

**VALUED EXPORTS:
SOCIAL STANDARDS IN EU AND U.S. TRADE AGREEMENTS**

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The European Union (EU) and the United States (U.S.) are rapidly signing bilateral preferential trade agreements (PTAs) that are used as vehicles for exporting social regulation, such as labor and environmental standards. Despite the similarity in terms of the inclusion of such provisions, their design varies greatly between U.S. and EU agreements. The United States exports its domestic standards, while the EU emphasizes international rules. Furthermore, the former relies on a more coercive approach than the latter when enforcing these provisions. Why do U.S. PTAs have stricter social standards than those signed by the EU? What makes U.S. provisions wider in scope, more enforceable, and legally binding than similar provisions pursued by the EU?

Using the principal-agent theory to explain the politics of social provisions in PTAs, I argue that weaker institutional insulation of trade policy executives from interest groups and legislators results in the ability of the former to set the agreement agenda independently of the latter. Thus, in the EU, where institutional insulation is high, social provisions mirror the normative preferences of executives in the European Commission, acting as a policy entrepreneur, rather than the interests of NGOs, labor unions, and businesses. In the United States, where such insulation is low, social provisions reflect the preferences of interest groups rather than trade policy executives.

Consequently, EU and U.S. approaches differ in terms of their enforcement of social provisions – the former relies on dialogue with governments and civil society actors and the latter on sanctions. I argue that both approaches are effective but work through different causal mechanisms: prior to signing an agreement due to a fear of future sanctions or, in the absence of coercion, as a result of learning during the implementation phase. Thus, U.S. provisions have positive *ex ante* effects, while EU provisions have positive *ex post* effects. I test my argument using the methods of process-tracing and structured focused comparison of labor and environmental provisions in the paired cases of EU-Chile, U.S.-Chile, EU-South Korea, and U.S.-South Korea PTAs, relying on data from interviews with interest groups and policy-makers in Brussels, Washington, Santiago, and Seoul.

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LIST OF ACRONYMS

AA	Association Agreement
AFL-CIO	American Federation of Labor-Congress of Industrial Organizations
BTD	Bipartisan Trade Deal
CAFTA-DR	Central America-Dominican Republic Free Trade Agreement
CEDEFOP	Centre for the Development of Vocational Training
CFSP	Common Foreign and Security Policy
CPC	Confederación de la Producción y el Comercio
CSD	Civil Society Dialogue
CSF	Civil Society Forum
CoM	Council of Ministers
CONAMA	National Environmental Commission
CUT	Central Unitaria de Trabajadores de Chile
DG	Directorate General
DOL	Department of Labor
DV	Dependent variable
EESC	European Economic and Social Committee
EFTA	European Free Trade Association
EP	European Parliament
ETF	European Training Foundation
ETUC	European Trade Union Confederation
EU	European Union
FKTU	Federation of the Korean Trade Unions
FTA	Free Trade Agreement
FTAA	Free Trade Agreement of the Americas
GAO	Government Accountability Office
GATT	General Agreement on Tariffs and Trade

GSP	Generalized System of Preferences
ILO	International Labor Organization
IPE	International Political Economy
IR	International Relations
IV	Independent variable
KCTU	Korean Confederation of Trade Unions
KOREU	Korea-European Union
KORUS	Korea-United States
LAC	Labor Advisory Committee
MEA	Multilateral Environmental Agreement
MEP	Member of European Parliament
MFN	Most Favored Nation
NAAEC	North American Agreement on Environmental Cooperation
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
NGO	Non-governmental Organization
OECD	Organization for Economic Cooperation and Development
PTA	Preferential Trade Agreement
QMV	Qualified Majority Voting
SENCE	Servicio Nacional de Empleo
SIA	Sustainability Impact Assessment
TEPAC	Trade and Environmental Protection Advisory Committee
TPA	Trade Promotion Authority
U.S.	United States
USTR	United States Trade Representative
WTO	World Trade Organization
WWF	World Wild Fund

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CHAPTER 1: INTRODUCTION

Preferential trade agreements (PTAs) are the new reality of today's global economy. Following the lasting stalemate in global trade negotiations, developed and developing countries alike are progressively eager to join PTAs. The number of PTAs has skyrocketed in recent years, signifying the striking shift from multilateralism toward bilateralism in the world trading system. Figure 1 below shows the cumulative growth of PTAs since the 1950s among both developed and developing countries.

