

## ***The Social Clauses in EU Trade Agreements: contents and prospects***

### **Le clausole sociali nei trattati commerciali dell'Unione Europea: contenuti e prospettive**

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#### **Abstract**

*According to the Lisbon Treaty, the common commercial policy is one of the exclusive policy competences of the European Union with reference to the member states. In recent years, several international agreements have been negotiated. Among them, there are the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and the Transatlantic Trade and Investment Partnership (TTIP) with the United States. The EU is also discussing an agreement with the Latin American Mercosur states. A common feature of these treaties is the presence of a 'labour chapter' dealing with the recognition and enforcement of work-related rights. In the literature, studies suggesting that such provisions can encourage improvements are confronted by contributions arguing that trade openness can lead to a downgrading of working and welfare standards, with a lack of political will to rights enforcement. In addition, social clauses may vary depending on their subject. The article examines the three agreements under the viewpoint of labour and industrial relations conditions. Since these international treaties are supposed to play a regulatory function, their potential influence should be considered in times of intense globalisation.*

Secondo il Trattato di Lisbona, la politica commerciale comune è una delle competenze politiche esclusive dell'Unione Europea rispetto agli stati membri. Negli ultimi anni sono stati negoziati numerosi accordi internazionali, tra i quali il CETA (*Comprehensive Economic and Trade Agreement*) con il Canada e il TTIP (*Transatlantic Trade and Investment Partnership*) con gli Stati Uniti. L'UE è inoltre in trattative con i paesi latino-americani del Mercosur. Una caratteristica comune di questi trattati è la presenza di 'capitoli sociali' riguardanti il riconoscimento e l'applicazione di diritti legati al lavoro. Nella letteratura, agli studi che confermano la possibile efficacia di tali misure si contrappongono i contributi che vedono nell'intensificazione dei rapporti commerciali il rischio di un ridimensionamento della qualità del lavoro e del welfare, con una scarsa volontà politica di tutela. Inoltre, il contenuto delle clausole sociali può variare significativamente. Il saggio analizza i tre accordi in base alle loro disposizioni in materia di lavoro e relazioni industriali. Poiché simili intese dovrebbero assumere una funzione regolativa, la loro possibile influenza è da valutarsi nell'ambito degli attuali processi di globalizzazione.

#### **Keywords**

*European Union, Social Clauses, Labour Standards, Trade Agreements, Common Commercial Policy*  
Unione Europea, clausole sociali, condizioni di lavoro, accordi commerciali, politica commerciale comune

## Introduction

The recent trade agreement between the European Union and Japan (2018) has once more drew attention to the connection between terms of trade and social clauses. The treaty established a system of exchanges and consultations, with the involvement of the International Labour Organization (ILO) and of civil society organizations. Sustainable development is affirmed, with the protection of environment and the safeguard of EU norms also in social and labour matters (applying the precautionary principle) and with respect to the basic ILO conventions. The target of sustainable development is pursued by EU law through all relevant EU policies, including trade. In accordance with Art. 9 of the Treaty on the Functioning of the European Union (TFEU, 2007), also called ‘the social clause’, the EU must promote a high level of employment, guarantee adequate social protection and fight against social exclusion when defining and implementing all EU policies (Rasnača and Theodoropoulou 2017). Economic, social and environmental elements have to be interlinked in order to ensure social justice, respect for human rights and high labour and environmental standards. This entails the application of related international standards and agreements. Labour standards and principles are subject to the ILO, founded in 1919 after the Treaty of Versailles, which has been setting international rules through specific conventions, adopted at the annual conferences of its member countries. The 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up required member states to respect and promote four core labour standards (freedom of association and collective bargaining, elimination of forced labour, elimination of child labour, elimination of discrimination in respect of employment and occupation), affirmed in eight conventions. Though ILO conventions have legal status and must be enforced only after ratification, core labour standards listed in the 1998 declaration are compulsory also without ratification (Bakvis and McCoy 2008; Bolle 2016). Two years later, the ILO adopted the Decent Work Agenda (2000), which supports the implementation of four strategic targets:

- a) creating jobs;
- b) guaranteeing rights at work;
- c) extending social protection;
- d) promoting social dialogue.

