EU trade policy and a social clause: a question of competences?

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EU trade policy and a social clause: a question of competences?

After describing Europe’s position on a social clause since the seventies, this article highlight the relevance of the competence dimension for explaining Europe’s (in)capacity to export core labour standards through its trade regime. We argue that the vertical integration cleavage in EU politics sheds light on Europe’s evolving stance and on the difficulties to reach a clear and common position on a social clause. The article illustrates how this proposal runs up against the limits of further European integration in both the external trade (trade-related issues) and the internal social (community role in ILO labour standards) domains.

In recent years the question of Europe’s role in the world has appeared prominently in the political and academic communities. One of the main questions has to do with the EU’s role as a norm exporter, with concepts such as ‘civilian’ or ‘normative’ power Europe (re)appearing in the debate on Europe’s international role. This paper aims to contribute to this emerging literature, focussing on EU trade policy on the one hand and on the export of core labour standards on the other. We examine Europe’s policy towards a ‘social clause’, defined as any attempt to link labour standards and trade relations.

The first section gives a historical overview of the ‘European’ stance in the debate on a social clause. Looking at both the

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1 Throughout this article, the term ‘European Union’ (EU, ‘Union’, or ‘Europe’) is used. The terms ‘European Economic Community’ (EEC) or ‘European Community’ (EC) are only used when referring specifically to the commercial policy (cf art.133 Treaty of Nice) or to the pre-Maastricht era.

*Politique européenne*, n°17, automne 2005, p. 159-187
multilateral GATT/WTO\textsuperscript{2} and the unilateral Generalised System of Preferences (GSP)\textsuperscript{3} trade policy level, five periods will be discerned. Arguing that the economic and ideological lines of approach do not suffice to explain Europe's evolving position, the second section dilates upon the explanatory value of the competence dimension. This perspective relates the European debate on a social clause in its external trade policy, to the intra-European struggle for competences in both the trade (scope for trade related matters) and social field (labor standards). We conclude that the 'vertical' integration dimension continues to be important for assessing Europe's role in exporting norms (such as core labor standards) through its trade policy.

1. European trade policy and a social clause: 25 years of debate.

1.1 The end of the seventies: the rise and fall of the Commission proposals.

The possible linkage between external trade and labor standards was not an issue during the intra-European negotiations about the Tokyo Round (1973-79), the establishment of Europe's first GSP regime (1970-71), or the Lomé I talks (1973-'75) (Alston, 1980, 137). This somewhat changed towards the end of the 1970s. Opinions from the Economic and Social Committee started to include references to a social clause. In contrast with previous resolutions, the Committee explicitly asked that the GATT negotiators\textsuperscript{4}, Europe's GSP regime\textsuperscript{5} and the Lomé II negotiations\textsuperscript{6} take the minimum standards of the International Labour Organization (ILO) into account (Arts 2000, 123-5). More importantly, in 1978 for the first time also the European Commission argued for incorporating a social clause in Europe's external trade relations. Initiated by DG Development, it issued two documents about the relationship between EEC trade policy and

\textsuperscript{2} As part of the Uruguay Round negotiations, the GATT (General Agreement on Tariffs and Trade) was replaced by the WTO (World Trade Organisation) from 1995.

\textsuperscript{3} In the form of EEC Regulations, Europe's Generalised System of Preferences has provided unilateral tariff reductions to developing countries since 1971.

\textsuperscript{4} Economic and Social Committee (ESC), OJ C 126, 28/05/1977.

\textsuperscript{5} ESC, OJ C18 21/1/1978.

\textsuperscript{6} ESC, OJ C114, 07/05/1979.
labour standards in 1978. In February a Memorandum on Lomé I renewal stressed that labour standards should be reckoned with\(^7\). In November a Commission communication was specifically devoted to the relationship between foreign aid, trade and labour standards. It pleaded for linking trade benefits to the compliance with four international labour standards, which were based on six existing ILO Conventions (see table 2)\(^8\).

The Commission requested the Council to approve these ‘general lines of policy’, to be able to proceed with specific proposals for the implementation of these plans (AE 13/11/’78). The November 1978 Communication would, however, sink into oblivion. Contrary to the Commission’s expectations that the Council would discuss its proposals on a social clause in 1980\(^9\), the Member States did not even consider it at the Council level. It would take another fifteen years before the Commission cautiously launched a new initiative in favour of a social clause.

Although the EP and the ESC criticised the details of this proposal, and also developing countries felt suspicious about hidden protectionism (Alston, 1980; Hansson, 1981, 25; Edgren, 1979, 532), the Commission’s initiative was basically blocked at the Council level (Charnovitz, 1987, 573). The fact that the matter was not even examined by the Council indicates that the issue of labour standards in external trade relations was simply not considered to be an EC competence by the Member States.

1.2. The eighties: European stance?

In the 1980s, only the European Parliament, through resolutions and parliamentary questions, kept pleading for a social clause. It simultaneously urged for more coordination concerning the ratification and implementation of ILO Conventions within the Community\(^10\). However, the Parliament was talking to a brick wall.

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\(^7\) CEC (European Commission), Memorandum au sujet des futures négociations ACP/CEC en vue du renouvellement de la Convention de Lomé. Strasbourg, 16/02/1978, 24 p. COM(78)47final.

\(^8\) CEC, Lien entre les aides et concessions communautaires aux pays en voie de développement, et le respect des conditions fondamentales de travail. COM(78)492final, 10/11/1978.

\(^9\) See the Commission’s answer to Written Question 827/79, OJ C150, 18/6/1980.

The Council kept its distance by not explicitly defining its position on these issues. This short answer about the ratification of an ILO Convention is but one illustration of its continuing resistance: ‘the Council has no intention to make any declaration on the question of ratification of ILO Conventions’\(^\text{11}\).

