



**SOCIAL STANDARDS AND HUMAN RIGHTS
CLAUSES
IN TRADE AGREEMENTS -
WINDOW DRESSING, HIDDEN PROTECTIONISM
OR FURTHERING THE CAUSE?**

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Overview of the session

The Preamble of the Marrakesh Agreement clearly defines “raising living standards, full employment” and “sustainable development”, as the ultimate objectives of the World Trade Organization (WTO). These objectives go beyond the domain of trade *stricto sensu* and define the goals of the WTO as reaching into the field of international human rights law and social standards.

However, the linkages between social and human rights standards (SHS) and trade are a sensitive issue. While some argue that trade can and should clearly be an important means to foster social justice, others insist on negative implications, such as economic stagnancy or “western” domination, when linking the two domains. The question of directly integrating social clauses in trade agreements has thus been a polemic issue for decades.

The Geneva Office of the **Friedrich-Ebert-Stiftung** (FES) and **3D -> Trade - Human Rights - Equitable Economy**, tackled the issue of “Coherence between WTO and other areas of global governance” by offering a human rights centred approach to trade agreements. Pascal Lamy defined “social demand” in his opening speech of the WTO’s Public Forum as a force shaping world trade primarily on the national level. The aim of this session was to identify how and to which extent the demand for social justice and human rights standards can have an impact on the international level i.e. in multi-and bilateral trade agreements.

Presentations by Panellists

The Panellists, **Claudia Hofman**, Research Associate at the University of Kassel, Germany, **John Clarke**, Chargé d’Affaires of the delegation

of the European Union (EU), **Pradeep S. Mehta**, Secretary General of CUTS International and **Eduardo Muñoz Gómez**, Ambassador of the Permanent Mission of Colombia to the WTO, were invited to shed light on this long debated topic.

Coherence in international law, not only being desirable but an actual obligation of states, was the first point in the panel raised by **Claudia Hofman**. 117 of the 153 WTO members have ratified all eight ILO core conventions, which seek to implement decent work conditions for all. However, only 31% of all regional trade agreements would contain this kind of social clauses. Hofman furthermore outlined that from a legal point of view, it would be possible to integrate social clauses in Free Trade Agreements (FTAs), but states tend to remain reluctant as long as these clauses might hinder competitiveness.

All agreements call for a trade policy based on fair and transparent negotiations and the willingness to offer concessions. Hofman emphasized that labour chapters would have to be context-sensitive in each agreement, taking into account the capacities of the respective governments. A mechanism of burden sharing should be integrated either in the labour or in the commercial chapter of these agreements.

The next panellist **John Clarke** highlighted the fear of trade partners that drawing linkages between labour standards and trade would result in western protectionism. He also admitted that the respective countries approach to human rights would always be reflected in the social chapter of trade agreements. But the UN and the ILO would have to continue to play

the main role in promoting human rights and labour standards. Furthermore, there would be mainly two factors pushing for integration of social clauses in trade agreements: civil society and legal obligations. Clarke mentioned that the EU approach reflects these two pillars: under the pressure of national parliaments and bound by their constitutional treaties the EU grants importance to SHS in the field of trade.

Illustrating the EU approach to social clauses in trade agreements, Clarke highlighted that economic sanctions could not present a measure to enforce SHS since they often worsen the situation of the poorest segments of society. The EU would thus focus on the Generalized System of Preferences (GSP) and the in 2008 established incentive “GSP plus” that aims to strengthen especially vulnerable countries by granting them duty-free export to the EU under the condition that they ratify and effectively implement 27 specified UN international conventions in the broader fields of human rights¹.

Pradeep S. Mehta held a slightly different point of view: a human rights perspective in the completely different domain of trade would decisively be a bad idea. He highlighted his opinion with the device: “A job is better than no job”. Social security could thus not be imposed on poor countries but would have to follow its “natural path”, closely being associated with processes of economic growth and development.

