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Promoting sustainable development or legitimising free trade? Civil society mechanisms in EU trade agreements

Jan Orbie^a, Deborah Martens^a, Myriam Oehri^b and Lore Van den Putte^a

^aDepartment of Political Science, Centre for EU Studies, Ghent University, Ghent, Belgium; ^bGlobal Studies Institute, University of Geneva, Geneva, Switzerland

ABSTRACT

This study critically reflects on the involvement of civil society actors in the sustainable development chapters of recent EU trade agreements. It discusses how civil society mechanisms may legitimise the underlying neoliberal orientation of the agreements through co-optation of critical actors. Starting from a critical perspective and drawing on evidence from innovative survey data, qualitative interviews and participatory observations, it concludes that, despite overall criticism, there is no clear evidence of co-optation. While being aware of the risks their participation entail, EU participants take a constructive position. Nevertheless, diverging perspectives between non-profit and business actors risk reinforcing existing power asymmetries.

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Introduction

In response to growing concerns and contestation about the sustainable development implications of free trade agreements, the European Union (EU) has included a sustainable development (SD) chapter in its recent trade agreements. This chapter typically creates institutionalised mechanisms for civil society participation. These civil society mechanisms aim to discuss and monitor the sustainable development dimension of the trade agreement. It has been argued that they constitute an original and distinctively European approach to promoting labour rights, environmental principles and economic development through trade. Each of the trading partners organises its own domestic mechanisms, which then meet annually in the transnational mechanism. The number of mechanisms is likely to increase dramatically in the coming years and decades, given the growing volume of trade agreements being concluded.

While very little is known about the functioning and relevance of these mechanisms, some criticism has already been voiced by civil society actors, academics, Members of the European Parliament and the European Economic and Social Committee (EESC).¹ Most call for institutional improvements, such as more efficient management, more representative composition of the participants, better feedback mechanisms with the governments and

budgetary support for travel and practical organisation. Some of these shortcomings have been (partly) acknowledged by EU officials.²

The above-mentioned shortcomings all have in common that they are compatible with the dominant neoliberal paradigm that free trade contributes to sustainable development and that civil society mechanisms ought to play a role in this process. Instead of these institutional shortcomings, and in line with the general objective of this collection, we aim in this article to explore a much-needed fundamental critique of how the civil society mechanisms may contribute to legitimising the underlying free trade orientation of the agreement. In particular, with the deadlock of the World Trade Organization (WTO) Doha Round and the increasing importance of bilateral and regional trade agreements, it is important to critically reflect on the opportunities and limits of civil society mechanisms in (European) trade agreements as well as on their potential incorporation into a neoliberal paradigm.³ This tension between resisting free trade agreements for their (alleged) adverse impact on sustainable development, on the one hand, and using the agreements' mechanisms for the purpose of improving sustainable development or at least preventing harmful consequences, on the other, will be situated theoretically and illustrated empirically in this study.

Thus, our critical evaluation involves both a theoretical and an empirical dimension. Theoretically, we discuss how and why the involvement of civil society in international trade agreements may be problematical. Specifically, we point to the danger of co-optation, whereby critical voices are being silenced and induced to be more constructive. This entails the 'insider-outsider dilemma' for civil society organisations: should they reform the system 'from within' by participating in the mechanisms established by the agreement, knowing that this may equally serve to legitimise the entire free trade agreement?

Empirically, we examine the experiences of the European members of the civil society mechanisms. Evidence comes from an innovative survey (conducted in August and September 2016) with EU business, labour, environmental and other representatives participating in the civil society mechanisms established in the EU trade agreements.⁴ In addition to the survey, we draw on 15 qualitative interviews conducted in Brussels, Colombia, Costa Rica, Honduras and Peru with civil society actors participating in civil society mechanisms, as well as participatory observation in the EU-Colombia-Peru and EU-Central America domestic and transnational civil society meetings held in 2015 and 2016.

Whereas both the theoretical and the empirical parts focus on the civil society mechanisms and how these may serve to legitimise the free trade agreements, they are embedded within a broader critical analysis of the trade-sustainable development nexus. As such, three critical questions recur in the theoretical and empirical parts: the impact of (EU) free trade agreements on sustainable development, the relevance of the sustainable development chapters in EU agreements and most importantly the role of the civil society mechanisms in this regard.

Our data reveal the insider-outsider dilemma that European civil society members, especially those from labour and other non-profit organisations, are facing through their involvement in the mechanisms. While these organisations hold (very) critical views on the impact of (EU) free trade agreements on sustainable development, they also actively participate in the mechanisms *and* acknowledge the pitfalls of co-optation. The position of business representatives is more straightforward: they hold more positive evaluations across the board, both on the benefits of free trade and the role of the civil society mechanisms (business representatives even recognise their potential to legitimise free trade).

The article is structured as follows. First, we provide an overview of the mechanisms and their rationale. Second, we draw from several strands of the critical studies literature to situate the possibly problematic role of civil society mechanisms in EU trade agreements. Third, we address the same issue based on empirical findings from the survey and interviews. Finally, we formulate provisional conclusions and questions for further research.

Institutional criticisms

The establishment of civil society mechanisms in the context of EU trade agreements is a recent phenomenon. The first EU trade agreement to create a separate mechanism involving civil society was the EU-CARIFORUM Economic Partnership Agreement (EPA), which was concluded in 2008. This agreement includes commitments on labour and environmental standards and sets up a transnational civil society mechanism, known as the Consultative Committee. The new generation of EU trade agreements, launched by the 'Global Europe' strategy,⁵ of which the EU-Korea agreement was the first in 2011.⁶ Three changes were carried through in these new generation agreements: first, labour and environment provisions were grouped in a separate SD chapter; second, in addition to a transnational mechanism, each agreement establishes domestic civil society mechanisms; third, the legal provisions concerning the set-up of these mechanisms are elaborated in more detail.