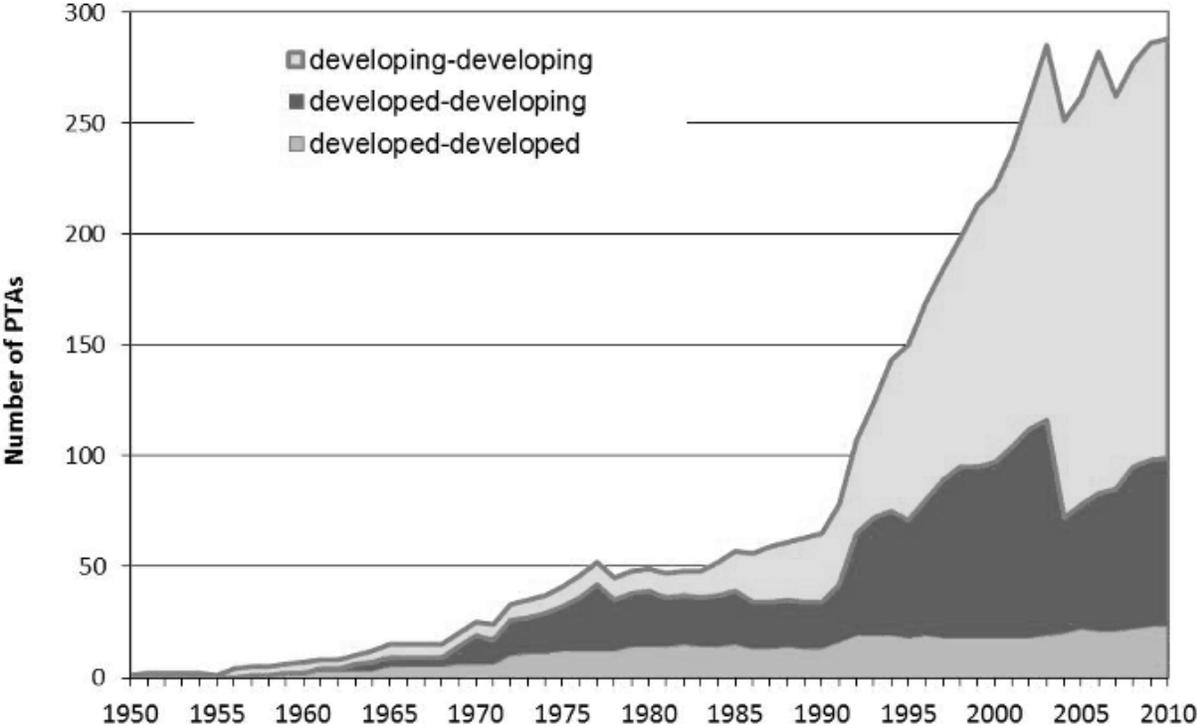
Milner and Mansfield (2012: 5) define PTAs as “international agreements that aim to promote economic integration among member-states by improving and stabilizing the access that each member has to the other participants' markets.”¹ This is done by removing trade barriers among PTA participants, i.e. granting preferential access to each other's markets. Unlike the multilateral trade regime based on the most-favored nation (MFN) principle, PTAs are discriminatory by nature since trade privileges only accrue to their members. While pundits continue debating the utility of bilateral agreements for the multilateral trading system embodied in the World Trade Organization (WTO),² it is clear that PTAs have become the defining feature

¹ The authors further distinguish among five different types of PTAs: preferential agreement; free trade area; customs unions; common market; and economic union (Milner and Mansfield 2012). Since free trade agreements (FTAs) that eliminate tariff and non-tariff barriers to trade among their participants are a subset of PTAs, this dissertation will use these terms interchangeably.

² See the continuing debate on whether PTAs are the building or stumbling blocks for multilateral trade liberalization (e.g. Baldwin and Freund 2011; Limão 2006).

of today's global economic landscape and, consequently, have entered major policy and academic discussions, especially in the field of international political economy (IPE).

Figure 1: Cumulative Number of PTAs in Force



Source: WTO Secretariat

In the developed world, both the European Union (EU) and the United States (U.S.) have spearheaded the signing of PTAs with various countries, becoming the true champions of bilateral trade liberalization.³ EU and U.S. PTAs also comprise the largest number of agreements between developed and developing countries, or North-South PTAs. As the two leading economies, the EU and the United States compete with each other for access to new markets,

³ The EU acts as a single actor when negotiating and signing trade agreements, as external trade is a supranational policy area in which the individual Member States lost their sovereignty to EU institutions.

forming “defensive” PTAs (Manger 2009) in response to newly formed agreements in a relationship that scholars have described as “competitive interdependence” (Sbragia 2010).

PTAs signed by developed countries, particularly by the EU and the United States, are often qualitatively different in terms of the depth of economic integration they generate. In addition to traditional trade liberalization measures, such as the removal of tariffs and quotas, these agreements increasingly include provisions covering various non-trade or trade-related aspects, such as national regulatory regimes on intellectual property rights, competition and investment, i.e. non-tariff barriers to trade, as well as social provisions dealing with health, labor, and the environment. Collectively, these are known as behind-the-border provisions because they target domestic laws of agreement partners, often leading to the harmonization on international, regional, or national standards. Scholars have also termed them the deep trade agenda or WTO-plus and WTO-extra provisions because they require a level of commitment extending beyond the existing WTO requirements (Horn et al. 2010).

Importantly, both the EU and the United States increasingly use their bilateral agreements as vehicles for exporting social provisions, such as labor and environmental standards, intended for mitigating adverse effects of trade liberalization on society. Such provisions are known as social standards, i.e. stipulations in trade agreements aimed at protecting societal welfare, such as the rights of workers and environmental regulations, from the potential negative effects of trade liberalization.⁴ Given the difficulty of including this kind of social regulation at the multilateral level due to the intransigent positions of developing countries, the United States and the EU incorporate these issues in their bilateral PTAs by virtue of having a better bargaining leverage

⁴ The terms social standards, social provisions, social clauses, and social issues will be used inter-changeably in this dissertation as they are in the existing literature.

relative to their trading partners. The agreement signatories are compelled to accept these if they want to get access to lucrative EU and U.S. markets.