Mehta illustrated this point on the example of the abolishment of child labour, one of the main aims of labor chapters in trade agreements.

Linking trade to SHS would lead to economic sanctions, which would erode the impact of poverty alleviation programs and thus aggravate the sufferings of child labour. In this respect, the outcome of the labour chapter would run contrary to the initial goal and jeopardise social improvements in the long run. Mehta thus made clear that without economic growth there would be no possibility to foster human rights and labour standards in the poorest countries. These standards could only be improved through economic growth that would make state allocations such as free meals and free education feasible.

The fourth panellist, **Ambassador Eduardo Muñoz Gómez**, put a strong emphasis on the fact that SHS in trade agreements cannot represent a panacea for ending human rights violations. The ultimate means to implement social and labor standards would be strong public policies on the national level, thus coming back to what Pascal Lamy had said in the Public Forum’s inaugural speech. Nonetheless, he partly contradicted Mehta’s argument that accused western countries of a hidden agenda policy; social clauses in trade agreements would have become standard. In recent years not only industrialised but also developing countries have asked for their integration.

The Colombian government would treat human rights and labour standards with the utmost importance, integrating them *inter alia* in trade agreements with the EU, the US and Canada. Another aspect Gómez focussed on was the commitment to the environment in the very same trade agreements, which would be of highest significance for a country with great biodiversity such as Colombia

¹ <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/>

Discussion / Questions and Answers

The subsequent discussion with audience and panellists focused mainly on two points:

The question of sanctions and enforceability of social clauses in trade agreements, and the utility, especially for developing countries, of trade agreements imposing “western” social standards.

As the audience raised the question of legitimacy for economic sanctions, illustrated by the case of the USA-Guatemalan conflict in August this year, Hofman used the opportunity to strengthen her argument in favour of coherence in international law. For enforcement measures, such as economic sanctions, it would, at this point, not be clear which would be the competent body to impose those drastic methods.

She underlined that due to the lack of harmonisation of standards, two different kinds of jurisprudence namely the one of the WTO and the ILO would make it impossible to come to a clear and fair judgement in these cases. There would thus be a strong need of institutional linkages between the two systems.

Gomez and Clarke highlighted measures, other than economic sanctions, that prevail in the respective EU/Colombian agreements. These measures would focus primarily on a cooperative approach including, among others, direct consultation from government to government or expert panels.

The question of utility for developing countries to engage in trade agreements with economically more powerful industrialized countries was illustrated on two examples by the audience: the upcoming FTA between the EU and Colombia as well as the case of the Economic Partnership

Agreements (EPA) between the EU and African, Caribbean and Pacific countries (ACP).

Regarding the first agreement, Gomez was confronted with an impact assessment study elaborated by the European Union. It predicts an increase of mining and horticulture activities which would eventually result in an internal conflict on land between indigenous people and the Colombian government.

The Colombian Ambassador stated that raw material extraction in a country, as rich in natural resources as Colombia, is likely to increase in the future, irrespective of the EU Free Trade Agreement, due to a stronger global demand. The Free Trade Agreement between the EU and Colombia would mainly provide consolidation of already existing rules e.g. for foreign investment. It would furthermore supply Colombia with certainty regarding their duty free exports to the European Union from which they already benefit due to the “GSP plus” incentive.

During the discussion about EPA, the EU was confronted with the allegation of a “Hidden Agenda Policy”. The so-called “Non-Executive Clause” which arranges for the suspension of these partnerships in case of human rights violations on either side, would in reality never be invoked by the developing countries but only by the EU itself.

John Clarke countered that the political reasons for this clause might be polemic. But if the goal would be to maximise the fostering of “other legitimate goals [than trade,] the possibility of suspending [the eco-nomic partnerships] should exist – as a last resort”.

Panellists and audience agreed on the importance of human rights and social standards. However, the linkage to trade will remain somewhat delicate. This fact should not

hinder future connections between the domains but, on the contrary, lead to approaches that focus on positive incentives and context sensitivity.

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