Even though there is some variation in the legal texts, the civil society mechanisms created in the new generation of EU trade agreements are characterised by three recurrent features. First, a domestic civil society mechanism is set up in which representatives of three constituencies (labour, environment and business) of each Party (the EU and its trading partner(s)) participate. This is often called the Domestic Advisory Group (DAG). Second, a transnational civil society mechanism is created where the members of the domestic mechanisms and/or other actors from both the EU and its trading partner(s) meet annually. Third, there is some interaction between these two mechanisms and the intergovernmental body (comprising officials of the EU and its trading partner(s)). This body meets annually to discuss the implementation of the SD chapter.

Currently, civil society mechanisms have been activated in the framework of the agreements with Korea, Peru-Colombia, Central America, Moldova, Georgia and the CARIFORUM states.⁷ Although the mechanisms are a relatively new phenomenon, several aspects have already been criticised by a variety of actors. A first cluster of criticism concerns the organisation of the mechanisms, which are viewed as too improvised.⁸ It has also been suggested that the domestic mechanisms should convene more frequently, for instance through videoconferencing, to ensure substantial progress and continuity.⁹ Another avenue recommended to ensure continuity and better organisation is creating a coordinating mechanism such as a secretariat.¹⁰ Whereas the EESC fulfils this role for the EU DAGs, there is no equivalent body for the EU's trade partners.¹¹ This limited secretarial support reflects a general lack of budgetary resources for the organisation of the mechanisms.¹²

A second area of criticism concerns the composition of the mechanisms, and more specifically the selection procedures. Although there are no indications that the European Commission deliberately excludes critical voices, the selection procedures are not transparent. This is all the more so in the EU's partner countries, where representatives are not always independent from the government, for example in Peru, Colombia and Honduras.¹³ Furthermore, there is a lack of awareness of the existence and role of these mechanisms,

affecting the level of civil society participation.¹⁴ The lack of financial resources also has a significant impact on some civil society actors' opportunities to attend meetings.¹⁵

A third criticism relates to the accountability of governments. It is often unclear whether and how governments follow up on the outcomes of these mechanisms. If participants feel that their views are not taken into account, this may lower their satisfaction and lead to 'consultation fatigue', which risks undermining the efforts invested in the civil society mechanisms.¹⁶ Moreover, it is not always clear whether domestic mechanisms in third countries are operational and effective.¹⁷

All of these criticisms refer to flaws in the functioning of the mechanisms and concentrate on institutional improvements. As such, they do not fundamentally question the underlying assumptions that free trade contributes to sustainable development and that civil society mechanisms can be instrumental for this purpose. In the remainder of this article, we aim to go beyond institutional criticisms and critically analyse how the mechanisms may legitimate free trade by reducing civil society opposition through co-optation. The next parts will attempt to address this question from a theoretical and an empirical perspective.

Critical reflections

In order to provide a more profound critique, this part will draw from several theoretical strands in academic literature and situate the potentially problematic role of civil society mechanisms within broader critiques of the free trade – sustainable development nexus.

Free trade and sustainable development

Even though there is no consensus on the impact of economic globalisation on sustainable development,¹⁸ there are concerns that free trade can have detrimental consequences for labour and environmental conditions. Liberalisation can lead to a race-to-the-bottom as countries and firms are tempted to engage in social dumping in order to increase their competitiveness.¹⁹ Likewise, it can create incentives for industry to produce in an ecologically unsustainable manner in order to reduce production costs.²⁰

Moreover, a conventional preoccupation with liberalisation largely assesses immediate economic benefits of enhanced market access while neglecting longer-term costs such as reduced regulatory policy autonomy.²¹ In fact, several authors evaluate the prevailing global trade governance as ultra-restrictive on policy space and as having a negative impact, especially on developing countries.²² Bilateral free trade agreements, even more than the multi-lateral WTO rules, may limit governments' scope to adopt measures aimed at enhancing social policy or increasing environmental protection.²³

Although EU leaders assume that free trade brings economic growth, which can reduce social injustice and environmental degradation and mitigate other crises,²⁴ it is still unclear whether the EU is actually able to 'square current neo-liberal trade policy with the preservation of ecological and social diversity'.²⁵ Such doubts are based on the observation that EU trade policy-making features unequal power relations in which corporate interests dominate at the expense of social and environmental voices.²⁶ Accordingly, EU free trade is at risk of fulfilling neoliberal demands while leaving sustainable development aspects behind. The EU's free trade agenda has been particularly criticised in relation to the EPAs with the African, Caribbean and Pacific group of countries. Reviewing a number of studies on the

'dangers of premature liberalisation' and the limits to policy space as a result of these agreements in West Africa, Langan and Price point out that the neoliberal trade agenda is also subscribed to by African elites.²⁷ The EU's neoliberal trade agenda has been further radicalised since the 2006 Global Europe trade strategy, which launched a range of bilateral free trade agreements with Asian and Latin American countries,²⁸ and more recently the negotiations with Canada, Japan and the US. While earlier critiques concerned the impact of the EU's free trade agreements within developing countries,²⁹ the protests against the EU-US Transatlantic Trade and Investment Partnership (TTIP) have sparked growing concerns about policy space for sustainable development objectives within the EU.³⁰

In order to mitigate the potentially negative effects of trade agreements on sustainable development, the European Commission added a chapter on environment and social aspects in the EU-CARIFORUM EPA and has included a SD chapter in its bilateral trade agreements since the agreement with Korea (see *supra*). The growing discursive attention to sustainable development is also illustrated by the 2015 'Trade for all' strategy. Here, it is emphasised that '[t]he EU has been leading in integrating sustainable development objectives into trade policy and making trade an effective tool to promote sustainable development worldwide.'³¹

Nevertheless, it seems the SD chapters in EU trade agreements do not go far enough in ensuring that free trade does not hamper sustainable development, let alone contribute to it. To start, they have been criticised on the grounds that their purposes are too vague³² and for being designed in such a 'soft' way that they are, for example, not able to deal adequately with labour violations.³³ The European Commission claims that this reflects its cooperative approach in dealing with labour and environmental issues. A DG Trade official formerly in charge of sustainable development argued that the EU's goal is to deal with the root causes of violations of labour rights rather than with the symptoms, as the US does by having a binding dispute settlement system for labour violations.³⁴ Furthermore, these provisions are designed in a conservative and flexible way: conservative because there are no specific requirements for modifications to domestic law, as long as core labour rights are not systematically violated and softening of domestic labour laws does not have an impact on trade and investment; and flexible because they leave ample discretion for the governments as regards implementation of the labour protection commitments at the domestic level and the functioning of the civil society mechanisms.³⁵ This is in sharp contrast to economic concessions, which are generally formulated in a much more binding and precise way.