The Decent Work Agenda has then been carried on through various country programmes and has been adopted by the United Nations’ Economic and Social

Committee and by the European Union, which pursues the promotion of decent work also in its trade agreements. ILO objectives have also often been enclosed in charters and codes of good practice developed by private firms and multinationals, which usually also follow the OECD Guidelines for Multinational Enterprises and the United Nations' Universal Declaration of Human Rights. After the NAFTA Treaty between the US, Canada and Mexico (1994), several trade agreements have included social chapters or labour clauses. In particular, EU treaties have to contain a section on labour and sustainable development. Since the Lisbon Treaty (in force since 2009), the EU's external policies must point at 'fostering sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty' and must respect the principles 'of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity... and the principles of the United Nations Charter and international law'.<sup>1</sup> Though in different forms, treaties usually include procedures for settling disputes and commitments in order not to undermine the core labour standards to push competitiveness (Siroën 2008). The 'horizontal social clause' of the Lisbon Treaty stipulates that EU policies must take social requirements into account to ensure consistency between policies and social objectives (Perulli 2014). Due to the stagnation of international action through multilateral channels, there is an increasing resort to diverse forms of lawmaking, including governance *through* trade. This is mainly pursued by international actors with a strong normative international agenda (Marx et al. 2015). It is also a reaction to the limitations of multilateral agreements, since the lack of international enforcement mechanisms causes a poor implementation of standards. The EU exerts power through trade using its market access power to promote its laws, standards, values and norms, and facilitates changes in terms of good governance, human rights and environmental policy in the context of its trade partners.

The paper intends to show that there are favourable conditions in order to let the EU play a stronger role in setting labour and social standards through trade agreements. Some key examples (the TTIP, the CETA and the EU-Mercosur agreement) are illustrated as cases of possible improvements in social standards. In comparison to the past, the EU is currently more legitimated to undertake a standard-setting task, also beyond the limitations of the ILO.

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<sup>1</sup> Art. 21 of the Treaty on the European Union (2007).

## A review of theory: approaches and choices

According to De Ville and Siles-Brügge (2016: 132), the most frequently used approach to understand global trade politics relates to the public choice school of political science. It is applied to explain opposite interests and rent-seeking behaviour by the actors. Linked to it is also the contribution by Olson (1965) on the logic of collective action, which is due to shed light on the political mobilization of economic groups, induced by selective incentives able to determine organizational cohesion. Considering international trade agreements, the Common Commercial Policy is an exclusive competence of the EU (Gstöhl and Hanf 2014). Following Art 21 of the TEU, this policy has clearly a wider scope than the abolition of restrictions on trade and investments. Political conditionality has been typical of EU trade policy since the 1990s. Using dialogue and incentives to implement labour and social standards imply a strong resort to exchange of information and reporting. The possible linkage between EU external trade and labour standards started to develop at the end of the 1970s, when the Economic and Social Committee made reference to a social clause in its opinions (Orbie, Vos and Taverniers 2005). In 1978, a social clause first appeared in external trade relations by the initiative of the DG Development of the European Commission, particularly because of the relationship between foreign aid and labour standards. However, the matter was not discussed by the Council and, during the 1980s, only the European Parliament kept demanding the introduction of a social clause and insisted on the ratification of ILO conventions by member states. In the early 1990s the question resurfaced during the negotiations within the General Agreement on Tariffs and Trade (GATT, due to become the World Trade Organization, WTO) when the Council cautiously supported the European Commission's stance in favour of a social clause, then incorporated in the Generalised System of Preferences (GSP). At the same time, the EC proposed a joint ILO/WTO Working Group to discuss the social issue. But later, it supported a 'soft governance' style, stressing the role of the ILO as the internationally recognised organization dealing with labour standards and highlighting the corporate social responsibility of firms. After the Lisbon Treaty, trade policy has officially been defined as an EU competence. Consequently, member states – through the Council – are now less competent in comparison with the Commission, opposite to the situation before 2009.