In the meantime, the Commission never explicitly reconsidered its 1978 proposals. While its 1980 GSP proposal cautiously recalled the 1978 Communication and suggested that more detailed initiatives to include labour standards in the 1981-85 GSP regime would follow\(^\text{12}\), these ideas never materialised. In 1986 the Parliament could only conclude that the Commission had not yet issued a draft regulation, despite the intentions in its Communication of November 1978\(^\text{13}\).

In the run-up to the launching of the Uruguay Round, during the fierce internal debates about a negotiating mandate for the new round of trade talks, there was no European discussion on the possible role of labour standards into the GATT trade regime. This European silence is all the more remarkable, since the United States did issue a detailed proposal on a social clause in ’86. As the Uruguay Round progressed, a minority of Member States started to argue for environmental clauses, but there were no signs of any European demand for a social clause. The same holds true for the unilateral trade policy: when the Commission drew up proposals for a ten-year review of Europe’s GSP regime in 1990\(^\text{14}\), again in contrast with America’s GSP, any reference to labour standards was lacking.

### 1.3. The first half of the nineties: the sudden rise of the social issue

In the first half of the 1990s, however, Europe’s position was changing. Firstly, regarding the multilateral GATT/WTO level, the issue of a social clause quickly rose to the top of the European and international trade agenda. In several Member States, during the Uruguay Round’s final stage and in the run-up to the signing of the Marrakesh Agreements (April 1994), a growing body of opinion


\(^{13}\) EP, A2-177/86, 15/12/1986, p. 36.

expressed itself in favour of a social clause. Following the US course, Belgium and France stimulated the debate within the EU. The argument for core labour standards in EU trade policy was included into the Belgian action program for its Council Presidency (second half of 1993) and also the French government started to promote the introduction of a social clause into the GATT. At the same time the European Parliament raised the issue again, with the Sainjon Report of January 1994.

Although the social clause suggestion quickly evolved from a non-issue to a hot topic within the EU, it proved difficult to formulate a clear EU position on this subject in Marrakesh. The Commission eventually sided with the idea of a social clause, albeit somewhat hesitantly; and only a few weeks before Marrakesh, the Council reached a cautious compromise position, basically saying that it did not oppose discussing the issue within the future WTO. Germany and the UK doubted the desirability of considering labour standards within the newly established WTO regime (Waer, 1996, 26).

Secondly, shortly after the Marrakesh Conference, the debate on a social clause resurfaced in the context of Europe’s GSP reform. The Sainjon Report of the EP had already argued in favour of the inclusion of labour standards into this unilateral trade regulation and in June 1994 the Commission showed its support for this argument. The social conditionality of the 1995-2004 GSP regime would consist of a stimulating (the ‘carrot’) and a sanctioning (the ‘stick’) component. The stick relates to the temporary withdrawal of the European GSP preferences vis-à-vis developing countries, in case of forced labour or prison labour. As to the carrot, the Commission suggested a ‘social incentive regime’: countries complying with certain labour standards (freedom of association, the right to organise and collective bargaining and abolition of child labour) would be granted additional trade preferences.

The ensuing Commission proposal still suggested this ‘carrot and stick approach’. But the incentive scheme was postponed until 1997, while the suspension clause could be applied from 1995

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15 For an overview of the EU decision-making process on this GSP regime, see Waer and Driessen (1995). On the labour standard provisions in Europe’s GSP clause, see also Dispersyn (2001).
onwards. In the final Council regulation\(^\text{18}\) (December 1994), the provisions about the ‘carrot’ were even vaguer and the decision to introduce it was essentially put off until 1998. With respect to the ‘stick’, the Commission was given a central role in the suspension procedure in case of violations of the above-mentioned labour standards, even though the Council had the final saying on the stick’s application. The UK government questioned the desirability of a social clause in the GSP regime and abstained from voting\(^\text{19}\).

Through this new GSP regulation the EU, for the first time, brought the principle of a social clause into practice. The achievement of a concrete EU initiative for a (indeed quite modest and merely ‘negative’) social clause was remarkable compared with the vague Marrakesh statement and the absence of any common EU position in the following WTO Singapore and Geneva Conferences (see below). In a sense this regulation \textit{de facto} recognises the Community competence with respect to the international promotion of labour standards through its trade policy. Nevertheless, some Member States (Germany, the UK, but also pronounced proponents of a social clause such as France, Denmark and the Netherlands) attached a declaration to the Council minutes, stressing that the references to labour standards in ILO Conventions did not imply any EC competence with respect to the content of those Conventions\(^\text{20}\).

1.4. Towards the end of the nineties: a united European front in Seattle

So while in the GSP regime the die is cast at the end of 1994, EU disagreements about a social clause on the multilateral level continued. The first WTO Conference after Marrakesh took place in Singapore at the end of 1996. In the run-up to this WTO summit, France and Belgium again pushed for an EU position favouring a social clause, while the UK and Germany were the most outspoken opponents of any discussion of labour standards within the WTO. In its market

\(^{19}\) Draft minutes, 1820th Council meeting, Brussels, 19-20/12/94. 11982/94, PV/CONS 92, p. 11. See also the British Foreign Secretary’s declaration (House of Commons Hansard debates, 24/1/1995).
access strategy\textsuperscript{21} and in a separate communication\textsuperscript{22}, the Commission had already shown its continued support for a social clause. It pushed for the establishment of a WTO working group, investigating the relationship between trade and labour standards. The Council’s position was much less clear. In the first half of 1995, the French Presidency vainly attempted to achieve an EU compromise, and in 1996 the Council again responded cautiously to the Commission proposals. After heated discussions, with the UK and Germany preventing any compromise, the Council Presidency could not even manage to bring up any ‘EU position’ on the social issue at the Singapore Conference\textsuperscript{23}.

Europe’s remarkable invisibility in Singapore is all the more relevant given the importance of this WTO Conference for the future debate on a social clause. The Singapore Declaration \textit{de facto} puts this topic on the sidelines, referring to the ILO as the competent organisation to deal with international labour standards and thereby consolidating the idea that the multilateral trade regime should not deal with social issues (Wilkinson, 2001, 402, 411).