From a more negative stance, one could even argue that the chapter is only included to ensure support for the free trade agreement, a practice that can be observed in other parts of the world. By way of illustration, during negotiations on the North American Agreement on Labor Cooperation, a side agreement to the North American Free Trade Agreement (NAFTA) between the US, Canada and Mexico, in 1993, voices from labour expressing reservations towards the NAFTA became more silent.³⁶ Similarly, the North American Agreement on Environmental Cooperation, NAFTA's other side agreement concluded in 1993, helped to mobilise support for the NAFTA from environmental groups.³⁷ In the same vein, van Roozendaal³⁸ argues that in the case of the EU-Korea agreement, the inclusion of labour standards could be regarded 'as a symbolic act to increase the support for free trade agreements without expectations that they would be effective'. This critical perspective might also hold true for other agreements concluded by the EU. Given the increasing contestation of EU trade policy and the growing power of the European Parliament in this area, the inclusion of SD chapters has become all the more important in order to guarantee public and political support for trade agreements.

Civil society participation

Adding a sustainable development dimension to EU trade agreements is not always enough to legitimise these intergovernmental accords. In fact, a political institution can be questioned per se by the broader public as political support for an institution is not predetermined but has to be granted. Allowing participatory practices can be a way of obtaining support for a system.³⁹ At the same time, however, they entail risks for those participating.⁴⁰ More precisely, participation can be either transitive or intransitive, moral, amoral, or immoral, free or forced and spontaneous or manipulative. In essence, whereas transitive forms of participation are oriented towards a specific goal, intransitive forms are reduced to a partaking process without any predefined purpose. Moreover, participation can pursue ethically or unethically defined goals. Free participation, furthermore, can be distinguished from a form of participating in which people are asked or pushed into partaking in operations which are not of interest to them, purely for the sake of participation.⁴¹

This manifestation of participation can also be understood as ‘co-optation’, which, in the context of policy-making, describes a process where states aim to divert the goals or demands of civil society (groups) to serve different, less transformative agendas. It can, furthermore, characterise a process by which civil society (groups) are co-opted into working ‘from within’ and thus cooperate with state actors to pursue certain goals.⁴² Finally, in contrast to spontaneous participation, in manipulated forms of participation participants do not feel they are forced into doing something, but are led to actions which are inspired or directed by manifestations of power outside their control.⁴³ This last dimension is in line with the Foucauldian notion of governmentality, which assumes a form of power which, while outside the sphere of formalised and centralised power structures, nevertheless enables control to be exerted over society.⁴⁴ Accordingly, and even somewhat counter-intuitive to its rhetoric of empowerment, participation leaves room for fundamental criticism. In this regard, Cooke and Kothari⁴⁵ speak of participation’s ‘tyrannical potential’, which is manifested in the illegitimate or unjust use of power through inclusive practices.

In light of these potentially negative effects of participation, three kinds of reactions to invitations for participation can be distinguished: inside, outside and inside-outside responses. Whereas the first type describes a strategy to defend vested interests from within by critically participating in certain initiatives, the outside response is characterised by actors’ decision to ‘opt out’; this means engagement outside the forum in order to build alternatives. The inside-outside response can be described as an oscillation between the two positions, comprising simultaneous or sequential engagement from within and protest from the outside.⁴⁶

Given these alternatives with their respective advantages and disadvantages, actors find themselves in a dilemma. This insider-outsider dilemma surrounding participatory practices is of particular relevance for civil society actors. From a Gramscian point of view, civil society can be seen as a sphere which either stabilises and reinforces or transforms governmental hegemony.⁴⁷ As extant literature illustrates, the involvement of civil society can help to improve the democratic legitimacy of global governance in general⁴⁸ and EU trade policy in particular.⁴⁹ Accordingly, participation by civil society actors entails the same risks as outlined above. In the context of trade liberalisation, the peril of being co-opted might be particularly imminent for non-profit actors such as environmental, human and labour rights groups as they are, in contrast to business, traditionally more critical towards the neoliberal

agenda.⁵⁰ Apart from that, it is more difficult for non-governmental organisations (NGOs) than for firms to defend their interests due to limited resources in terms of personnel and funding.⁵¹

The case of the WTO demonstrates a form of civil society participation which can be described as co-optation. In fact, the transformative potential of global civil society such as NGOs has been 'taken in' by the multilateral trade institution and its dynamics. In essence, civil society engagement against the WTO's neoliberal agenda from within the WTO has not resulted in alternative discourses and perspectives in debates and deliberation. Instead, civil society actors have themselves adopted technocratic and neoliberal forms of advocacy over the years.⁵²

Inhibiting the potential of civil society for purposes of a neoliberal nature might also be a strategy applied by the EU. With the inclusion of critical civil society actors in a trade instrument, the democratic legitimacy of this instrument is likely to increase. Put differently, reservations that civil society actors have towards EU trade agreements can be undermined by the possibility to participate in policy-making in the context of these agreements. Such an assertion is substantiated with regard to the new generation of EU trade agreements. The limited literature on this topic has indeed suggested that the civil society mechanisms are 'at risk of legitimising free trade deals'.⁵³ Creating support for the trade agreement and assuring its ratification has been referred to as the mechanisms' 'instrumental purpose'.⁵⁴

Co-optation is further manifested in the limited power given to civil society groups in the context of EU trade policy. At the EU level, despite the access that was granted to NGOs via the Civil Society Dialogue within DG Trade, these actors have not been able to influence trade policy outcomes in any real sense.⁵⁵ A similar picture is revealed in the context of civil society mechanisms in EU trade agreements: while EU domestic and transnational mechanisms convene in practice, participating civil society cannot articulate enforceable rules for the governments. As a recent study illustrates, '[i]nitial assessments from stakeholders indicate that participation is time-intensive but recommendations and provisions are non-enforceable'.⁵⁶ This limitation underlines the restricted role of civil society actors in relation to sustainable development in the context of EU trade agreements. In summary, a critical perspective suggests that providing civil society with a role in trade agreements, but at the same time restricting their influence in policy-making, may be a way of silencing potential criticism of neoliberal orientations.