Labour provisions can be distinguished between *promotional* (based on supervision and capacity building, plus social dialogue and monitoring) and *conditional* (based on either sanctions or incentives) (Ebert and Posthuma 2011). In case of disputes, friendly resolutions are generally preferred, and settlement provisions include several stages of reviews and consultation. EU agreements are usually promotional, but have progres-

sively enlarged their scope and normative content. Sanctions can influence a state's behaviour quite effectively, and change its reputation among trading partners. But political reasons (degree of democracy, relevance of trading relations, governmental political orientation) can play an important role in the decision of imposing sanctions. Their effects on workers are also uncertain. In some cases they apparently worked (Ebert and Posthuma 2011: 24), but technical capacities for problem-solving and the scrutiny by social partners' organizations are crucial. Cooperation through workshops and research activities has proved very useful, though it should be more focused, under careful financial assessment and with the support of social partners, NGOs and civil society organizations. The EU approach is centred on technical assistance and cooperation to improve labour rights as part of a broader sustainable development and human rights-related view of trade (Bakvis and McCoy 2008: 4). According to Perulli (2015), the Lisbon Treaty set the linkage between international trade and the promotion of core labour standards, being a strategic step from *free* trade to *fair* trade. In EU agreements, parties usually undertake to keep their levels of protection and enforce their labour and environmental legislation. Bilateral committees are established for sustainable development issues (Bartels 2012).

According to the ILO (2015), about 40% of trade agreements including labour provisions have a conditional dimension, with consequent sanctions or benefits. The remaining 60% have a promotional nature and include provisions on dialogue, cooperation, and/or monitoring. These are typical of the EU, but are equally binding and may entail a comprehensive institutional framework. Agreements can have positive effects with adequate economic, employment and social policies. Pre-ratification conditionality can determine major changes in labour law, while – after ratification – conditionality can improve compliance of existing norms (through complaint and dispute settlement procedures). The promotional approach often leads to the constitution of advisory groups with the social partners and civil society organizations. An expert panel may analyse disputes and issue recommendations. In order to increase the effectiveness of labour provisions, economic incentives seem to be more successful than sanctions.

## The three treaties under consideration

### *a) The TTIP*

The importance of the TTIP, whose negotiations started in 2013, is not only related to its mere contents. In a multilateral world, trade agreements are necessary in order to set common standards in whole regional areas. It is clearly a matter of trading goods

and services, but also of defining rules and principles for pacific relationships (Baldwin 2014). This view can be set in the framework of international political economy, which is particularly suited to study interactions between economic and political factors, and of globalization studies, since the increase in trade flows begun in the early 1970s is considered as an important dimension of internationalization (Milner and Keohane 1996: 10). Keohane and Nye (2003) have also observed that, in times of globalization, accountability in the sphere of international organizations' governance is strictly output-related, with legitimacy depending on efficacy. According to the Sustainability Impact Assessment prepared for the TTIP (Ecorys 2017), the treaty is envisaged to promote the ILO standards and benchmarks. However, the assessment was required because civil society representatives argued that the treaty might entail a downgrading of labour standards, due to the missing ratification of most basic ILO conventions by the United States.<sup>2</sup> On the contrary, EU member states have ratified all of them, and certainly the level of labour protection is higher than the minimum set in the conventions. Nevertheless, according to the above-mentioned study, enforcement can still improve even in the EU. Following the negotiated texts, environmental and working conditions must be ensured in the framework of multilateral environmental agreements and of basic ILO conventions. Sustainable development and corporate social responsibility must be respected, especially regarding the trade of natural resources. The treaty also establishes the participation of civil society in the control of the system and a mechanism of dispute resolution, possibly a flexible mediation system. Concerning work, a clear reference is made to the Decent Work Agenda of the ILO and to the respect of core labour standards, with the support of joint actions. Each party (the EU and the US) should keep its right to regulate, consistently with internationally recognised standards and agreements, with high levels of protection and improvement of domestic labour policies, preventing a race to the bottom to attract trade or investments. Before the current suspension of negotiations, the Commission proposed an Investment Court System (similar to that enshrined in the CETA), in order to replace the much contested Investor-State Dispute Settlement (ISDS) clause for investment protection with a first instance tribunal and an appeal court. While judges would be appointed by the parties to the agreement, the appeal court would work on similar principles to those of the WTO Appellate Body, which has remarkable discretionary powers. Rules concerning the ability of investors to take a case before the tribunal, and the governments' rights to regulate, would also be fixed in the TTIP. Perulli (2015) remarks that the TTIP should provide the establishment of an expert committee – including an ILO representative – to prepare regular reports, evaluate complaints and