However, despite the similarity in terms of the inclusion of such provisions, their design varies greatly between U.S. and EU agreements. The United States tries to export its domestic standards, in addition to international rules, while the EU emphasizes the latter. Furthermore, the United States relies on a more coercive approach when enforcing social provisions, while the EU opts for a much softer approach. This variation in the design of EU and U.S. PTAs' social standards is puzzling, especially if one considers the importance that the EU traditionally attaches to social issues and the strength of civil society, especially labor and environmental movements, in Europe in general.

Several studies (Heydon and Woolcock 2009; Horn et al. 2010) have compared EU and U.S. PTAs. They found that their behind-the-border provisions are different in scope and enforcement and EU agreements are generally characterized by the so-called legal inflation, i.e. they are much more legally binding with regard to non-trade issues. Yet, when it comes to including social standards, the EU's approach is less legally binding, which is surprising, considering a greater importance that the EU is thought to attach to social issues in general. These authors point out that both the EU and the United States are trying to export their respective regulatory regimes to third countries and use asymmetric bilateral agreements to achieve this goal by wielding their enormous market power to entice their partners to adopt their domestic rules. Yet, the sources of variation in the design of social provisions remain unexplained. Furthermore, the consequences of social standards in PTAs are also not well understood in the extant literature, as will be shown later in this introduction.

1.1. Research Questions and Arguments in Brief

To address the observations made above, this dissertation asks two related research questions, pertaining to both the causes and consequences of social standards in PTAs. *First, why do U.S. PTAs have stricter social standards than EU ones?* In other words, what makes U.S. social provisions wider in scope, more enforceable, and legally binding than similar provisions pursued by the EU? *And second, do these standards achieve their desired goals?* Or, to put it differently, how does the agreement design matter for agreement outcomes and which design of social standards is more effective in terms of improving labor and environmental conditions in partner countries? Thus, the goal of this study is two-fold: to explore two distinct but related processes of policy-making and policy implementation with regard to social standards in PTAs.

This dissertation will argue that in order to understand the different design of social standards we need to unravel the complexities of foreign economic policy-making processes in the EU and the United States, leading to the inclusion of labor and environmental provisions in their trade agreements, and the institutional roles enjoyed by various domestic actors in these processes. It will be further argued that the difference in the design of social standards will matter for the agreement outcomes because it will produce different implementation dynamic, resulting in the distinct patterns of domestic policy change in EU and U.S. PTA partners.

Thus, it will demonstrate how weaker institutional insulation of trade policy executives from interest groups and legislators results in the ability of the former to set the agreement agenda independently of the latter. Accordingly, in the EU, where institutional insulation is high, social provisions mirror the normative preferences of executives in the European Commission rather than the interests of NGOs, labor unions, and businesses. In the United States, where such

insulation is low, social provisions reflect the preferences of interest groups rather than trade policy executives.

As a result of these domestic arrangements, EU and U.S. approaches differ in terms of their design, especially when it comes to the enforcement of social provisions – the former relies on dialogue with governments and civil society actors in trading partners, while the latter uses sanctions. This dissertation will argue that both approaches can be effective in terms of triggering positive domestic policy adjustment in trading partners but will work through two different causal mechanisms, determining the timing of their effects: prior to signing an agreement due to a fear of future sanctions or, in the absence of coercion, as a result of learning by domestic actors during the implementation process. Thus, U.S. provisions will have positive *ex ante* effects, while EU provisions will have positive *ex post* effects.

1.2. Social Standards in International Trade

Just like the shift from multilateralism to bilateralism in world trade itself, the inclusion of labor and environmental issues in PTAs is the result of failure to address them through the WTO. Since its inception, the WTO became the desired forum for addressing labor and environmental issues due to their acknowledged linkage with trade liberalization. The participants of the ministerial conference of the General Agreement on Tariffs and Trade (GATT) in Marrakesh in 1994, when signing the WTO treaty, expressed their views on labor and environmental issues related to trade but failed to come to any agreement. At the next ministerial conference in Singapore in 1996, the United States brought up the issue of social standards again, along with other trade-related aspects (termed the Singapore issues ever since then) but failed to convince

other participants about the need to institutionalize labor and the environment as part of the WTO mandate (Elliott 2011). At the ministerial conference in Seattle in 1999, the European Union leaders again tried to advance the social agenda in trade to no avail. It was decided that the International Labor Organization (ILO) remains the appropriate forum for labor issues and the environment should be covered by separate environmental agreements. Thus, despite a lot of criticism from civil society groups (see Esty 2002), labor and environmental issues to date remain outside of the WTO remit.

The failure to address social standards in the WTO is part of broader disagreements between the global North and the global South about regulatory issues in international trade and the overall legitimacy of the global economic order. Social standards are particularly vexing for developing countries who view them as nothing more than disguised protectionism on the part of the EU and the United States and who can effectively use their collective bargaining leverage to prevent the linkage between the WTO rules and social issues. As a consequence, labor and environmental provisions have become increasingly institutionalized in North-South PTAs where developed countries can exercise their bargaining advantage, which compels developing countries to acquiesce to their demands and make concessions on social issues in order to gain access to attractive new markets, despite having the same set of concerns as at the WTO.⁵

Hence, at present the institutionalized links between bilateral trade agreements and social issues, such as labor rights and the environment, have become fully established. This means that these issues are currently part of trade policy-making and have their distinct political dynamic within it. Young (2007) provides a useful typology of current trade policy issues which fall into three main categories: 1) at-the-border issues, dealing with trade liberalization, such as tariffs

⁵ For a comprehensive overview of developing countries' positions with regard to labor and environmental provisions in PTAs see Anuradha (2011) and Elliott (2011).

and quotas, and behind-the-border issues, divided into 2) commercial policy, dealing with differences in domestic regulatory regimes on services, investment, government procurement etc. (the so-called Singapore issues), and 3) social trade policy, dealing with market failures, such as sanitary and phytosanitary rules, technical barriers to trade, core labor rights and the environment (see Figure 2 below).