This theoretical exploration will inform the empirical insights in the following part, which analyses the positions of the European members of the civil society mechanisms. Again, the critical evaluation of the civil society mechanisms will be related to broader questions on (EU) free trade agreements and the sustainable development chapters.

Empirical perspectives

Free trade and sustainable development

When asked about their opinions of the 'impact of free trade on sustainable development', labour representatives as well as other non-profit organisations such as environment, development, human and animal rights organisations' replies vary slightly from positive to extremely negative, but the main tendency is towards the negative (see Figure 1, Non-profit).⁵⁷

What is perhaps surprising is that non-profit organisations are only *moderately* negative on the consequences of free trade (see Figure 1) and EU trade agreements (see Figure 2) for sustainable development. The option 'extremely negative' was indicated only a few times, whereas more than one third of these representatives were neutral or even positive on the relevant questions. Non-profit organisations are neither unanimously nor radically negative about these issues. Despite tendencies towards the critical end of the spectrum, a significant minority assesses the impact of (EU) trade agreements positively and only a very small minority makes an extremely negative evaluation (see Figures 1 and 2).

This might lead to the conclusion that these civil society organisations have become less critical through their co-optation within EU mechanisms. If we consider the anti-TTIP and anti-CETA protests, which took place at the time when the survey was held (August-September 2016) and are remarkably strong both in terms of intensity (heavily anti-trade) and scope (proliferation of civil society organisations mobilising against these agreements), we might have expected a more outspokenly negative evaluation by labour, environmental, development, human rights and animal welfare organisations. In other words, non-profit organisations participating in the mechanisms seem generally less critical of free trade and EU trade agreements than most civil society organisations that are campaigning on trade issues. Nevertheless, it would be premature to conclude that this more positive inclination



Figure 1. Opinion on impact of free trade on sustainable development (in percentages; business n = 10, non-profit: n = 32).

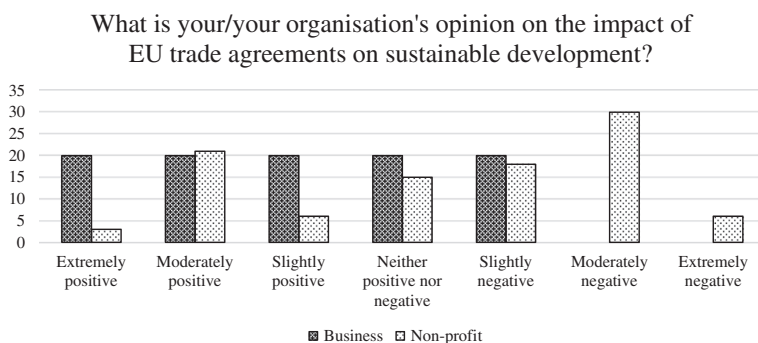


Figure 2. Opinion on impact EU trade agreements on sustainable development (in percentages; business n = 10, non-profit: n = 32).

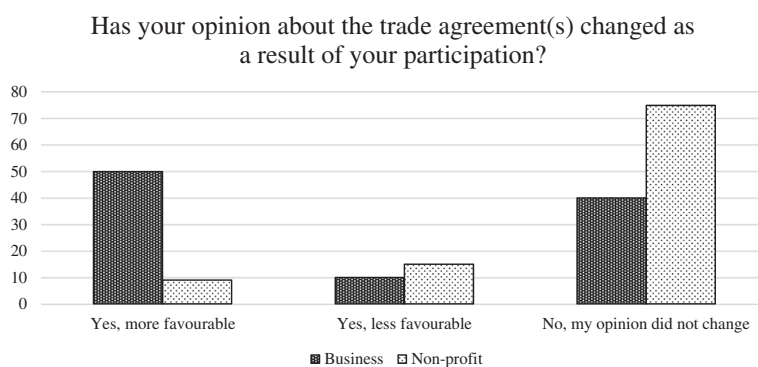


Figure 3. Changed opinions about the free trade agreement (in percentages; business $n = 10$, non-profit: $n = 32$).

of the participants in the civil society mechanisms is caused by co-optation. Our methodology does not make it possible to make a pre–post measurement (before/after participation) or to use a control group (non-participants). We did, however, ask the civil society participants whether participation in the mechanisms had changed their evaluation of the EU trade agreement. On this question, most non-profit organisations indicated that they had not changed their views (see Figure 3). There may also be a self-selection effect in that organisations that are radically against free trade agreements do not participate in the mechanisms because they are not willing to do so or because they have not been selected by the European Commission.

Importantly, further qualitative data suggest that civil society representatives are aware of the dangers of co-optation. Even respondents who are very critical of free trade and EU free trade agreements in general attempt to be actively involved in the mechanisms in order to make the best of the situation. Several interviewees from civil society acknowledge that their participation in the mechanisms may have the (in their eyes) perverse effect of legitimising the free trade agreement as a whole. As one respondent who is a member of an environmental organisation wrote:

‘It’s primarily a tool by the Commission to show that the EU is integrating environmental and social issues in trade agreements.’

Non-profit organisations seem to be clearly aware of the pitfalls as well as the opportunities that the civil society mechanisms offer and seem to be struggling with the ‘inside-outside dilemma’ that these pose for them. One NGO representative who has experience with several transnational and domestic civil society mechanisms formulated this as follows:

A cabaret artist portrays the EU as a kind of ‘humanist capitalist’: not shooting on people at the border but letting them drown in the sea; and feeling bad about it. So full of contradictions. Hence, yes, the CSD [civil society dialogue] can be seen as an attempt by the institutions to promote and improve sustainable development, BUT this is done under the premise of a trade liberalisation regime and framework which contradict sustainability goals. FTAs (free trade agreements) are an agenda of increasing competition, of resource exploitation, of false measurements (GDP, externalisation of costs), etc. that contradicts sustainability goals. In other words, sustainable development is equated with growth; that is why DG Trade can organise those kinds of CSDs and include sustainable development chapters. So they have appropriated and incorporated sustainability...