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<sup>2</sup> However, most of their content is covered by US law.

recommendations and run periodical meetings for information exchange and discussion. The EU and the US could devise a bilateral control body and formulate a social conditionality clause, with a dispute settlement procedure, since the Open Method of Coordination – with peer review and benchmarking – may not suffice as a form of institutional cooperation.

### ***b) The CETA***

Usually, Canada has adopted a similar approach to that of the US in its trade agreements, with a dispute settlement mechanism and the possibility of inflicting sanctions (Agustí-Panareda et al. 2014). Like the US (whose trade agreements were the first to refer to ILO instruments), Canada has inserted references to ILO conventions in its treaties, implying their implementation through domestic law and practices.

The CETA (signed in 2014), which is provisionally operative while waiting for the ratification of all EU member states, has been greeted favourably by trade unions for its Investment Court System in place of an ISDS mechanism, which should introduce ethical and conflict of interest standards for tribunals, plus the possibility for them to dismiss claims without legal merit. It is a permanent court of fifteen judges appointed by the EU and Canada, whose auditions will be open to the public. The treaty includes commitments to ILO core standards and fundamental conventions, and affirms the implementation of multilateral environmental agreements. It also confirms the right of each party to regulate in the areas of labour and environment as considered appropriate or necessary, and stresses that labour and environmental rules must not be used to encourage unfair trade and investment practices (as disguised protectionism or by downgrading standards). Interestingly, the treaty sets up an institutional mechanism to check its implementation and the application of enforcement procedures. It includes a specific governmental body and channels for the domestic and bilateral involvement of civil society; a detailed process to address disputes, with governmental consultations and review by an independent panel of experts; a high degree of transparency and an open review clause, according to which both parties check the effectiveness of implementation and reconsider enforcement procedures.

Generally, agreements made by Canada are conditional and have evolved from the implementation of national law to compliance with minimum international standards (Ebert and Posthuma 2011: 11).<sup>3</sup> They include fines for non-compliance, whose amount goes to a fund for the implementation of labour rights and deficit resolution. They also include technical assistance and dialogue through a ministerial council for

<sup>3</sup> In Canada, most labour law is provincial (Greven 2005).

each treaty, with national officers for each country. Chapter 23 of the CETA deals with labour standards. NGOs must be involved in its implementation. There must be cooperation with the ILO and other competent international or regional organizations. Each party has to designate an office which must serve as contact point with the other party for the implementation of the chapter, including cooperation programmes and information. A Committee on Trade and Sustainable Development will oversee implementation and review it. Each party will also have advisory groups for issues related to the chapter, which will gather representatives from civil society organizations, trade unions and employers' associations. These groups will submit opinions and make recommendations. The chapter insists on the exchange of information between the parties. For unsolved matters, on request by a party a panel of three experts can be convened, chosen from a list of independent experts in labour law by the Committee on Trade and Sustainable Development. Its reports must be made public and require a follow-up.

