the South Korean side did not accept the ILO's presence there. The EU seems to have learned from this first experience and current agreements provide for more open meetings.

Third, there is the question of funding. If the Parties do not provide funding for civil society of both countries to meet, then it is likely that the meetings of the Labour Ministers will be one-sided. As such these meetings do not by themselves enhance the possibility that civil society representatives will learn from each other.

Fourth, more efforts could also be directed towards increasing the accountability of the mechanisms. This is especially the case for the US agreements, where participants noted that they are not sure what the Department of Labour does with their advice.

In the US case it was also found that institutionalisation very much depends on the political constellation. Democratic administrations in the US seem to be much more in favour of making the

domestic mechanism work well. During the Republican administration of Bush it was dormant. If the mechanisms are to have an impact in the long run, continuity is important. Related to that, if the trade agreement contains no obligation that the mechanism be established (as is the case in the US), it is less likely to be set up, as the South Korean case shows.

Fifth, it might be a good idea for the European Commission to be more transparent on how representatives were chosen. In the Colombia/Peru case, where similar mechanisms are set up, it has for a very long time been unclear for organisations that applied, whether they would be chosen or not.

Sixth, while the impact of the mechanisms on labour conditions is difficult to discern and thus to judge, both US and EU participants thought it was useful to take part in the consultation mechanisms. Participation permitted an exchange of views with other civil society representatives and was an opportunity to have governments listen to them in a formal setting. However, a South Korean participant agreed that although any mechanism was better than none, the existing structures were insufficient to tackle labour issues because they have no enforcement power whatsoever and also because they are embedded in the framework of a trade agreement (Interview 1).

All in all, while many problems with the implementation of these mechanisms exist, such domestic and transnational mechanisms are vital to achieve the Decent Work objective of promoting social dialogue, even in industrialised countries like the US where tripartite dialogue is not very common.

NOTES

1. Please note that this study does not cover the civil society involvement in the whole implementation process and focuses only on the promotional aspect of the implementation via civil society consultation mechanisms. For the difference between promotional and conditional aspects of labour norms in trade, please see the 2013 publication by the International Institute for Labour Studies. In the US, for example, civil society has the right to file complaints under the labour chapters of the agreements, but this mechanism cannot be qualified as promotional given the possibility for penalties it foresees.
2. Recently also the EU–CARIFORUM Joint Consultative Committee was established with civil society from the EU side and the side of the Caribbean countries meeting in November 2014 in Brussels. Currently the mechanisms under the EU–Colombia/Peru trade agreement are being set up.
3. This ‘New Trade Policy for America’ in practice meant that pending US trade agreements should include key Democratic principles, not only on labour, but also on the environment, access to medicines and other issues. With regard to labour it stipulated that countries should uphold in their law and practice the obligations of the 1998 ILO Declaration (Inside U.S. Trade, 2007b).
4. These included two side letters to the agreement: one on patents and one on environmental provisions.
5. This US institution, officially called ‘Labor Advisory Committee for Trade Negotiations and Trade Policy’, provides advice to the Secretary of Labour and the US Trade Representative. Also, at the conclusion of negotiations of each agreement it provides a report to Congress, the Office of the United States Trade Representative and to the President.

6. The programme of the hearing can be found at <http://www.europarl.europa.eu/document/activities/cont/201006/20100611ATT75961/20100611ATT75961EN.pdf>. Most of the speakers were business representatives.
7. The European (especially the Italian) automobile sector and the electronic industries were very much opposed to the agreement.
8. Within this article references will be made to specific interviews conducted by the author in Washington, Brussels or via Skype. However, given that only few people take part in the mechanism and given that they were promised anonymity, the author at the end only provides the place and date of the interview.
9. See art. 17.5.7 in the US–Peru and US–Colombia agreement.
10. See art. 17. Aaronson and Zimmerman (2008: 173) point to the fact that the environmental side agreement of NAFTA set up an institutionalized Joint Public Advisory Committee, which comprises five citizens for each country. According to the website of the committee, the citizens represent a microcosm of the public in the three countries. For more information visit http://www.cec.org/Page.asp?PageID=1226&SiteNodeID=208&AA_SiteLanguageID=1.
11. See art. 19.5.2. The agreements mention this should happen unless the Council decides otherwise.
12. Art. 13.12.5.
13. It consists of three members from the EESC, four business organizations, three labour organizations and four non-governmental organizations (NGOs) (consisting of a farmer group, a group on human rights, one on animal rights, and one on development and humanitarian aid). The full list can be consulted here: <http://portal.eesc.europa.eu/eu-korea-dag/Civil-Society-Forum/Pages/Members-of-Civil-Society-Forum.aspx>.
14. In this capacity he is also one of the co-chairs of the Civil Society Forum.
15. This committee has the task to oversee the implementation of the sustainable development chapter. See art. 13.12.1-3.
16. This panel may be set up if a Party would like an issue of sustainable development to be discussed between the Parties, after this has been insufficiently addressed in government consultations. See art. 13.1.
17. See art. 13.13.
18. One interviewee also recalled that this has to do with the different understandings that consist of what civil society means in different parts of the world (interview 2).