After Singapore, the EU remained disillusioned. In the run-up to the Seattle Conference in 1999, where the Union supported the launching of a new trade round, the Commission warned for unrealistic expectations. Its earlier plea for a separate WTO working group was replaced by the demand for a permanent joint WTO-ILO forum where the social issue would be discussed. As before, the emphasis was laid on stimulating measures and on the avoidance of protectionist misuse\textsuperscript{24}. Although disagreement continued to exist within the Council, the Fifteen eventually reached a compromise. This EU stance, included into the European negotiation mandate for a new trade round\textsuperscript{25}, basically repeated the Commission’s argument for an ILO-WTO working group.

Factors contributing to the final achievement of this common EU position were the changes of government in Germany and the UK and the strategic importance of a broad trade agenda. But Seattle

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{22} CEC, COM(1996)402 final, 26 p.
\item \textsuperscript{23} This conclusion is remarkably absent in the literature on EU external relations and on social clauses. Most accounts (one exception is Mortensen 1998) assume that the Union was one of the supporters of the social issue at Singapore (e.g. Mörh 2004).
\item \textsuperscript{24} CEC, COM(1999)331def, 8/7/1999, p.22-24.
\item \textsuperscript{25} Fisheries Council, Luxembourg, 12121/99, 26/10/1999.
\end{itemize}
\end{footnotesize}
turned into a debacle, partly because of the growing assertiveness of the developing countries, which fiercely rejected the US President Clinton’s suggestion to introduce a punitive social clause.

The Union also extended its GSP provisions on labour standards. In 1997 the Commission reverted to its earlier proposals for a social incentive clause, in addition to the sanctioning clause (which had led to the suspension of Burma’s tariff preferences because of forced labour). The approval of such a ‘carrot’ in the case of observance of core labour standards remained a sensitive matter within the Council. But this time, the disagreement was related to the implementation modalities (margin of tariff preferences, relative power of the Council versus the Commission), rather than to the principle of linking the GSP regime with labour standards. Tariff reductions in the May 1998 agreement on a social incentive scheme were much more limited than in the Commission’s original proposal, and the debate between the Commission and a number of Member States about the applicable comitology procedure was settled to the advantage of the Commission.

1.5 From the turn of the millennium onwards: the ILO-isation of the EU position.

So by the turn of the millennium, EU divergences were largely overcome. Europe’s unilateral GSP scheme incorporated a social clause, including the stick (since 1995) and the carrot (since 1998), and shortly before Seattle (1999) a common EU position on this issue in multilateral trade relations was reached. Nevertheless, some evolutions in EU policy since then are worth mentioning.

The application of the social GSP clause remained utterly limited. Burma (stick) and Moldavia (carrot) have long been the only countries affected by the social GSP clause. Quite a lot of developing countries are not even eligible for the incentive clause: the ACP countries (enjoying trade preferences under the Lomé/Cotonou regime), the Least Developed Countries (benefiting from Lomé equivalent treatment since 1998 and from free market access since ‘Everything but arms’ in 2001) and the Latin-American beneficiaries of the European GSP drugs regime (fight against drugs trafficking and production). Moreover, the additional tariff reduction in case of

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compliance with the fundamental labour standards is not quite generous (Von Schöppenthau, 1998) and the conditions to be eligible were far from straightforward.

The Commission’s reform proposal for 2002-2004 somehow simplified the social GSP scheme. But potential beneficiaries of the incentive regime had to apply all eight core ILO Conventions (in the past only three Conventions were referred to), and also the legal basis for the punitive clause was extended to these eight core labour standards. The fact that the extension of the incentive scheme’s legal basis could not harm European economic interests undoubtedly facilitated the Council’s approval. Although the positions of the Member States, the Council and the Commission were more aligned than was the case for the 1994 and 1997-98 GSP reforms, disagreements about the Commission’s power in the application of the incentive and suspension clauses continued. The ILO was given a more important role as well: henceforth the ILO evaluations (instead of the Commission’s autonomous evaluation) are the starting point for the assessment.

In 2004, Belarus was the second country to be confronted with the punitive social mechanism, while Sri Lanka became the second beneficiary of the incentive scheme. This doubling of the number of applications of the social GSP clause cannot be considered as a great success. In addition, after a WTO dispute settlement ruling on the GSP drugs regime, the EU was forced to radically review its incentive schemes. In the reformed 2006-2014 GSP regulation, the social clause is incorporated into the broader ‘sustainable development and good governance’ regime. To be eligible for this ‘GSP Plus’ regime, several international conventions have to be ratified and effectively applied. While beneficiaries of the previous social GSP clause had to apply the core labour standards without necessarily ratifying them, in the future, beneficiary countries of the GSP+ regime also have to ratify the eight ILO Conventions.

In practice, the application of this new regime may be largely limited to some of the former beneficiaries of the GSP drugs regime. Only ‘vulnerable’ countries (not e.g. China, India) are eligible. Moreover, much of the available (but eroding) preferential margin of Europe’s GSP scheme has been used for other purposes than a social conditionality. Least developed countries already enjoy free market-

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access under ‘Everything but arms’ and many other developed countries are engaged in reciprocal free trade areas with the EU (Mexico, Chile, South-Africa, and in the near future Mercosur, Gulf Cooperation Council and the Mediterranean and ACP partners).

In principle, Europe’s position on a social clause on the multilateral WTO front has not changed since 1999. The Seattle mandate and its provisions on a social clause remain the EU negotiation basis for the Doha Conference (2001) and the ongoing Doha Development Round (from 2002). Nevertheless, the Commission managed to force a more subtle review of this negotiation mandate in the run-up to Doha (Van den Hoven, 2004, 265-7). This is also true for Europe’s position on labour standards. While this topic has not disappeared from the EU wish list, the Union seems to have gradually abandoned it.