### ***c) The EU-Mercosur Agreement***

The first round of negotiations of the EU Association Agreement with the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay) was held in 2010, but talks about a potential agreement had already started in the 1990s. Currently, the chapters under discussion on agriculture and trade according to sustainable development include references to labour and environmental aspects. Concerning the protection of the natural environment (forests, fisheries, biological diversity and wildlife), the chapters recall the Agenda 21 (1992), the ILO Declaration on Social Justice for a Fair Globalisation (2008), and the 2030 Agenda for Sustainable Development (2015). Both the EU and the Mercosur are committed to implementing the Paris Agreement on Climate Change (2015). The treaty should also include provisions on the involvement of civil society in its implementation. A clear reference to labour rights is made in the chapter on trade and sustainable development. Art. 2 states that each party will define its law and policies according to the above-mentioned international standards. The parties are also committed to improving environmental and labour protection levels, which is important since implementation is often very problematic in cases of agreements between parties of very different administrative capacities. An interesting part of this article regards the commitment to respect environmental and labour provisions, even when ignoring them may encourage trade or investments. Art. 3 insists on the promotion of international trade in line with decent work, also for women and young people. The ILO Constitution and documents on fundamental principles and rights at work, plus the ratification of the basic ILO conventions, are considered necessary. The exchange



of information concerning ratification and resolution of trade-related labour issues of mutual interest is also included. Possible violations are not allowed as either comparative trade advantage or protectionism forms. With a precise focus on implementation aspects, Art. 3 also remarks that each party shall develop and put into practice measures for occupational safety and health, decent working conditions (wages, working hours) and labour inspection.

The emphasis on the enforcement of labour regulations leads to the relationship between formal and informal employment. Studies on labour inspection have shown that labour regulations increase the costs of formal labour, but better compliance with mandated benefits stimulates formal employment (Almeida and Carneiro 2012).<sup>4</sup> Often, labour inspectors in developing countries are few and with scarce resources. Consequently, they hardly target informal employment, and rather concentrate on officially registered firms. So, formal declarations in the agreements are important, but the real problem lies in actual implementation. Improvements in regulation are possible, but the effect of a trade agreement on law enforcement is uncertain, also under the point of view of the political will (Dewan and Ronconi 2018). These authors stress that, with reference to Latin American countries, the first example of labour provisions in free trade agreements signed by the US was the NAALC (North American Agreement on Labor Cooperation), a side agreement on labour and environment accompanying the NAFTA, which mainly committed signatories to enforce their own labour law.<sup>5</sup> It made no reference to international labour standards, but subsequent trade agreements have referred to the ILO 1998 Declaration (including the four fundamental conditions previously mentioned) which has become the international basic reference for labour standards. In 1998, Mercosur countries have adopted a common declaration on labour conditions which goes beyond the core labour standards, and establishes a commission which oversees and advises member countries on compliance (Bakvis and McCoy 2008: 4). According to Dewan and Ronconi (2018: 50), signing a free trade agreement with the US seems to improve the enforcement of labour law in Latin American countries, both through more control resources and a rise in inspection activities. It also helps in case multinational companies insist with the governments on the establishment of a common competitive playing field based on the standards agreed in the treaties. There could also be a stronger political and legal pressure to enhance enforcement, depending markedly on the letter of the agreements. Receiving funds from the US for capacity

<sup>4</sup> This study is on Brazil.

<sup>5</sup> The NAALC had several problems related to dispute resolution, lengthy procedures, scarce resources and shortcomings in law enforcement (LaSala 2001). However, it recognised the laws on child labour, minimum wage and occupational safety and health as binding (Compa 2015).

building has also proved effective. It remains to be seen whether the EU will also be an effective partner under this profile. More generally, enforcement can be difficult when firms are not correctly informed by governmental representatives. Woll and Artigas (2007) report that, particularly in developing countries, state personnel may not be adequately prepared for negotiations. Consequently, employers have to rely on their own networks or on international organizations (e.g. the WTO).<sup>6</sup> It has to be added that clauses similar to those included in the Mercosur agreement are also present in the Association Agreement between the EU and Central American countries and in the EU Agreement with Andean countries (Colombia, Peru and Ecuador). It is a remarkable difference in comparison with the 1990s EU trade agreements with Chile, Argentina and Mexico, where labour rights were absent or rather included in a generic 'human rights' clause (Compa 2015). However, rather than on sanctions for possible violations, recent agreements resort to consultation, dialogue, cooperation, education and training, joint projects and information. While treaties signed by the US often include sanctions in case of violations, the EU still prefers 'soft' measures.