LIST OF INTERVIEWS

1. Interview South Korean side, Skype, 26 August 2014
2. Interview US side, Washington, 14 July 2014
3. Interview US side, Skype, 6 August 2014
4. Interview US side, Washington, 10 July 2014
5. Interview US side, Skype, 27 August 2014
6. Interview US side, Washington, 11 July 2014
7. Interview EU side, Brussels, 22 July 2014

8. Interview EU side, Brussels, 19 June 2014
9. Interview EU side, Brussels, 11 March 2014
10. Interview US side, Skype, 24 July 2014

REFERENCES

- Aaronson, S.A. and Zimmerman, J.M. (2008) *Trade imbalance: The struggle to weigh human rights concerns in trade policymaking*. Cambridge: Cambridge University Press.
- Abbott, K.W., Keohane, R.O., Moravcsik, A., Slaughter, A.-M. and Snidal, D. (2000). The concept of legalization. *International Organization*, 54(3): 401–419.
- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) (2010) ‘Statement by AFL-CIO President Richard Trumka on Korea Trade Deal’. Available online at <http://www.aflcio.org/Press-Room/Press-Releases/Statement-by-AFL-CIO-President-Richard-Trumka-On-K>, [Accessed: 14 March 2015].
- Altintzis, Y. (2013) ‘Civil society engagement and linkages in EU trade policy,’ in Takacs, T. and Dimopoulos, A. (eds.) *Linking trade and non-commercial interests: The EU as a global role model?* (Vol. 4). The Hague: Centre for the Law of EU External Relations.
- Amnesty International (2014) ‘Bitter harvest: Exploitation and forced labour of migrant agricultural workers in South Korea’. Available online at <https://www.amnesty.org/en/article/news/2014/10/south-korea-end-rampant-abuse-migrant-farm-workers/> [Accessed: 14 March 2015].
- Amnesty International USA (2013) *Annual report: South Korea 2013*. Available online at <http://www.amnestyusa.org/research/reports/annual-report-south-korea-2013>, [Accessed: 17 February 2015].
- Banks, K. (2010) *Trade, labor and international governance: An inquiry into the potential effectiveness of the new international labor law*. Available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1657745, [Accessed: 20 August 2014].
- Campling, L., Harrison, J., Richardson, B. and Smith, A. (2014) ‘Working beyond the border? A new research agenda for the evaluation of labour standards in EU trade agreements’, *Legal Studies Research Paper* (Vol. 3): University of Warwick School of Law.
- Civil Society Forum under the EU-Korea FTA (2013) ‘Rules of procedure of the civil society forum under the EU-Korea FTA’ (internal document).
- Cooper, W.H., Manyin, M.E., Jurenas, R. and Platzer, M.D. (2013). The U.S.–South Korea Free Trade Agreement (KORUS FTA): Provisions and implications. Washington: Congressional Research Service.
- Council. (2012). Council decision of 22 June 2012 on the position to be taken by the European Union within the Committee on Trade and Sustainable Development set up by the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, as regards the operation of the Civil Society Forum and the establishment of the Panel of Experts to examine the matters in the areas falling within the scope of the Committee on Trade and Sustainable Development. (2012/488/EU).