We summarize this evolution as the ‘ILO-isation’ of Europe’s position, comprising three related but analytically distinct trends: (1) an increasing emphasis on the ILO (instead of the WTO) as the appropriate organisation to deal with labour standards, (2) a shift towards the promotion of ‘soft governance’, in line with the non-binding ILO approach (instead of the ‘stronger’ trade regime), and (3) a growing responsibility of the private sector (instead of governmental action) for applying the principles of the ILO Conventions29.

Importantly, this ILO-isation commenced several months before the Doha Conference, which leads to the assumption (not elaborated here) that the Union sacrificed this topic in favour of other trade negotiation themes (Novitz, 2002a, 7-8). The EU indeed insisted on including issues such as competition, investment and government procurement on the WTO agenda, although these also met strong resistance with developing countries. So here too, as in the GSP dossier, Europe’s available margin was used to pursue other trade related objectives than a social clause.

The Commission’s implicit reinterpretation of the negotiation mandate’s social provisions became clear in a July 2001 communication on international labour standards. This document basically argues that the goal of promoting labour standards remains

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29 This latter element seems inconsistent with the ILO approach. However, Alston (2004) convincingly argues that the ILO’s increased emphasis on the ‘principles’ derived from the core ILO Conventions entails an evolution away from a rights-based approach towards a rather voluntaristic system, in which the private sector disposes of a large responsibility for assessing whether the fundamental principles are applied.
the same, but that the ILO constitutes a more suitable organisation to discuss it. There is no reference whatsoever to the Doha Conference, which is quite surprising given the timing of this communication. On the same day the communication was published, the Financial Times (18/07/2001) put the point more clearly: the Commission warns against attempts to include labour standards into the WTO trade regime, because this would jeopardise attempts to launch a new trade round. The ILO-isation of Europe’s stance also emerged in Trade Commissioner Lamy’s discourse in the run-up to Doha and in the Member States’ interventions in Doha. Confirming the Singapore Declaration’s statement on labour standards, the Doha conclusions prevented any future debate on the social issue within the WTO.

After the Doha conference, this ILO-isation manifested itself even more clearly in Europe’s activities within the ILO World Commission on the Social Dimension of Globalisation. Within the WCSDG, the Commission stressed the ‘European social model’ and the Open Method of Coordination as examples for the international promotion of labour standards. Suggestions for linking these standards with trade regimes were not mentioned. The WCSDG report’s broad approach to the promotion of international labour standards, albeit without any reference to the trade regime, is also reflected in a 2004 Commission Communication on this topic.

In conclusion, the EU seems to have toned down its position in recent years. The emphasis is increasingly on the ILO instead of the WTO. Also in Europe’s GSP regime stronger references are made to the ILO and its supervisory mechanisms. At the same time, there is a bigger emphasis on soft governance, being for that matter the preferred decision-making method within the ILO, contrary to the more binding character of the WTO. Since 2001 the EU increasingly stressed the importance of dialogue, stimulation, the setting of standards and non-binding mechanisms, to the detriment of more or less binding trade mechanisms such as a social clause. At the same time, the main responsibility for EU policy with regard to a ‘social clause’ – or better, ‘the social dimension of globalisation’, since the

binding trade dimension became underexposed – has shifted from the strong DG Trade to the weaker DG Employment and Social Affairs. Recent Commission communications on the international dimension of labour standards refer to this last DG as the ‘responsible DG’, while in the second half of the 1990s this was certainly not the case. A related conclusion is that the idea of a social clause is not as high on the European agenda as it was between 1994 and 1999. In recent years it became a non-issue again. Parallel with the ILO-isation of the EU vision, Europe’s commitment for a social clause, in the sense of a binding (established and enforceable by governments) link between the trade regime and labour standards, has become less pronounced. This theme became part of the social and/or development policy of the Union, rather than a topic for the EU’s trade policy. Ten years after the rise of the European debate, the question has been virtually buried, be it under a huge pile of policy documents.

Table 1: A social clause in EU trade policy: ups and downs since the 1970s

<table>
<thead>
<tr>
<th>Period</th>
<th>Events</th>
</tr>
</thead>
<tbody>
<tr>
<td>Late 1970s</td>
<td>Rise and fall of the European debate: EP, ESC and the Commission (1978 proposals) argue in favour of a social clause.</td>
</tr>
<tr>
<td>1980s</td>
<td>The EP still wants a social clause, but the Commission is much more reluctant and the Council remains silent. No European priority in the GATT Uruguay Round and in Europe’s GSP reform.</td>
</tr>
<tr>
<td>Early 1990s</td>
<td>The social clause suddenly becomes a hot topic, but within the Council huge differences of opinion continued. The EP (Sainjon Report) and the (initially hesitant) Commission also want a social clause.</td>
</tr>
<tr>
<td>GSP</td>
<td>1994 proposal for a social clause in new GSP regime, with a stimulating and a sanctioning component. The ‘stick’ comes into effect; the Council postpones the ‘carrot’ until 1998.</td>
</tr>
<tr>
<td>GATT</td>
<td>Vague EU compromise position, but different opinions between Member States.</td>
</tr>
</tbody>
</table>
Late 1990s

The die is cast: all institutions in principle support the idea of a social clause.

GSP
The incentive scheme (carrot) is drawn up. Discussions between Commission and Council limited to modalities.

GATT / WTO

Since 2001

‘ILO-isation’ of the EU stance: emphasis on the ILO as the competent organization, on soft governance as the preferable decision-making method and on the responsibility of the private sector in voluntarily applying the ILO core ‘principles’.

GSP
Limited application of social GSP clause (irrelevant for Lomé, EBA and GSP drugs beneficiaries); larger role of ILO and its eight core labour standards. New ‘GSP Plus’ regime includes ILO labour standards in broader incentive regime, but probably limited application.