### **Discussion: enhancing the EU role in the definition and implementation of labour standards**

According to Compa (1998), wide disparities between parties to an agreement often determine a race to the bottom and frequent abuses to the damage of the weakest partner and to the advantage of profit-minded investors. On the contrary, when the partners have comparable and well-functioning social protection systems, labour laws and legal devices for enforcement, a strong social dimension in their treaties is a good starting point to encourage better policies, better management strategies and higher labour standards. In particular, European labour law and practice generally comply with core labour standards of the ILO. Freedom of association and collective bargaining are also protected by the European Convention of Human Rights and the European Charter on the Fundamental Rights of Workers (the Maastricht Social Protocol). The TTIP could then encourage a stronger global respect of labour rights and standards, sending a clear message at international level. In addition, the US and the EU should harmonise their preferential trade provisions for developing countries exports, in order to discourage labour abuses and monitor the implementation of social clauses. For sure, the impact assessment of trade agreements with reference to labour standards is difficult, though apparently positive incentives work better than negative ones (Siroën 2008).

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<sup>6</sup> The authors explicitly refer to cases reported during the Mercosur agreement negotiations.

The North-South division persists inasmuch Northern (and more developed) countries have easier chances of compliance with decent work standards (and of being accused of protectionism), while Southern countries tendentially demand preferential treatment or exceptions for vital economic sectors, being equally accused of protectionism.

An important issue is represented by the potential role of EU law. Some crucial subjects (the right to strike, collective bargaining, freedom of association) are excluded from EU law-making and reserved to state sovereignty because they strongly depend on national history and legal frameworks. EU Directives have been mostly focused on safety and health at work, non-discrimination, workers' consultation, pensions and social security contributions. According to Compa (1998), these subjects are mostly uncontroversial, and this has somehow lowered the potential international impact of EU law. But, in the EU system, even single citizens – in addition to organizations – can complain to the European Commission (or, more simply, to a national judge) for the implementation deficit of a directive. National governments are held responsible, and the case may arrive at the European Court of Justice. Instead, in the ILO system, complaint procedures are not open to individual workers or NGOs, but rather to trade unions, employers' organizations and governments. The latter can allege ILO conventions' violations by another government only if both countries have ratified the conventions in point. The UN can be another potential forum where labour rights' violations can be either denounced by governments or by NGOs. Especially in the case of the UN and the OECD, public opinion pressure can also lead to a sanction. Generally, sanctions can involve the suspension or removal of beneficiary status in the GSP system. They may also go from 'moral suasion' attempts to investigations, self-reporting requirements, reviews by other governments, NGOs or international bodies, consultations, recommendations, labelling requirements and fines. Within the ILO, all member countries must report annually on their progress towards ratification of conventions, and can be investigated by specific committees. The lack of coercive power by the ILO to compel correction or to issue sanctions leads to public 'shaming' as the main form of punishment. On the contrary, in the EU system monetary fines can be issued against non-compliant governments, in case they do not respect rulings by the European Court of Justice. Moreover, member states may be ordered to pay monetary damages to citizens if the Court states that they suffered a violation of their rights deriving from the lacking implementation of a directive. Consequently, EU trade agreements should incorporate some elements of the internal judiciary system in order to overcome the missing enforcement powers of the ILO and the UN. An example could be the extension of EU complaint procedures to the citizens of the EU treaties' signatory counterparts. As observed by Dombois et al. (2003), trade agreements often preserve national sovereignty, and this is connected to the dimension of political and economic domi-