Each type of trade policy issue is associated with a certain pattern of politics. Behind-the-border issues are thought to be part of so-called “new trade politics.” Within it, commercial policy issues are expected to be affected by the general dynamic of regulatory competition, while the political dynamic behind the social trade policy issues is thought to be more ambiguous (Young 2007).

Labor and environmental issues stand apart from other behind-the-border provisions as they cut across essential normative and institutional foundations of advanced industrial societies, i.e. the extent to and manner in which they are valued as part of the international trade agenda by various actors depends heavily upon the very definition and type of governance and regulatory state encapsulating their unique features, such as industrial relations, labor market institutions, and social attitudes, in the EU and the United States.⁶ Both labor and the environment are also thought to be part and parcel of the so-called “fair” trade (Ehrlich 2010). Thus, these issues have their distinct political dynamic which will be dealt with in greater detail in the following chapter.

⁶ The literature on varieties of capitalism captures many of these variations across modern capitalist societies (see Hall and Soskice 2001).

Figure 2: Typology of Trade Policies in Trade Negotiations

		<i>Location of Measure</i>	
		At-the-border	Behind-the-border
<i>Focus of Measure</i>	Competition	<i>Traditional trade policy</i> Tariffs Quantitative restrictions Trade facilitation Agriculture (export subsidies, levies)	<i>Commercial policy</i> Services Intellectual property rights Subsidies Trade-related investment measures Investment Competition policy Government procurement Agriculture (subsidies)
	Market failure	discriminatory import bans	<i>Social trade policy</i> Sanitary and phytosanitary rules Technical barriers to trade Environment Core labor standards Agriculture (multifunctionality)

Source: Adapted from Young (2007)

1.3. Review of the Existing Literature

In order to understand the political dynamic of social issues in trade, the extant literature on trade policy-making is the natural departure point. This literature is vast and allows for a relatively

good understanding of domestic factors responsible for the shape of traditional, at-the-border, trade policy issues. Despite some disagreements about whether benefits of trade liberalization accrue mainly to societal interests divided along class or industry lines and the role of the mobility of factors of production in this process (Rogowski 1987; Frieden 2002; Hiscox 2001), there is a broad agreement that trade policy produces domestic winners and losers. It is argued that the winners from trade liberalization – mostly export-oriented industries – will typically lobby their governments for more trade openness, while the losers – mostly domestically oriented, import-competing industries – will do the opposite and prefer protectionism. The influence of these competing groups, which hinges on their ability to overcome their collective action problem and organize politically, will determine policy options governments will embrace on the continuum from autarchy to free trade (Milner 1988).

Thus, many studies also emphasize the importance of domestic trade policy coalitions in setting the trade policy agenda (Alt et al. 1996). Their success will depend on their ability to mobilize and use institutional channels provided by the domestic political system, ranging from formal and informal lobbying to electoral mechanisms of interest aggregation (e.g. Bailey et al. 1997; Ehrlich 2008; Lohmann and O'Halloran 1994). Both formal and socio-economic institutions are important for channeling preferences of various domestic groups into policy outcomes, as they determine different patterns of interest representation (Garrett and Lange 1995; Milner 1999). Institutions influence both the distributional policy demands of the private sector and the macroeconomic constraints on governments. They also determine whose preferences are satisfied in the policy-making process and the overall responsiveness of the government to societal actors.

In addition to material interests of societal actors, the constructivist scholarship on trade policy-making also highlights the importance of non-material factors, such as certain ideas and beliefs, in explaining trade policy outcomes in both the EU and the United States (Goldstein 1993; Siles-Brügge 2014).

At the same time, very little is known about trade policy-making in non-traditional issue areas, such as behind-the-border provisions, partly because of the novelty of this phenomenon and partly because of inadequacy of traditional approaches. Young (2007) argues that policy-making on traditional and social trade issues is characterized by different patterns of domestic politics because of the role played by society. While extant political economy models are well suited to explain the outcomes of traditional trade policy by attributing causal power to the interests of winners and losers of trade liberalization, they do poorly in trying to explain the outcomes of social trade policy because the distribution of costs and benefits in this case is less clear and significant uncertainty exists with regard to the goals of such policy. Others have also noted that societal actors' influence can vary greatly by issue area. For example, Young and Peterson (2006) point out that new trade politics mobilize different kinds of actors, ranging from industries to civil society groups. They also expect that executive actors negotiating trade policy will have more influence on these issues than interest groups whose stakes might be not as clear as in traditional trade issues.