WTO
Already several months before Doha, the EU abandoned the aim of a WTO-ILO forum. Emphasis increasingly on the ILO, on soft governance and on private initiatives (cf in WCSDG).

1.6. Two unsatisfactory explanations: unemployment and the ideological dimension

Two approaches seem obvious to account for the position of the EU or of specific EU actors at a certain time: the economic and the ideological points of view. Without attempting to present ‘the’ ultimate explanation of Europe’s evolving stance on a social clause, we briefly sketch the explanatory value of these two dynamics, illustrating that a third line of approach has to be introduced to provide a more comprehensive explanation.

The economic dimension: hidden protectionism?
Proposals for a social clause are often understood as a form of hidden protectionism. Policy makers may use the instrument of social conditionality in trade relations to shield their markets from competition from developing countries. One could argue that, as unemployment within the EU increases, European politicians will look for protectionist mechanisms such as the social clause. As Kerremans noticed about the 1994 debate: “Suddenly the issue became problematic, which gives the impression that the real reason of the complaints is not ethical, but rather economic, i.e. a perceived need of protection of some of the interests inside the industrialised world.” (Cuyvers and Kerremans, 1998, 118)

Indeed, the patterns of the European unemployment figures in labour intensive occupations and sectors on the one hand, and the rise of the debate on the social clause on the other, evolve noticeably analogously. At the end of the 1970s and beginning of the 1990s, each time an acceleration of the increase in unemployment figures took place. Interestingly, in both periods, this coincides with the emergence of a European social clause debate. It equally corresponds with the end of a large-scale round of trade liberalization (respectively the Tokyo and the Uruguay Round), which explains the increased call for alternative means of protection.

However, the unemployment perspective is not sufficient to frame the evolution of the positions of the EU and/or EU actors. It remains, for example, unclear why the debate disappears from the European agenda in the beginning of the 1980s, while unemployment keeps rising. Neither can the economic dimension explain why intra-European differences of opinion continued between Member States which are equally affected by rising unemployment, even during the 1970s and the 1990s.

The ideological dimension: a left-wing project?

In general the idea of a social clause tends to be promoted by politicians at the left of the interventionism-neoliberalism continuum. The debate on a social clause can be summarised as a ‘free trade versus fair trade’-debate (van Roozendal, 2002, 67). This ideological dimension is relevant at three levels: the general ideological climate,

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Data from the following ILO databases: ISCO-1968 (Major Group 7/8/9), ISCO-88 (Major Group 7), ISIC-Rev.2 (Major Division 3) and ISIC-Rev.3 (Tabulation Category D).
the composition of the Council and the position of specific EU-actors.

Firstly, focussing on the ideological climate, the rise of neoliberalism in the 1980s corresponds with the disappearance of the social clause debate in the same period – despite growing unemployment. Secondly, within the Council, the growing dominance of centre-left governments towards the end of the 1990s (Manow et al, 2004) corresponds with the extension of the limited and merely ‘negative’ social GSP clause to a more extensive social incentive regime in 1998 (unilateral trade policy level), and with the final achievement of a common EU position within the WTO in 1999 (multilateral level). Thirdly, this ideological shift was reinforced by the electoral victory and government participation of the left in two crucial Member States, the UK (Labour) and Germany (SPD and the Greens). And whereas the European Parliament had favoured a social clause since the seventies, its support (in reports and resolutions) became less outspoken after 1999, when the European People’s Party’s victory ended the centre-left dominance in the Parliament.

But even this ideological dimension cannot provide an all-embracing explanation. The rise of the EU social clause debate in 1993-94, for example, has little to do with the then ideological climate. During this period left-wing parties were in government in only four Member States, while centre-right governments (such as the French Balladur government) were pushing for a social clause. Conversely, the ideological climate in the 1970s was apparently favourable to this idea. As in the end of the 1990s, when the Commission launched its 1978 proposals for a social clause, the Council was dominated by left-wing parties (Manow et al, 2004, 13). In addition, at that time left-wing governments were more interventionist than their successors in the 1990s.

So in combination with the growing unemployment at the end of the 1970s, the ideological dimension would predict that the Council manifests itself as an important advocate of a social clause, enthusiastically following the Commission 1978 proposals. Quod non. Community institutions (Commission, EP, ESC) argued in favour of a social clause in Europe’s trade relations, but the Council (or better, the Member States) did not even put the matter on the agenda for discussion. This institutional setting of the European debate on a social clause at the end of the 1970s, leads to the hypothesis that the competence dimension may be relevant for explaining Europe’s position.
2. A question of competences: more or less Europe in trade related and social affairs?

Here we look at the explanatory value of the competence perspective, which is related to the traditional ‘vertical’ cleavage on ‘more or less Europe’. In this case study, the competence issue has an external (trade) and an internal (social) dimension, although they are inextricably linked. We will highlight the relevance of both these competence dimensions for explaining Europe’s position at the end of the 1970s as well as during the 1990s. Several other aspects of the EU stance, which are hard to explain from the economic and ideological points of view, will also be discussed.

2.1. The seventies: a bridge too far for the Council

Despite growing unemployment and a favourable ideological climate, the Member States did not even consider the proposals from the Commission (as well as the EP and the ESC) for a social clause at the Council level. This observation led to the hypothesis that this idea affects the distribution of competences between the Community and the Member States. More specifically, this question ran up against the at the time limits of further European integration in both the trade and the social domains.

The external dimension: what scope for European trade policy?