- Del Felice, C. (2012) 'Transnational activism and free trade. Exploring the emancipatory potentials of global civil society'. *Voluntas*, 23: 302–327.
- Dombois, R., Hornberger, E. and Winter, J. (2003) 'Transnational labor regulation in the NAFTA: A problem of institutional design? The case of the North American Agreement on Labor Cooperation between the USA, Mexico and Canada', *The International Journal of Comparative Labour Law and Industrial Relations*, 19(4): 421–440.
- Domestic Advisory Group under the EU-Korea FTA. (2013a). 'Opinion on the fundamental rights at work in the Republic of Korea, identification of areas for action' (internal document).
- Domestic Advisory Group under the EU-Korea FTA. (2013b). 'Opinion on the green economy and trade in the context of sustainable development: contribution of the Domestic Advisory Group under the Korea FTA' (internal document).
- Dür, A. and De Bièvre, D. (2007) 'Inclusion without influence? NGOs in European trade policy', *Journal of Public Policy*, 27(1): 79–101.
- European Centre for Development Policy Management (ECDPM) (2011) *Civil society participation in EPA implementation*, ECDPM Discussion Paper 119. Maastricht: ECDPM.
- ETUC (2013) *Speech at EP INTA hearing on sustainable development chapters in trade agreements*. Available online at <http://www.etuc.org/speeches/ep-inta-hearing-sustainable-development-chapters-trade-agreements>, [Accessed: 20 August 2014].
- European Commission (2006). 'Global Europe: Competing in the world. A contribution to the EU's growth and jobs strategy'. COM (2006) 567.
- European Commission (2014) *Evaluation of DG trade's civil society dialogue in order to assess its effectiveness, efficiency and relevance*. Available online at http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152927.pdf, [Accessed: 23 February 2014].
- European Parliament (2007) '*Economic and trade relations with Korea*', 2007/2186 (INI).
- European Parliament (2011) *Recommendation on the draft Council decision on the conclusion of the Free Trade Agreement between the European Union and its Member States, of the one part, and the republic of Korea, of the other part*', (A7-0034/2011).
- Inside U.S. Trade (2007a) *Advisory groups complain about late release of Korea FTA text*, 25.
- Inside U.S. Trade (2007b) *Korean officials reject FTA renegotiation; Auto issues linger*, 25.
- Inside U.S. Trade (2007c) *U.S. accepts two FTA changes as Korea accepts labor, environment deal*, 25.
- Inside U.S. Trade (2011) *House Democratic support for Korea FTA falls short of lobbyists' goals*, 29.
- International Institute for Labour Studies (IILS) (2013) *The social dimensions of free trade agreements*, Geneva: Institute for Labour Studies.
- Jenkins, T. (2014). 'Serious violations of Chapter 13 of the EU–Korea FTA' (unpublished letter).
- Kim, Y. (2013) 'The policy and institutional framework for FTA negotiations in the Republic of Korea', in Harrison, J. (ed.) *The European Union and South Korea: The legal framework for strengthening trade, economic and political relations*. Edinburgh: Edinburgh University Press.
- Labor Advisory Committee (2007) *Report of the Labor Advisory Committee for trade negotiations and trade policy: The U.S.–Korea Free Trade Agreement*. Available online at <https://ustr.gov/sites/default/files/uploads/Countries%20Regions/africa/agreements/korus>

- /Advisory%20Committee%20for%20Trade%20Policy%20Negotiations.pdf, [Accessed: 20 February 2014].
- Maes, M. (2009) 'Civil society perspectives on EU–ASIA free trade agreements', *Asia Europe Journal*, 7: 97–107.
- Muguruza, M.I. (2002) *Civil society and trade diplomacy in the 'global age': The European case: Trade policy dialogue between civil society and the European Commission*. Washington: Inter-American Development Bank.
- Nolan Garcia, K.A. (2011) 'Transnational advocates and labor rights enforcement in the North American Free Trade Agreement', *Latin American Politics and Society*, 53(2): 29–60.
- Oehri, M. (2014) 'Comparing US and EU labour governance "near and far" – hierarchy vs network?' *Journal of European Public Policy*. Available online at <http://www.tandfonline.com/doi/pdf/10.1080/13501763.2014.966743#.VQRS21HYE6g> [Accessed: 14 March 2015].
- Postnikov, E. and Bastiaens, I. (2014) 'Does dialogue work? The effectiveness of labor standards in EU preferential trade agreements', *Journal of European Public Policy*, 21(6): 923–940.
- Spalding, R.J. (2008) 'Civil society engagement in trade negotiations: CAFTA opposition movements in El Salvador', *Latin American Politics and Society*, 49(4): 85–114.
- The Hankyoreh (2014) *ILO could dispatch inspection team to South Korea*. Available online at http://www.hani.co.kr/arti/english_edition/e_international/641454.html, [Accessed: 15 September 2014].
- Trade Union Advisory Committee to the OECD (TUAC) (2014) *ITUC/TUAC sends mission to South Korea in light of ongoing non-compliance with labour standards and violation of trade union rights*. Available online at http://www.tuac.org/en/public/e-docs/00/00/0E/10/document_news.phtml, [Accessed: 17 February 2015].
- U.S. Department of Labor (n.d.). *Charter of the National Advisory Committee for labor provisions of U.S. Free Trade Agreements*. See DoL website: <http://www.dol.gov/ilab/trade/agreements/nac.htm>.
- Van den Putte, L., Bossuyt, F., Orbie, J. and De Ville, F. (2013) 'Social norms in EU bilateral trade agreements: A comparative overview', in Takacs, T., Ott, A. and Dimopoulos, A. (eds.) *Linking trade and non-commercial interests: The EU as a global role model*. Den Haag: TMC Asser Institute.
- Vogt, J.S. (2014) 'Trade and investment arrangements and labor rights', in Blecher, L., Kaymar Stafford, N. and Bellamy, G.C. (eds.) *Corporate responsibility for human rights impacts: New expectations and paradigms*. Chicago: American Bar Association.

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