While the analysis of trade policy-making institutions in the United States has achieved great depth, fewer studies of EU trade policy-making institutions exist that explore its domestic sources to the same extent, perhaps owing to a unique supranational nature of the EU (e.g. Conceição-Heldt 2011; Dür 2010; Meunier 2000; 2005; Siles-Brügge 2014; Woolcock 2012). Some scholars emphasize that the institutional arrangement of EU trade policy allows the

Member States to exercise more influence on non-traditional issues when negotiating trade agreements (Meunier and Nicolaïdis 1999). Although the European Commission has full authority to negotiate traditional trade issues on their behalf, its mandate on non-trade issues is more ambiguous, as it shares this authority with governments due to a special clause concerning new trade issues, such as services and intellectual property rights (Dür and Zimmermann 2007; Meunier and Nicolaïdis 1999). On the whole, the question of relative weight of these different actors in the policy-making process pertaining to new trade issues both in the EU and the United States, as well as its institutional dynamic, are not well explored in the existing literature.

As mentioned above, social standards have become an integral part of modern PTAs, so the IPE literature on trade regionalism that encompasses studies of PTAs also needs to be consulted. The first wave of studies of regionalism in IPE focused mainly on the causes of PTA formation (Baldwin 1993; Hicks and Kim 2012; Mansfield and Reinhardt 2003; Mansfield and Milner 2010; Ravenhill 2009). Scholars have notably argued that PTAs are formed because they increase bargaining leverage within the multilateral trading regime (Mansfield and Reinhardt 2003) and that the willingness to form a PTA heavily depends on domestic political factors, such as regime type and the number of veto players (Mansfield and Milner 2010). Furthermore, extant PTAs tend to expand over time, owing to the trade openness of their members (Mansfield and Pevehouse 2013).

At the same time, it has been noted that domestic economic interests also drive the formation of PTAs, especially “defensive” North-South PTAs (Manger 2009). These interests are weary of possible trade diversion arising from the first mover advantage that occurs as the result of the formation of a PTA by a competing economic power. It has been further found that such PTAs are also more likely to be formed between countries that are not only economically

but politically interdependent (Manger and Shadlen 2014). While this literature has been vast and illuminated a lot of important political dynamic, it generally tends to ignore social standards.

Many studies of PTAs also explored their effects on various economic, political, and social outcomes, including increased volumes of trade (Egger et al. 2011; Gray 2014; Hicks and Kim 2012), foreign direct investment (Büthe and Milner 2014; Manger 2009), exchange rate regimes (Copelovitch and Pevehouse 2013), democratic transition (Pevehouse 2005), domestic economic reform (Baccini and Urpelainen 2014a), militarized disputes (Haftel 2011), compliance with human rights norms (Hafner-Burton 2009), and access to potable water (Rudra 2011). Scholars have largely attributed various positive effects of PTAs to their role of credible commitment devices in inter-state relations and their legally binding effects. While this literature has greatly improved our understanding of PTAs, the causes and consequences of behind-the-border, regulatory provisions, including social standards, which now comprise such a significant proportion of PTAs and have proven to be crucial in their negotiation, have not yet received scholarly attention they deserve.⁷

A more recent wave of PTA studies has explored the design of various PTAs, devoting much needed attention to variation in institutional features of the “spaghetti bowl” of trade agreements comprising the global economic system and their coverage of different trade and non-trade issue areas (Dür et al. 2014; Haftel 2011; Johnson and Urpelainen 2014; Kucik 2012). This literature has examined economic and political sources of this variation in PTA design but is yet to explore the effects of various design features on different agreement outcomes. Some scholars also tried to explain the variation between different legal features of PTAs, drawing on

⁷ For example, the current negotiations of two most important PTAs – the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the United States and the Trans-Pacific Partnership (TPP) between the United States and the countries in the Pacific – have stalled largely due to the disagreements over regulatory issues, including social standards.

the social constructivist approach (Duina 2006). While providing a more nuanced understanding of various institutional forms of PTAs in the global economy, these studies tend to neglect the design of social standards.

Several existing studies explicitly examined social standards in PTAs (Grynberg and Qalo 2006; Horn et al. 2009). Horn et al. (2009) have compared labor and environmental standards in EU and U.S PTAs, pointing at the significant variation described above that serves as the departure point for this dissertation. However, while providing a thorough description of social standards in PTAs and their comparison across various agreements, these studies leave this variation unexplained. Kerremans and Gistelinck (2009) attempt to explain labor standards in EU and U.S. PTAs, highlighting the importance of political parties. While undoubtedly contributing to our understanding of the issue, the study does not explore the political process of labor standards' formation by focusing exclusively on the agreement ratification stage and neglects the role of trade policy executives.

Several IPE studies have specifically examined the effects of liberalized trade in general and PTAs in particular on labor rights and environmental standards in agreement partners. For example, Greenhill et al. (2009) find a positive association between trade and labor rights in developing countries attributing it to the "California effect." Hafner-Burton (2009) examined how various legal features of PTAs might affect compliance with human rights norms and where these norms come from, also looking at the role of labor rights. While the effect is found to be positive, we still lack an understanding of social standards as a rather distinct type of new trade policy, as outlined in the typology above. A study by Kim (2012) looks at the effect of labor standards in U.S. PTAs and finds a significant effect on the improvement of labor rights in partner states, attributing it to their "*ex ante* due diligence," as U.S. trading partners try to make

themselves look more appealing for fair-trade minded American constituents in order to secure an agreement. While this mechanism seems plausible, it is not clear if it would also work in the case of labor standards in EU PTAs which are less coercive and therefore might appear less credible. Furthermore, the study is oblivious of enforcement arrangements for labor standards.