Initially, common trade policy was a spill-over of one of the main goals of the EEC, namely the creation of a customs union. With the disappearance of the tariffs at the borders between Member States, a common tariff policy at Europe’s external borders had to be established. During the 1970s, for the first time, it became clear that the organisation of a ‘European’ trade policy was not that evident. The question was not so much whether the Community disposed of an exclusive competence in this policy domain – for that matter, the Court of Justice left no doubt in its Opinion 1/75 – but the European debate rather concerned the scope of the Community’s trade policy. The Commission understandably pleaded for a broad interpretation of ‘trade policy’, while the Member States opposed this. As a result of the
negotiations on the International Rubber Agreement, this gave rise to an intense and scholastic dispute before the Court of Justice, which eventually led to the Court’s Opinion 1/78. Here the Court largely supported the Commission’s “objective/instrumental approach” (trade policy instruments can be used for broader purposes) instead of the Council’s “subjective/purposeful approach”. (Eeckhout, 2004, 11-25) But the question whether the promotion of international labour standards also fell within this broad Community competence, was not explicitly brought to the Court 35.

The internal dimension: the limits of social integration and the role of ILO-standards

The second half of the 1970s also illustrates both the increasing importance and the limits of European social integration in general and the Community role concerning labour standards in particular. Although the Rome Treaty did not provide a common social policy, through a couple of back doors the Community managed to take measures in the social domain. The Social Action Program of 1974, not coincident in the context of a leftward shift within the Council (see above), was the starting point for several directives in the social field. These first European social regulations dealt with issues such as the equality of men and women at the workplace and the protection of social rights in case of fusions. Still, this is a relatively modest integration of social policy, where unanimity rules made a further integration extremely difficult.

These limits of European social integration also apply to the question of labour standards. At the end of the 1970s, there existed remarkable differences between the EEC Member States in terms of ratifications of all until then approved ILO Conventions. The EP Geurtsen Report (1977) showed that Denmark had ratified 43, Ireland and Luxemburg 51, Germany 60, the UK 69, Belgium 72, Italy 78 and France 96 of the 140 ILO Conventions 36. Alston checked to what degree these six ILO Conventions, on which the four minimum standards in the Commission communication of November 1978 (see above) were based, were ratified by the EEC Member States at the time of the Commission’s proposal for a social clause. Table 2 is mainly based on Alston’s findings (1980, 144):

35 However, the Court briefly mentioned the issue of labour standards. ECJ, Opinion 1/78, p. 2871.
Table 2: Ratification ILO minimum standards by EEC Member States (1980)

<table>
<thead>
<tr>
<th>ILO Convention nr.</th>
<th>1</th>
<th>5</th>
<th>79</th>
<th>90</th>
<th>111</th>
<th>138</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Denmark</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>France</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>West-Germany</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Ireland</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Italy</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>7</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>4</td>
<td>25</td>
</tr>
</tbody>
</table>

X = ratification

Alston concluded that one Convention was ratified by only two of the nine Member States, another by three and two other by four Member States. The UK ratified only one of the six Conventions while Denmark, France, Germany and Ireland all ratified two of them. In sum, not even half (25) of the 54 possible ratifications by EEC Member States had taken place. Interestingly, however, these were the Conventions on which the Commission based its 1978 proposal to introduce a social clause vis-à-vis developing countries.

It could be argued that such a social conditionality would de facto have entailed or at least facilitated a greater role for the Community regarding these labour norms. In this respect, Murray refers to the consistency requirement: “don’t demand standards you yourself don’t adhere to”. One could also refer to the doctrine of implied power and parallelism, developed by the ECJ in the 1970s, which links Europe’s external competences with the internal dimension. Messerlin (2001, 166) stated that external Community competences to promote labour standards, could bring a “boomerang effect on intra-EC relations”. Given the large divergences between the Member States with regard to ILO ratifications, including these core conventions, the Council’s lack of enthusiasm for the 1978 Commission proposals becomes all the more understandable.

In addition, in the 1970s, quests for a greater Community competence in these ILO Conventions did not remain limited to theoretical reflections. During this decade the supranational...
institutions formulated several attempts for a larger ‘Community coordination’ in the ratification, implementation and supervision of the ILO labour standards. In 1973 the EP approved the Pêtre Report, in response to a Commission Report on the ratification of ILO Conventions in the Member States (AE 2/4/’73). Among other things, it denounced the limited ratification of ILO Convention 111 (one of the current ILO core labour norms). The Report insisted on Commission proposals for further social harmonisation\textsuperscript{37}. In 1975 the Commission published a report on the Member States’ ratification of ILO Conventions. This document did not only contain a detailed overview of ILO Conventions and the degree to which they had been ratified, but also a plea for more European coordination and harmonisation in this matter. The above-mentioned Geurtsen Report (1977) pleaded for further integration in the social area and in 1980 the Commission proposed to transfer the competence for ratification and implementation of ILO Conventions to the EEC (AE 14/6/’80). As was the case for the social clause proposals, the Council did not respond to any of these initiatives. It is clear that the issue of ILO labour standards, where huge differences continued to exist between the Member States, was not considered as a topic to be discussed at the EEC level.

Given Member States’ reluctance with regard to the scope of the Community’s trade policy on the one hand (Opinion 1/78, nota bene the same year as the Commission’s social clause proposal) and further European integration in social policy on the other (ILO labour standards, cf several EP/ESC/Commission proposals), it is not surprising that the idea of a social clause in external trade was a bridge too far for the Council. Competence matters thus elucidate, better than the ideological and economic perspectives, the absence of political support for the 1978 Commission proposals.

2.2. The nineties: an Echternach procession\textsuperscript{38}

Since the beginning of the 1990s the unemployment figures increased and in the second half of this decade the ideological climate became more favourable to the idea of a social clause as well. Still, we noticed differences of opinion between the supranational institutions


\textsuperscript{38} Procession reposant sur le rythme trois pas en avant, deux pas en arrière (note de l’éditeur).
and the Council (or at least some Member States) during this period. Here too we can point to an external trade (regarding the scope of Community competences) as well as an internal social (regarding ILO labour standards) dimension of the debate, both of which are clearly interwoven.