nance, which affects agenda-setting and mutual influence. For intergovernmental logics, governments also prefer to avoid conflicts after signing agreements, and it may be difficult to identify clear effects of complaints, also because treaties are often seen as supplementary to other routes, basically legal proceedings at national level (*ibid.*: 15). This consideration should reinforce the EU position in trying to consolidate compliance mechanism modelled on its legal system, both in the relationships with developing countries (which have their specific implementation problems) and with developed ones (like the US). More space should also be opened to civil society organizations, as a form of public scrutiny on the implementation of treaties. This could become easier by establishing more effective modes of communication and monitoring between governments, and through more incisive incentives (similar to EU funds), with an automatic combination of mutual and symmetric obligations (*ibid.*: 21). Again, the EU concept of 'conditionality' comes to the fore, and it looks very adequate also as a way to impose regulatory controls on globalising processes (Pedersini 2017; Hyde-Price 2006). As indicated by Rodrik (1997), globalization generates wage inequalities, normative and social conflicts and an increasing demand for social protection against work instability, with serious consequences especially in less developed countries, unable to practise redistributive policies. This furthermore encourages a stronger regulatory role by the EU at international level. Actually, where labour rights are protected, productivity levels and economic activity tendentially rise, due to the improvement of human capital and the increase in foreign investments (Onida 2009; Sengenberger 2002). Bolle (2016) has also stressed the need for more uniform norms on penalties, definitions of labour provisions and dispute settlement. Moreover, instead of concentrating on the costs of labour standards' adoption, stronger attention should be devoted to the economic, political and social dividends of their implementation. This certainly requires financial efforts and the strengthening of the whole system of labour administration at country level, but political stability and better economic conditions are extremely important results (Dolumbia-Henry and Gravel 2006). In this sense, the international protection of workers could result weakened because of the interpretation and application of standards according to the different trade agreements. Synergies among them would be advisable. It is also important to check whether reference is made to the ILO conventions or to the 1998 Declaration, and to see how labour provisions are formulated in the agreements (Agustí-Panareda et al. 2014: 14). A more active role of the EU in promoting decent work has been suggested also by the European Commission, on the basis of its long-time experience with the European Social Model (European Commission 2006). Even more, it has been argued that, in the TTIP case, it would be necessary to go beyond ILO goals and add further protections, not yet included in the ILO/UN/OECD regimes (Faioli 2015).

## Conclusions

According to Alston (2005), the 1998 ILO Declaration gave an important signal in order to establish stronger global labour law standards. However, free trade agreements still contain only the basic enforcement commitment related to domestic labour law, not necessarily reflecting international conventions. Though governments may not be seriously engaged in reforming or redressing abuses, the ILO could be more active in terms of assessment and control, also of multinationals, international and financial agencies and private actors – and would need further financial resources (Alston 2005: 477; Onida 2009). Analysing the impact of conventions and insisting on the normative content should help to understand whether substantive rights are respected. The ILO should also interact more constantly with other international institutional actors (like the EU) to check how its principles can influence their activities. The strengthening of ILO control activities would be important also because of the lingering negotiations within the WTO, which have hindered multilateral arrangements so far, also due to the refusal of the same WTO to deal with labour and environmental issues (in the lack of a general consensus on competition or FDI rules) (Tajoli 2017).

The recent agreement (2018) between the EU and the US on the lowering of tariffs and trade barriers does not anticipate anything about the future of the TTIP and of its social clauses. But the EU has been defined a ‘civilian’ or ‘normative’ power in the debate on its international role, which could also justify a stronger consideration of its normative system. The ‘external governance’ approach has shown that, at least sectorally, the EU may be successful in promoting the adoption of its rules by third countries (Lavenex and Schimmelfennig 2009). The OECD (1996) has shown that there is at least a weak positive association between the degree of enforcement of labour rights and the level of economic development, and that there is no evidence that low-standard countries enjoy a better global export performance than high-standard countries. On the contrary, the respect of core standards could strengthen the long-term economic performance of all countries (*ibid.*: 13).