Furthermore, the same person argued that 'the core of the trade agreement has not changed just because there are consultative bodies [involving civil society] or DAGs set up; if there is any impact, it is limited [...]'. Another development NGO representative stated that he finds it important to negotiate on the conclusions of the meetings until the very last minute, even if he is very critical of the impact of free trade and EU trade agreements on policy space for sustainable development. From our observations of the EU-Peru-Colombia and EU-Central America mechanisms, some representatives of non-profit organisations attempt to use the mechanism to highlight shortcomings in third countries' compliance with labour, environmental and human rights standards. In so doing, they criticise the impact of the EU trade agreement in this regard, trying to get the most out of it. Others attend the civil society mechanisms, yet are more passively involved or work behind the scenes.

When discussing their role in the EU-Peru-Colombia DAG, one member from another development NGO illustrated the insider-outsider dilemma in very literal terms as follows:

Look where we are standing now... Before, we were shouting against the agreement on the streets; today, we are helping to implement it inside this building.⁵⁸

Two years earlier, another participant in these mechanisms had expressed it as follows:

You see, this is a governmental process and then we're asked to come in to basically defend these free trade agreements. Now many of us [...] have substantial conflicts and issues with the kind of free trade agreements and the economic agenda behind it. And for the Commission, for the government, this is a way to say we're smoothing the edges and we get civil society in there and they can help us to address the worst issues. But the fundamental drivers and the way we design trade relations remain contentious. At least for us, [...] it's a way to invite the protest on the street into the agreement.⁵⁹

One opponent of the EU-Central America trade agreement decided, after opposing the agreement as a whole, to join the civil society mechanisms because then at least they would still have a platform available to fight possible negative consequences of the agreement.⁶⁰ He too decided to participate in the civil society mechanisms, not in spite of but because of his opposition to it.

Civil society mechanisms

When considering the survey questions on participants' evaluation of the civil society mechanisms, a mixed picture emerges. When asked to rate their experience with the civil society mechanisms according to a number of statements ranging from 'strongly disagree' to 'strongly agree', non-profit organisations not only endorsed the critical statements but also (moderately) subscribed to the opportunities that the mechanisms offer. Three statements in the survey relate to the critical perspective: whether the civil society mechanisms are there 'to guarantee ratification of the agreement', 'to reduce opposition to the agreement' and 'to legitimise the agreement with the larger public'. Each of these statements relates to the possible function of the mechanisms as legitimising free trade instead of promoting sustainable development. Notwithstanding some exceptions, the large majority of respondents from non-profit organisations agree with these statements. Again, however, a constructive position emerges: only a slight minority 'strongly agrees', and overall evaluations are rather moderate (see Table 1).

More surprisingly, these rather negative evaluations go together with positive assessments of the mechanisms. Our data illustrate that these representatives recognise potential

benefits of the civil society mechanisms. Not only are non-profit organisations 'only' moderately critical about the mechanisms in terms of legitimising free trade, but they also accept that these can promote sustainable development, foster discussions on the topic and most of all contribute to building alliances with other organisations. Although these respondents are not overly enthusiastic about these functions, they do recognise their potential.

Also in the blank spaces that respondents could fill in, this 'critical but constructive' position of non-profit organisations becomes clear. While a few comments relate to the insider-outsider dilemma and the risk of legitimising free trade (see *supra*), most of them express frustrations with the practical functioning and impact of the mechanisms. Some refer to the mechanisms' limited dynamic and the absence of a real impact: As a representative of a non-profit development organisation participating in the EU-CARIFORUM Consultative Committee claims,

[t]here is not much life in between the meetings... They seem to be one-off events.

A similarly disillusioned opinion on the impact of civil society mechanisms is expressed by a labour representative member of several mechanisms:

The meetings are not working and do not amount to anything. But if we would leave, there would be a void and we can't do that.⁶¹

Along the same line, a member of a non-profit organisation participating in the EU-Central America transnational meeting and its EU DAG claims:

The meetings I attended are mostly to 'tick the box' on the mechanism of the agreement. They have been mostly processes where we focus more on the mechanism itself than on the content of discussions.

This is confirmed by a statement of a non-profit organisation member who participates in the EU-CARIFORUM Consultative Committee and the EU DAG of the EU-Colombia-Peru agreement:

Sometimes, the discussion is more about the governance of the groups and less about the implementation of the agreements. After the meeting, there is not really an agenda for joint activities for the members of the groups in order to strengthen the exchange and the cooperation among them to monitor the implementation of the agreements. Lack of funding makes it sometimes difficult for the members of the groups to attend the relevant meeting and also to have the human resources to follow in detail the implementation of the agreements.

A member of another non-profit organisation who has participated in the EU-CARIFORUM Consultative Committee several times describes its limitations as follows:

The mechanism in the CARIFORUM EPA has not really been very active; it is rather formal. As there is minimal interest on both the Caribbean and the European side in genuinely implementing this agreement, and there was very little private sector interest as well, there are few incentives to engage and therefore this civil society mechanism is not very active/effective as there is little to fight for or against.

Limited interest on both sides of the EPA is also observed by a business representative attending the EU-CARIFORUM Consultative Committee:

The follow-up to the meetings is slow and there are no concrete outcomes. There is a lack of interest from the EU side and too high expectations from the Cariforum side.

As already touched upon in the previous two quotes, there are also concerns about the limited accountability of the governments. Limited interaction between civil society members and the Parties to the agreement is further substantiated in the following quotes:

I have always found that the Sustainable Development Committee members (i.e. the intergovernmental body members) are reluctant to engage in a real discussion with DAG members and civil society during joint meetings. Sometimes they do not even accept having a dialogue with DAG members.