In sum, the studies mentioned above find a positive link between trade and social outcomes but fail to examine different institutional mechanisms, such as specific agreement design features, which might lead to this improvement.⁸ Furthermore, these studies are often conducted in a large-*N* fashion and do not explicitly test the causal mechanisms by which these effects are produced.

Additionally, little scholarship has given due attention to the question of PTA implementation in general and the implementation of social standards in particular. A recent study by Gray (2014) based on the survey of PTA bureaucracies finds that most of the North-South PTAs are never implemented due to the lack of institutional and physical capacity in the developing world. Do her findings apply to the case of social standards? Answering this question begs for a more refined understanding of various implementation mechanisms specific to concrete agreement characteristics, such as the design of social standards.

Case study research can further clarify causal mechanisms at play, how they differ among trade agreements based on their design, and compare them across various social issues. A case study of the North American Free Trade Area (NAFTA) by Aspinwall (2009), drawing on the Europeanization literature, finds that there has been a positive effect on the environment in Mexico as an indirect result of institutional learning by civil society actors. A study by Nolan

⁸ Hafner-Burton's (2009) study points at differences between "hard," i.e. legally binding, and "soft" PTAs in terms of their effectiveness for improving the protection of human rights. While being a step in the right direction, her study fails to explain the effects of various enforcement provisions in these PTAs which could matter independently from the degree of legal binding.

Garcia (2011) finds a similar effect of NAFTA with regard to labor rights, pointing at the role of transnational advocacy networks. Are such mechanisms at play in bilateral PTAs and would they be affected by the design of agreement provisions?

1.4. Contributions to the Existing Literature

This project aims to make several contributions to the international and comparative political economy literature by shedding light on the process of formation and implementation of social provisions in EU and U.S. PTAs, i.e. on their causes and consequences. The current literature, consisting of rather disjointed studies on this subject, has not yet explored this question in a systematic fashion. This study is the first one, to my knowledge, to focus on both the causes and consequences of social standards within a single analytical framework by linking specific PTA design features to agreement outcomes. Furthermore, it explores the process of implementation of PTAs' social standards, contributing to the nascent literature on PTA implementation cited above.

Furthermore, as the above review of the literature has shown, there is a lack of communication between the studies of trade policy-making and PTA design. Scholars need to acknowledge that PTAs are an outcome of the trade policy-making *process*. Thus, we need a better understanding of this process and the way in which it is responsible for the design of certain agreement features and their outcomes to fully grasp the nature of PTAs in the global economy. For this reason, this dissertation attempts to bring together two separate literatures on trade policy-making and PTAs and their effects, while keeping an analytical focus on the design of social standards.

In addition, there is a dearth of comparative focus in the trade policy studies, with separate studies devoted to the analysis of either EU or U.S. trade policy-making, as acknowledged by scholars (Dür 2006; Poletti and De Bièvre 2014), notwithstanding several exceptions (e.g. Conceição-Heldt 2011; Dür 2010; Young 2011). Moreover, previous studies have focused primarily on explaining the behavior of the EU and the United States in multilateral rounds of trade negotiations when dealing with social issues (e.g. Kelemen and Vogel 2010); however, the domestic politics of new trade issues after the recent move toward bilateralism in EU and U.S. trade policies have not yet been analyzed as extensively. This dissertation makes an attempt to remedy this by providing a comparative study of EU and U.S. foreign economic policy-making that has been long overdue, with a focus on labor and environmental standards in PTAs.

It also contributes to the EU studies literature by uncovering the political process and institutional dynamic of EU trade policy-making with regard to social issues. Studies of EU trade policy have also been insulated from the mainstream IPE literature and this dissertation will also try to fill this gap. It has been asserted that the EU represents both a “power in trade” and a “power through trade” or “Market Power Europe” (Damro 2012; Meunier and Nicolaïdis 2006).⁹ This study aims to show just what sort of market power or “power in trade” the EU is, comparing and contrasting it with the kind of power the United States exercises in the global economy.

⁹ “Power in trade” refers to the leverage enjoyed in international negotiations stemming from the size of the market. “Power through trade” refers to the ability to shape various economic and political outcomes in other states with which the EU has developed trade relations (Meunier and Nicolaïdis 2006).

1.5. Policy Relevance

The questions tackled in this dissertation have broader impact for societal welfare as they help us better understand new trade policies of advanced industrialized countries and their impact on the developing world. This research also has clear policy implications for the EU and the United States, as both try to include social standards in their future trade agreements, by specifying the policies and instruments that are most likely to succeed and potentially strengthen underrepresented civil society groups in the developing world, such as organized labor and environmental NGOs, advancing the ongoing academic and policy debate about the fairness of world trade. Understanding the nature and effects of social standards in trade is ever more important as the pace of economic integration accelerates, bringing severe concerns about the race to the bottom, and thousands of workers' lives continue being lost and environmental degradation goes unabated due to the negative side effects of economic globalization.¹⁰

1.6. Dissertation Outline

The rest of this dissertation is structured as follows. Chapter 2 proposes a theoretical framework and hypotheses to be tested in the following empirical chapters, as well as some alternative explanations. It also outlines a methodology used in this dissertation to answer the research questions posed in this introduction. Chapter 3 explores the politics of social standards in EU trade agreements, testing the first hypothesis developed in the next chapter. Chapter 4 tests this