According to Bartels (2012), the EU human rights clause is robust and flexible enough to be applied effectively. Moreover, ILO core labour standards are also human rights, and are therefore covered by the usual human rights clauses (European Commission 2001). In the latter communication, the European Commission recognised that ‘global market governance has developed more quickly than global *social* governance’. While the ILO enforcement mechanism, limited to ratified conventions, has also lacking effectiveness, the WTO is stronger and relatively more effective, relying on its rules-based system and a binding settlement mechanism (European Commission 2001: 3). The ILO instruments, including the supervisory mechanism (regular reporting and

complaint procedure) and the follow-up procedure to the 1998 Declaration (reporting plus technical assistance), are not incisive enough.<sup>7</sup> Looking at the EU framework, labour standards are respected as a basic component of the European Social Model, and they also constitute a remarkable part of EU-level legislation, going from general rules on health and safety to working conditions, equal opportunities and non-discrimination. Norm-setting in these fields has been pursued since the beginning of the European Community. In the more specific case of international core labour standards, all the EU countries respect the fundamental principles and rights identified by the ILO. Beyond proposing a strengthening of the ILO supervisory and complaint procedures, the Commission also supports the resort to positive incentives – e.g. related to technical assistance – and a system of voluntary reciprocal commitment by states to respect the core ILO standards, involving adequate measures (like public recognition of effective implementation). Capacity strengthening in relevant ministries would be important, in order to formulate and apply legislation, within a multilateral framework of cooperation. A valid incentive for action could be the fact that foreign direct investments are apparently more consistent in countries with strong labour rights, since greater social and political stability is seen positively (Kucera 2002).

If a ‘new law’, beyond the ILO system and the regional EU dimension, is needed for social clauses (Treu 2017), still the EU could offer a solid basis. EU law has gained international appreciation on issues like competition, data protection, environmental protection, financial services, agriculture and food quality, regulation of chemical substances (Young 2015). The EU has not materially ‘exported’ its rules because of the complexities of domestic regulatory politics, which can make EU law adoption not convenient (due to high harmonisation costs and veto players). So, the acceptance of equivalence or convergence on the basis of international standards have prevailed alternatively up to now. The substance of labour standards can have resource implications for the parties involved in an agreement if they imply new labour policies, institutional arrangements, monitoring structures and participation in dispute settlement procedures. New governmental institutions could also be necessary (Bourgeois et al. 2007). Nevertheless, important parts of EU labour provisions could be submitted during negotiations, for a potential introduction in the treaties, as it has already been done in practice in the above-mentioned policy areas.

According to Banks (2011), in trade agreements incentives contingent on progress to improve compliance may work better. And devising effective labour-trade linkages is important to involve employers actively and inform them, since sanctions and incentives must affect both governments and firms (Polaski 2004). In any case, the inclusion

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<sup>7</sup> In the same communication, the EC recalled its proposal for an ILO/WTO Standing Working Forum.

of labour rights provisions in bilateral or regional agreements can be a promising strategy for improving compliance (Greven 2005). In the case of the EU, such agreements are focused on human rights, development issues, technical cooperation and political dialogue, rather than on enforceable measures. Labour relations are often considered as mainly internal institutions, and external pressure may not be sufficient to change rules and behaviours. Greven (2005) also warns that the negotiating phase of an agreement does not eliminate ‘bargaining within/between states’, with consequences on the industrial relations systems deriving from such further pressures. Since the ILO’s approach has not provided a secure enforcement of conventions, the introduction of labour rights provisions in the EU trade agenda in the 1990s is an answer to remedy the missing involvement of the WTO and the lacking cooperation between it and the ILO.

Since the EU trade policy is firmly established in the Treaty on the European Union, it is not an end in itself, but a powerful means to ‘higher ends’ (Larik 2015). This should encourage – if not a norm-exporting attitude – a more incisive strategy to enhance the international influence of EU law and practice on the setting of labour and social standards.

**Note:** Texts of the agreements and thematic reports are available on the Trade Policy website of the European Commission (<http://www.ec.europa.eu/trade>).

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