Like his labour counterpart, an environmental organisation representative to the EU DAG of the EU-Korea agreement emphasises the European Commission's passive role:

The EU Korea DAG allows business, labour and civil society to express their views on certain environmental and labour issues related to trade. That is really all it is. The Commission attends, listens and does nothing.

In addition, there are comments on the representativeness of the mechanisms, especially on the limited presence of trade unions. To illustrate, a member of a non-profit organisation who has experience with five types of EU trade agreements' civil society forums notes the following:

The key problem is lack of full involvement of all sectors of civil society (NGOs, trade unions), particularly in the EU trading partners' DAGs. Employers' federations are always represented.

A labour representative who attends several EU DAGs puts it as follows:

The EU-Korea DAG is the most advanced one (even though problems of representation in the composition of the Korea DAG persist). The composition of the Central America DAG is still not defined and there is a lack of representation of trade unions in Central American countries.

Thus, the bulk of these comments concern criticism within the system, in line with the 'inside response' (see *supra*). This confirms once more that civil society participants have not given up on the possibilities that the civil society mechanisms are offering, and that they are intent on improving these mechanisms. However, as also stated above, this does not mean that these participants are not aware of the potentially legitimising effect of their participation in the mechanisms. Therefore, here too it is difficult to conclude that co-optation has taken place.

The perspectives of the business sector representatives deserve special mention as they diverge from those of the representatives of non-profit organisations. In essence, business groups are generally (very) positive about free trade, the EU trade agreement and the civil society mechanisms. Compared to the non-profit organisations, they are more positive about the impact of free trade on sustainable development (see Figure 1). Although they evaluate the impact of EU agreements slightly less favourably than the impact of free trade in general, a divergence with the other representatives continues to exist. This may not be surprising since it reveals a traditional socio-economic cleavage in European politics between labour and capital on the benefits of free trade.⁶²

More surprisingly, business representatives also tend to evaluate the civil society mechanisms in terms of legitimising the free trade agreement. They largely agree with those statements that we considered to endorse the critical perspective, i.e. that the mechanisms serve 'to guarantee ratification of the agreement', 'to reduce opposition to the agreement' and 'to legitimise the agreement with the larger public'. As such, the polarisation between business and the other participants on the merits of free trade for sustainable development disappears when it comes to recognising the broader liberal agenda behind the mechanisms.

However, one may assume that the motivations behind these assessments are different, in line with the above-mentioned divergent assessments of the impact of free trade and EU trade agreements on sustainable development. While business representatives are more

Table 2. Business and labour evaluating the civil society mechanisms (in percentages; business n = 10, non-profit: n = 32).

	The meetings that I attended are a mechanism to...							
	Have an impact on decision-making		Discuss with officials		Criticise the sustainable development dimension of the agreement		Promote sustainable development	
	Business	Labour	Business	Labour	Business	Labour	Business	Labour
Strongly agree	0	13	0	13	0	25	0	0
Agree	60	13	60	38	0	25	30	13
Somewhat agree	20	38	10	50	20	25	30	50
Neither agree nor disagree	10	0	20	0	60	13	30	0
Somewhat disagree	10	13	10	0	10	0	10	13
Disagree	0	25	0	0	10	13	0	25
Strongly disagree	0	0	0	0	0	0	0	0

likely to support the mechanisms' legitimising role as necessary to guarantee the more important objectives of the trade agreement, non-profit organisations tend to view the legitimising function from a more critical perspective and are warier about co-optation, as illustrated above.

At the same time, business groups recognise the more 'mainstream' or 'free trade oriented' purposes of the mechanisms. The respondents (moderately) agree on all the statements that point to purposes and criticisms 'within the system'. However, a closer look at the data reveals subtle differences between business and labour representatives (see Table 2). For instance, the former agree more than the latter on the mechanisms' function 'to have an impact on decision-making' and 'to discuss with officials'. Business groups are also much less convinced than their labour counterparts that the mechanisms serve 'to criticise the sustainable development dimension of the agreement'. Business is also much more optimistic than labour about the mechanisms' aim 'to promote sustainable development'.

In sum, the survey data suggest that business groups recognise that the mechanisms play a role in legitimising the EU trade agreements while at the same time providing opportunities to discuss with officials and impacting on decision-making. This more positive evaluation of the civil society mechanisms is in line with their more optimistic assessment of the benefits of free trade for sustainable development in general. It also resonates with the different responses of business and non-profit organisations to the question 'Has your opinion about the trade agreement(s) changed as a result of your participation in the meeting(s)?' As can be seen from Figure 3, while most respondents indicate that their opinion has not changed, a majority of business representatives indicate that their opinion of the trade agreement has become more favourable.

Conclusion

This study aimed to critically reflect on a recent phenomenon in EU trade policy, namely the involvement of civil society actors in the EU's trade-sustainable development nexus. More precisely, it discussed how transnational and domestic civil society mechanisms provided for in the new generation of EU trade agreements may be a way to legitimise the underlying neoliberal orientation of the agreements. Starting from critical perspectives and drawing

on evidence from a survey, qualitative interviews and participatory observations, we arrive at the balanced conclusion that non-profit civil society actors recognise the pitfalls of participatory practices in EU agreements, but also see the opportunities that they may offer for the promotion of sustainable development.

Therefore, we conclude that the approach adopted by non-profit actors has been constructive. Rather critical views on the impact of free trade and EU trade agreements on sustainable development have not prevented them from participating in the mechanisms; at the same time, rather critical evaluations of the purposes of the mechanisms have not withheld them from acknowledging the opportunities to discuss and monitor sustainable development. In short, both the vices and virtues are recognised. However, it is too early to evaluate whether this constructive position also entails co-optation. The non-profit actors involved seem clearly aware that they are walking a tightrope between legitimising free trade and obtaining results for the cause they represent.