¹⁰ While in the recent garment factory collapse in Bangladesh, over one thousand workers' lives were lost due to labor rights abuses (see <http://www.bbc.com/news/world-asia-22635409>), industrial cities in the developing world become more and more enveloped in thick smog, raising alert over an impending health crisis and questions about the sustainability of export-driven economic growth (see <http://www.bbc.com/news/science-environment-25576716>).

hypothesis, examining the politics of social standards in U.S. trade agreements. Chapter 5 explores the effects of the agreements analyzed in the previous chapters, investigating the process of their implementation and testing the second hypothesis outlined in the theory chapter. It is followed by Chapter 6 that summarizes the main findings of this dissertation, explores its policy implications, evaluates alternative explanations, and proposes venues for future research.

CHAPTER 2: THEORY AND METHODOLOGY

This chapter first provides a theoretical framework developed by the author and used to guide this dissertation's inquiry. It then advances some alternative explanations. Next, it proposes a methodology for the empirical analysis conducted as part of this dissertation study.

Theoretically, this study advances a new theory to explain the relationship between societal actors and executives involved in trade policy-making on new trade issues in various institutional settings and to trace the effects of social standards in trade agreement partners.

Methodologically, it is a novel attempt to analyze social issues in PTAs qualitatively, focusing on causal processes responsible for their design and implementation.

2.1. Theoretical Framework

In this section, I present a theoretical framework used in this study. I begin with outlining the political dynamic of inclusion of social standards in PTAs and how it differs from the one pertaining to traditional trade issues. I then explain the sources of key actors' preferences. Next, I introduce my argument and offer a principal-agent theory to explain the policy-making process of making PTAs' social provisions and introduce the first hypothesis to be tested in Chapters 3 and 4. Finally, I present my second argument and introduce the second hypothesis to be tested in Chapter 5.

2.1.1. The Domestic Politics of Social Standards in PTAs: Traditional vs. New Trade Issues

Even if the rapid signing of bilateral PTAs is largely driven by international systemic factors, such as geo-economic competition among the EU and the United States and the goal of achieving bargaining leverage in the multilateral trading system, as acknowledged by scholars (e.g. Milner and Mansfield 2003; Sbragia 2010), these factors do not account for the variation in PTA design, including the design of social provisions. Thus, a broad contention of this study is that in order to explain variation between social provisions in EU and U.S. PTAs, we need to have a clear picture of the causal links between relevant domestic political factors and their effects on various PTA features. This contention echoes other studies of PTA formation, highlighting the importance of domestic political and economic factors (e.g. Manger 2009; Milner and Mansfield 2012).

As mentioned above, IPE scholars acknowledge that trade policy is the outcome of domestic political process. When taking stock of the international trade literature, Milner (1999) notes that international trade policy outcomes can be viewed as a function of the constellation of societal preferences channeled through domestic political institutions and affected by the bargaining power of negotiating partners. This dissertation utilizes this accepted framework for the analysis of the outcome of interest: the design of social standards is a function of actors' interests, domestic institutions, and agreement partners' negotiating power. However, while maintaining this general framework, I expect, however, that the political dynamics in non-trade issue areas will be different from the traditional international trade matters, such as trade liberalization, which can be gauged from the typology offered in the previous chapter (Young 2007).

First, unlike traditional trade issues, social provisions are characterized by less severe distributional conflicts for certain domestic groups because material gains and losses are diffuse and spread across multiple constituencies, especially for the environmentalists and less so for labor, which is a factor of production. This can affect the intensity of actors' preferences. For example, while business and labor represent factors of production whose material benefits and losses from trade are rather clear, the advocates of some environmental provisions can belong to various factors of production or economic sectors and be united only by similar values. Moreover, unlike in trade liberalization matters where such gains and losses are material in nature, as they can reduce or increase the welfare of different actors in a predictable way, in new trade matters societal preferences can be also dictated by normative concerns, such as the wrongness of child labor. When stakes are more value-driven, the intensity of societal preferences might decrease.

Second, the beneficiaries of social provisions in trade agreements can come from various factors of production and industrial sectors and are, therefore, less organized than traditional winners and losers of trade liberalization. In addition to firms interested in cheap labor and lax environmental regulations and labor unions and environmental NGOs fearing social dumping and environmental damage, social issues in trade mobilize other actors, such as various NGOs, as well as officials from certain non-trade ministries. Together, they can often be perceived as loosely organized value communities connected by their normative vision of the appropriateness of regulating certain aspects of international trade rather its material consequences. The collective action problem they face when trying to influence the agreement agenda is potentially exacerbated. For example, NGOs trying to advocate the enforcement of core labor rights in PTAs will have fewer resources at their disposal to lobby negotiators than well-organized business

interests. The success of their attempts to influence the policy process will depend on the kind of mobilization strategies they use, such as, for example, issue framing, apart from traditional lobbying of governmental actors. Furthermore, executives negotiating trade agreements will have more room to maneuver when the interests of their domestic constituents are diffuse and will be able to act in accordance with their own preferences that might be driven by various rationales, such as ideology and bureaucratic creep.