**The external dimension: what scope for European trade policy?**

In spite of Opinion 1/78, during the 1990s competence conflicts on the scope of the Community trade policy reappeared. The Commission stood by its plea for broad competences, including the so-called trade related subjects (services, investment, intellectual property rights). It basically argued that Community competences in the field of trade had to keep pace with the evolving nature of international trade relations, as became clear in the Uruguay Round’s comprehensive agenda. Again most Member States challenged this broad definition of EU trade policy before the Court of Justice. But interestingly, this time the Court’s judgement largely followed the reasoning of the Member States.

The tenor of its Opinion 1/94 was largely adopted in the Amsterdam Treaty, because of some Member States’ profound distrust of the transfer of sovereignty to the Commission (Meunier and Nicolaïdis, 2000, 340). The Treaty of Nice brought another reform of the trade policy provisions: Community competences were extended but, for example, investments remained a national competence. In addition, in some cases the Council had to decide by unanimity, where previously decisions were made by Qualified Majority Vote (QMV). Therefore, from an integration perspective, Nice is only a small step forwards (Krenzler and Pitschas, 2001, 312). Whereas the European Convention’s draft constitution increased the Community’s trade competences, much to the pleasure of the Commission, the ensuing Intergovernmental Conference partly turned back this European integration. Although most ‘new trade issues’ remain Community competence, in several cases the Constitution replaces QMV by unanimity[^39]. So the familiar pattern of the 'procession of Echternach' (two steps forward and one backward) surfaces again. Contrary to what some may suggest (Tsoukalis, 2003, 68), the traditional vertical integration cleavage on the extent of

Community competences remain highly relevant in the trade policy domain to date.

**The internal dimension: the limits of social integration and the role of ILO standards**

The internal dimension shows an image that is just as complex. In the domain of social policy, especially with regard to the role of the Community in monitoring compliance with ILO labour standards, competence conflicts keep surfacing. Firstly, there are the so-called no go-areas of the Maastricht Treaty, where the Community has no competence whatsoever to take action. Among these are issues related to the ILO core labour standards, such as the right to organise and the right to strike (Novitz, 2002b).

In addition, here too a conflict emerged between the Council and the Commission before the European Court of Justice in the early 1990s. In its Opinion 2/91, the Court clarified that the existence of Community legislation on certain labour standards does not necessarily imply an exclusive Community competence to negotiate related Conventions within the ILO. This is not merely a practical problem about the Community not being an ILO member (only an observer), but more importantly, a question of competences. When the Community limits itself to setting minimum labour standards – which is often the case with EC directives – this implies that the external competence in this matter is shared by the Community and the Member States. As Leal-Arcas (2001) noted, this shared competence may hinder Europe’s action on the international scene.

So the Member States clearly remain, just like in the 1970s, reluctant to increase the Community’s role concerning ILO labour norms. In addition, there continued to be large divergences between the Member States with respect to the ratification of the core labour standards. An odd situation arose when the Union introduced a social incentive scheme into its GSP regime in 1998, offering developing countries complying with ILO Convention 138 a larger access to the EU market, while at the same time three of its own Member States had not ratified this Convention themselves.

Table 3: The eight ILO Core Conventions, date of ratifications by EU-15 (2004)
The table also makes clear that the EU-15 had ratified all core labour standards by 2001, even though the picture again became incomplete with the 2004 accession of Estonia, Latvia and the Czech Republic. Ratification of these conventions is apparently not part of the _acquis communautaire_. Not to mention the rather dubious European track record in the observance of these and other ILO labour standards and the limited role of the Community in dealing with these. (Novitz, 2005)

To conclude, as in the 1970s, the debate on a social clause is related to delicate competence discussions about the scope of external trade related matters and about the role of the Community in the internal promotion labour standards. Both these issues led to conflicts between most of the Member States and the Commission before the Court of Justice, which largely confirmed the primary role of the Member States in trade related issues and in labour standards. According to Young, Opinions 1/94 and 2/92 “drew back slightly from the doctrine of implied powers” (Young, 2002, 35). Since the European debate on a social clause is related to both of these sensitive
topics, the protracted failure to reach a European agreement on the social clause is not all that surprising.

2.3. Other aspects of the European debate since the nineties

This competence perspective gives a general idea of the difficulties for the Community, both in the 1970s and in the 1990s, to formulate a clear and common European stance on a social clause. The following analysis will dilate upon a couple of more specific aspects of the EU position on this topic, where the explanatory value of the competence dimension seems to be larger than that of the economic or ideological perspectives. We examine (1) the observation that the Commission expressed itself in favour of a social clause, (2) the shift of emphasis in both the internal and the external social policy, to soft governance instead of hard regulation, and (3) the consequences of the institutional differences between the European GSP and the WTO decision-making system, for the EU position on a social clause.

After a long period of silence, from around 1994 onwards the Commission expressed itself in favour of a social clause, both within the WTO and in Europe’s unilateral GSP regime. This cannot be explained from the economic or ideological perspectives. The economic angle would stress that the Commission meets less pressure from trade unions than any other Member State. This is all the more true for the Union’s trade policy, which is traditionally characterised by a relatively technocratic style (Smith and Woolcock, 1999, 446). Regarding the ideological perspective, the Commission and particularly DG Trade are usually categorised under the ‘Northern’ free-traders within the Community, together with the UK and Germany. This latter observation would a fortiori be true for the then Trade Commissioner Sir Leon Brittan, whose ideological background as a former minister under the Thatcher government clearly showed a preference for a neoliberal inspired trade policy.

The competence dimension provides an important part of the puzzle, since the Commission has an institutional interest in a strong Community. With the social question on the WTO agenda, this would undoubtedly increase pressure for a larger Community role concerning ILO labour standards within the Union. Another element of explanation is related with the specific position of the Commission as the EU negotiator in international trade matters. The Commission obviously has a strategic interest in a comprehensive trade agenda,
because this increases the possible options of compromise which compensate for the necessary but painful EU agricultural concessions. The abandonment of the social issue by the Commission, nota bene a few months before the Doha Conference, can be considered as such a necessary 'compromise' to launch a new round of trade negotiations. The competence perspective also sheds light on the ILO-isation of Europe's stance from 2001 onwards. As an observer and given its limited competences (Opinion 2/91), the Commission hardly plays any role in the ILO. According to Novitz (2002a, 11-2), by insisting on a consideration of core labour standards within the ILO, the Commission attempts to increase its influence representing the EU in this organisation.