Moreover, non-profit organisations, and particularly labour representatives, are rather critical about the civil society mechanisms. The large majority indicate that they have not become more favourable towards the trade agreement. In addition to criticisms concerning the institutional dimension of the meetings (e.g. financial support and representativeness), they also point to frustrations with limited impact and lack of substantive dialogue. In the absence of tangible progress, these actors' critical but constructive position may modify into a more radical rejection of the trade agreement. Instead of co-optation, one might equally expect a radicalisation of the positions on free trade and the EU agreements, especially if existing frustrations are not seriously addressed.

While not providing clear evidence of co-optation, the findings did reveal another critical issue, namely the discrepancy between business groups and non-profit organisations. Business representatives evaluate the civil society mechanisms more positively. For instance, they recognise the value of the mechanisms in terms of networking with officials and having an impact. Several business representatives also indicate that they have become more favourable towards the trade agreement since their participation. Therefore, there is a risk that the civil society mechanisms further reinforce the existing asymmetric power relationship between business and non-profit organisations when it comes to trade policy influence⁶³, rather than balancing them in favour of sustainable development.

This study contributes to extant literature which critiques EU trade governance⁶⁴ and assesses the transformative power of civil society actors in the context of international trade⁶⁵ by collating the perspectives of the civil society actors participating in the civil society mechanisms established in recent EU trade agreements. While it partly reveals fundamental criticism of these mechanisms, it would probably go too far to describe them as a form of 'tyranny'; as suggested by Cooke and Kothari⁶⁶ on participatory approaches in development policy. Nevertheless, they may certainly be regarded as a double-edged sword in the sense that they may well entail co-optation in the longer run. The decision of critical groups to participate in EU civil society mechanisms undermines the power of their peers who have deliberately decided to stay outside the system in order to challenge it. What is more, 'empty' engagement from within runs the risk of fragmenting a constituency as the 'outsiders' might feel betrayed by the 'insiders'. Therefore, civil society actors are well advised to jointly reflect on potential negative effects that participation in civil society mechanisms might have on their constituency as a whole.

In order to better understand reservations about civil society mechanisms in EU trade agreements, future research would need to assess the rationales of those civil society groups and actors who decide to stay outside. It would also be of interest to investigate the perceptions of civil society on the other side of the agreements. Given the countries' different cultural and political heritages and, to some extent, the lack of experience with social and civil society dialogues, such an assessment is necessary to obtain a complete picture of the potential and limits of the civil society mechanisms in EU agreements.

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Notes on contributors

Jan Orbie is the director of the Centre for EU Studies and a professor at the Department of Political Science at Ghent University. He was a visiting scholar at Utrecht University (the Netherlands) and the ISCTE (Portugal) and guest professor at Sichuan University (China) and at the University of Canterbury (New Zealand) and he has given guest lectures at different universities. His primary research focus is on the European Union's foreign policy and specifically the 'soft' (trade, development, social, democracy promotion) dimensions of EU external relations. In particular, he follows closely the interaction between the trade, development and foreign policies from an EU perspective. He (co-)edited books on EU trade and development politics (2007 and 2009), European external policies (2008) and Europe's global social policies (2008) and special issues of the *European Foreign Affairs Review* (2009 and 2011), *Res Publica* (2008), *Journal of Contemporary European Research* (2013), *Contemporary Politics* (2014), *Cambridge Review of International Affairs* (2015) and *European Politics and Society* (2016). He is currently editing a Handbook on EU Trade Policy. He teaches on similar subjects within Ghent University's Master EU Studies programme. He is (co-)supervising about 15 PhD projects, many of them relating to EU trade policy. His recent publications include De Ville et al. (2016), *European Journal of Risk Regulation*, Van Elsuwege et al. (2016), *Humanitarian Aid Policy in the EU's External Relations: The Post-Lisbon Framework*, Verschaeye et al. (2016), *European Journal of Development Research*.

Deborah Martens is a PhD researcher at the CEUS since December 2014 with a grant from the Special Research Fund. She works on the interdisciplinary research project 'When EU trade politics and farm economics meet' with Annelien Gansemans, from Ghent University's department of agricultural economics, on the impact of the EU trade on social development in Latin America. Together, they aim at understanding how labour conditions in the agricultural sector are influenced by trading with the EU. Concretely, they link the macro-level of EU politics and trade agreements as well as the meso-level of Corporate Social Responsibility (CSR) strategies of (European) firms to the micro-level of the life on the ground in the agricultural sector, more particularly in pineapple plantations in Central America. Deborah also moderates an intensive seminar on EU Fair Trade policy. Her recent publications include Orbie et al. (2016), *Centre for the Law of EU External Relations (CLEER)*, Martens et al. (2016), *ECDPM Briefing Note*, Van den Putte (2015), *ETUI Policy Brief*.

Myriam Oehri is a postdoctoral researcher and lecturer at the Global Studies Institute and the Department of Political Science and International Relations, University of Geneva. She defended her dissertation on the US and the EU external promotion of labour standards at the University of Lucerne in 2015 (forthcoming with Palgrave Macmillan). During her doctoral studies, she was a visiting fellow at the Labor and Worklife Program at Harvard Law School, Harvard University, and worked as external collaborator for the International Labour Organization (ILO). She has a long-standing interest in international trade and global governance of labour rights and conducted extensive field research in this context. Her recent and forthcoming publications include Oehri (forthcoming), *US and EU External Labor Governance: Workers' Rights Promotion in Trade Agreements and in Practice*, Oehri (2015), *Journal of European Public Policy*, *Bulletin of Comparative Labour Relations*.

Lore Van den Putte obtained her PhD in September 2016 after she has been working as a PhD student (Research Foundation Flanders – FWO) at the CEUS since October 2012. She graduated in 2011 with a master's degree in political science at Ghent University (including Erasmus stay at Lund University), after which she completed internships at the Centre for European Policy Studies (CEPS) as well as the Committee of International Trade (INTA) in the European Parliament. Her research concerns the promotion of labour norms in EU (as well as US) bilateral trade agreements. In particular, she focuses on the role of civil society mechanisms, the European Parliament and the trade agreements with Peru–Colombia and Korea. This research involves extensive fieldwork in Colombia, Peru, the US and Canada. Apart from her academic publications in, among others, *Global Labour Journal* and the *International Journal of Comparative Labour Law and Industrial Relations* and several chapters in edited books, she conducted policy-oriented research for, among others, the International Labour Organisation and the European Parliament. Lore also moderates an intensive seminar on EU negotiations and EU development policy. Her recent publications include Van den Putte (2015), *Global Labour Journal*, Marx et al. (2015), *Global Governance of Labour Rights: Assessing the Effectiveness of Transnational Public and Private Policy Initiatives*, Van den Putte et al. (2015), *The European Parliament and Its International Relations*.

Notes

1. EESC, *Briefing Note to the Attention of Mr. Dumitru Fornea*; Montoute, "Civil Society Participation in EPA Implementation"; Van den Putte et al., "What Social Face of the New EU Trade Agreements?"; Altintzis, "Civil Society Engagement and Linkages"; and Harrison et al., "Labour Standards in EU Free Trade Agreements."
2. Personal interview EU officials, 15 April 2015 and 4 August 2016.
3. Hopewell, "Multilateral Trade Governance," 37.
4. It comprised close-ended questions about the opportunities and limits of civil society mechanisms and blank spaces for comments. Out of the 126 listed participants, not all of whom participate effectively, 42 completed the survey, generating a response rate of almost 50% of effective participants in the mechanisms.
5. European Commission, *Global Europe*.
6. The EPAs with the West African States (ECOWAS) and the East African Community (EAC), which are awaiting approval at the time of writing, include very similar provisions to those pertaining to CARIFORUM. Interestingly, the EPA concluded between the EU and the Southern African Development Community (SADC), approved by the European Parliament in 2016, does not refer to any civil society involvement whatsoever.
7. In the near future, such mechanisms will also be created for the agreement with Ukraine. The number of civil society mechanisms is likely to increase exponentially, as some trade agreements have yet to enter into force, e.g. with Ecuador, Singapore, Vietnam, Canada, ECOWAS and EAC; some are still being negotiated (e.g. with the US, Japan, India and the Philippines); and some will be updated (Mexico, Tunisia) or (re)launched (e.g. Mercosur, Indonesia) in the near future.
8. Orbie et al., *Civil Society Meetings*.
9. Van den Putte et al., "What Social Face of the New EU Trade Agreements?"
10. Montoute, "Civil Society Participation in EPA Implementation."
11. EESC, *Briefing Note to the Attention of Mr. Dumitru Fornea*; and see note 8 above.

12. Harrison et al., "Labour Standards in EU Free Trade Agreements."
13. Altintzis, "Civil Society Engagement and Linkages"; and EESC, *Briefing of the EESC Secretariat*.
14. See note 11 above.
15. See note 10 and 11 above.
16. Muguruza, "Civil Society and Trade Diplomacy."
17. Orbie and Van den Putte, "Labour Rights in Peru."
18. Mosley, "Globalisation and the State."
19. Brown et al., "International Labour Standards and Trade."
20. Paul, "Cost of Free Trade"; and Porter, "Trade Competition and Pollution Standards."
21. Heron, Asymmetric Bargaining and Development Trade-offs," 336.
22. Chang, *Kicking Away the Ladder*; Chang, "Policy Space in Historical Perspective"; Dicaprio and Gallagher, "Shrinking of Development Space"; and Rodrik, "Save Globalisation from Cheerleaders."
23. De Ville et al., *TTIP and Labour Standards*; Rodrik, *The Globalization Paradox*; Shalden, "Development for Market Access"; and UNCTAD, *Trade and Development Report 2014*.
24. European Commission, *Commission Staff Working Document; Europe 2020*; and *Trade for all*.
25. Ford, "EU Trade Governance and Policy," 580.
26. See also Dür and De Bièvre, "Inclusion Without Influence?"
27. Langan and Price, "Extraversion and the West African EPA."
28. Holden, "Neo-liberalism by Default?"
29. Del Felice, "Power in Discursive Practices."
30. De Ville and Siles-Brügge, *The Truth About TTIP*.
31. European Commission, *Trade for all*, 22.
32. See note 12 above.
33. Adriaensen and González-Garibay, "The Illusion of Choice"; and Vogt, "Arrangements and Labor Rights."
34. Hencsey in Van den Putte, "Transcripts Social Face Trade," 10.
35. See note 17 above, 18.
36. Finbow, *Limits of Regionalism*, 54.
37. Allen, "The North American Agreement on Environmental Cooperation," 127–8.
38. van Roozendaal, "Labour Standards as an 'Afterthought,'" 12.
39. Kröger, *Europeanised or European?*
40. Luhmann, *Legitimation Durch Verfahren*, 151–3.
41. Rahnema, "Participation," 116.
42. See also Jaffee, "Weak Coffee: Certification," 270.
43. See note 41 above.
44. See also Kurki, "Governmentality and EU Democracy Promotion."
45. Cooke and Kothari, *Participation: The New Tyranny*.
46. See note 42 above, 279–81.
47. Cox, "Civil Society Turn of the Millennium," 4–5.
48. Scholte, "Civil Society and Global Governance."
49. Meunier, "Trade Policy and Political Legitimacy."
50. see also note 44 above.
51. See note 26 above, 86.
52. See note 3 above, 37.
53. Ulmer, "Trade Embedded Development Models," 319.
54. See note 8 above, 26.
55. Coffey, *Evaluation DG Trade CSD*; Slob and Smakman, *A Voice, Not a Vote* and see note 26 above.
56. See note 53 above, 318.
57. When participants are asked about the impact of EU trade agreements in general and of the specific agreement in which they have been involved, the same moderately critical tendency emerges.
58. Personal interview participant EU DAG of the EU Peru-Colombia agreement, 7 April 2016.
59. Personal interview European NGO, 19 June 2014.

60. Personal interview European NGO, 1 March 2016.
61. Personal interview European labour representative, 6 December 2016.
62. Burgoon, "European Union's 'Fair Trade,'" 647.
63. See note 26 above.
64. See note 25 above.
65. See note 3 above.
66. See note 45 above.

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