The second aspect is related with the fact that this ILO-isation implies a greater emphasis on soft governance. Interestingly, EU internal social policy shows a similar evolution. Since the start of the millennium, the Union has strongly emphasised the importance of the Open Method of Coordination (OMC). Around the middle of the 1990s this method was applied in the employment policy and more recently (as part of the Lisbon process) in other domains as well (pension reforms, social inclusion and education). Guidelines are determined and through a benchmarking process Member States are encouraged to comply with the goals. The OMC stresses the importance of peer pressure and of a learning process. For the time being, the effect of this soft integration method remains unclear (Falkner, 2003, 273).

What is clear, however, is that the OMC was developed as an alternative to the binding Community decision-making method, precisely because further European social integration along the classic Community lines did not run smoothly. Therefore this method is also a manifestation of the Council's reluctance to transfer more competences in the social field (although substantial long-term results of the OMC are not impossible). The OMC essentially differs from the traditional European social integration, in that it establishes a non-binding decision-making method.

In Europe's external trade position on a social clause, we noticed a similar evolution towards soft governance. Within the ILO World Commission on the Social Dimension of Globalisation, the OMC was even presented as a European model for the international promotion of labour standards. The OMC for that matter shows striking resemblances with the ILO method as it has been applied for decades:
A third aspect is related to the labour standard provisions in Europe's GSP system. Here we could point to the protracted discussions between the Council and the Commission about the way to deal with the implementation and observance of labour standards in developing countries. More importantly, we observed a striking difference between Europe's position on a social GSP clause on the one hand and its stance on labour standards within the WTO on the other. Whereas the Union managed to approve a GSP regulation establishing a social clause in '94, it took another five years to reach a common WTO position on the very same topic.

This difference can also be explained by means of the competence perspective. Briefly summarised: while the decision-making on GSP trade regulations necessitates QMV within the Council (article 113/133EC), the establishment of a negotiating mandate within the Council requires a European consensus in order to be a credible basis for further negotiations. This difference is analogous with respectively day-to-day European decision-making at the systemic level and the IGC negotiations about Treaty reform at the super-systemic level. During the 1994 GSP decision-making process, the shadow of QMV forced sceptical Member States such as Germany and the UK to contribute to a compromise within the Council. This eventually led to a (indeed quite modest) social clause. The dynamics of EU negotiations in the run-up to agenda-setting WTO Conferences, which are also much more politicised than the European GSP regulations, are completely different.

Here too, the competence perspective points to interesting similarities between European internal integration in the field of labour standards and its external position on a social clause. The achievement of an ‘early’ EU position on a social clause in the European GSP scheme is related to the QMV requirement for trade (not social) policy. Through the backdoor of ‘market enhancing’ competences, namely trade policy under article 133, the EU managed to introduce a ‘market correcting’ mechanism such as the social clause. The same logic holds true for the European integration in labour standards such as the health and safety standards for workers in the second half of the 1980s: these ‘market correcting’ measures were only possible through the backdoor of the QMV requirement for directives.
concerning the completion of the internal market. This is another instance where the Commission amply used the possibility of QMV to introduce social legislation on labour standards, resulting in a general dynamic for a more social Europe and indeed much to the displeasure of the UK.

Conclusion

Aiming to contribute to the increasing literature on the EU as a norm exporter, this paper examined Europe’s stance on the idea of promoting core labour standards through its external trade policy. Sketching the ups and downs of the European debate as well as the evolving ‘European’ stance on the social clause, it became clear that the Community has long failed to produce a clear and common stance on this issue.

Looking for explanations, it was argued that, besides the economic and ideological viewpoints, the competence dimension remains relevant. This perspective allowed us to account for several specific aspects of the ‘EU’ position since the 1990s. More importantly, we illustrated that Europe’s difficulties in reaching a position on the social clause, both at the end of the 1970s and in the 1990s, can be related to sensitive competence issues in both the trade and the social sphere. The idea of a social clause is, by definition, situated at the crossroads of these policy domains. Both periods show discussions about the scope of Europe’s external trade competences on the one hand and about further intra-European integration of labour standards on the other.

The Commission’s 1978 proposals coincided with the Court’s Opinion 1/78 about the scope of European trade policy, and with attempts by the Community institutions to increase Europe’s role in dealing with ILO labour standards within the Community, each time to the displeasure of the Council. The sudden rise of the social question on the EU trade agenda in ’93-’94 took place in the context of a competence dispute between most Member States and the Commission on trade related issues (Opinion 1/94), whereas the Court’s Opinion 2/91 had already made clear that Member States were not willing to grant the Community more competences in the field of ILO labour standards.
These two disputes between the Commission and the Member States, in which the latter have at least temporarily won the battle, point to the continuing relevance of the ‘vertical’ cleavage in EU external relations. Even in the area of trade policy, the traditional backbone of Europe’s role in the world, the competence dimension influences the Union’s ability to promote core labour standards.

Future research could investigate the linkages between the ‘vertical’ competence and the ‘horizontal’ ideological dimensions, and its consequences for Europe’s capacities as a norm exporter. Here a new hypothesis is raised by the observation that the EU could, both internally and externally, much more straightforwardly agree on labour standards through the QMV ‘backdoor’ of essentially ‘market-enhancing’ (respectively internal market in the 1980s and GSP regime in the 1990s). This hypothesis then reads that Europe’s proactiveness as a norm exporter is more obvious with market-enhancing norms (e.g. trade liberalisation, competition and investment rules, modelled after Europe’s internal market project), whereas the promotion of market-correcting norms such as a social clause proves to be much more difficult.

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