Third, as in traditional trade policy, domestic institutions also aggregate societal preferences with respect to non-trade issues. They can lessen the collective action problem faced by domestic groups trying to influence the agreement agenda, for example, by providing more channels for labor and environment activists to make their concerns heard by politicians, or make it more severe when such channels are not easily accessible. For instance, the multi-level structure of the EU might have variegated effects on actors' strategies in terms of multiplying lobbying venues available to them (national and supranational) but might also make their efforts less effective by increasing the number of policy-makers which they need to target. Supranational EU officials might also be more immune from societal pressures than their national-level counterparts in the United States.

In sum, actors' preferences channeled through domestic institutions are responsible for the shape of social provisions in PTAs, just like in traditional trade policy. Yet, the nature of societal preferences and the way in which they are translated through domestic institutions might differ in this case. Thus, variation in the design of social provisions in EU and U.S. PTAs should be the function of distinct patterns of the relationship between interests groups and trade policy-

makers in the EU and the United States respectively, i.e. the constellation of societal preferences and institutions through which these preferences are channeled.¹¹

2.1.2. Actors' Preferences

Voters in the developed world are generally supportive of linking trade with labor rights and the environment. Yet, public opinion does not explain the different approaches pursued by the EU and the United States with regard to social provisions in PTAs. This suggests that voter preferences themselves are not enough to explain the design of social standards which is a function of interest groups politics.¹²

Before analyzing the behavior of interest groups and policy-makers, it is important to understand the nature of various actors' preferences over the link between international trade and labor and the environment. I deduce societal preferences from the Stolper-Samuelson theorem from the Heckscher-Ohlin theory of international trade.¹³ This theorem provides important microfoundations for my theory by specifying the sources of preferences of various interest groups. There are multiple societal actors, such as labor unions, environmental NGOs, and organized businesses who lobby trade policy-makers to realize their preferences with regard to social standards in trade agreements. Labor in the developed world is a scarce factor of production, which would be most negatively affected by trade liberalization due to a potential capital flight to other jurisdictions with laxer standards and cheaper labor, according to the Stolper-Samuelson theorem and the logic of race to the bottom, also known as social dumping in

¹¹ I will return to the question of bargaining power later.

¹² For example, in the Eurobarometer public opinion survey EU citizens respond positively to questions about whether trade should be linked with labor and the environment (European Commission 2010). Similarly, American voters are shown to generally value fair trade policies (Kim 2012).

¹³ See Krugman and Obstfeld 2003 for an excellent overview.

EU parlance. Thus, labor should be generally opposed to trade liberalization and will lobby for safeguarding its interests in bilateral trade agreements by having an adequate level of protection.

Trade liberalization can also negatively impact the environment, as producers from the developed world will be incentivized to move production to jurisdictions with less stringent environmental regulations to cheapen the cost of production, which, in turn, will put the environment under more strain. However, unlike labor, the environment is not a factor of production and the costs of environmental degradation are more diffused across various segments of society, cutting across factoral and sectoral lines, as mentioned above. The environmental constituency represents a loosely organized value community and the intensity of their preferences might be lower than those of labor. Yet, environmentalists should also oppose trade liberalization unless their interest in protecting the environment is guaranteed.

Capital in the developed world is an abundant factor of production expected to gain from trade liberalization, so organized businesses should prefer free trade uninhibited by strict labor and environmental regulations. The latter could be potentially costly and could restrict fully reaping the benefits of free trade stemming from increased access to overseas markets. However, the overarching goal of organized businesses is to receive benefits offered by free trade from gaining uninhibited access to new markets. Thus, businesses would be willing to compromise with other societal actors if that can help them achieve this goal by securing a trade deal. It should be noted that any trade agreement in the end would be a package deal, based on the compromise among these three main stakeholders.

The sources of various societal actors' preferences have been aptly captured by Bruce Yandle (1983: 13, quoted in Hafner-Burton 2009: 58-58):

“What do industry and labor want from the regulators? They want protection from competition, from technological change, and from losses that threaten profits and jobs. A carefully constructed regulation can accomplish all kinds of anticompetitive goals of this sort, while giving the citizenry the impression that the only goal is to serve the public interest.”

I also make a set of assumptions about the behavior of both legislators and executives. Legislators are the actors who respond to societal interests. Their major goal in democratic societies is to seek re-election. Hence, they need to ensure that the interests of their constituents are satisfied if those constituents determine their re-election. Thus, the nature of the relationships between societal actors and legislators can differ from one polity to another and is more direct in those polities where societal interests are closely connected with their legislators through direct electoral links. These links make lobbying most effective as they allow voters to sack a legislator who does not fulfill their expectations. Without such direct links, legislators are confronted with multiple political pressures and can also act upon their individual preferences driven by such factors as ideology.

Trade policy executives are the actors negotiating and signing PTAs. They are often non-elected bureaucrats whose main goal is to advance a certain policy agenda. This agenda is handled to them by legislators accountable to societal actors. Yet, as any bureaucrats, trade policy executives have their own preferences. I derive these preferences institutionally, i.e. they are based upon the belief which policies an institution that executives represent should produce. According to Jupille (2004: 17), “The notion of derived institutional preferences depends critically upon actors’ beliefs about the causal connections between institutions and outcomes and upon the proposition that they place value on achieving some outcomes over others.” These

beliefs can vary significantly, depending on how executives perceive their institutional mandate and what policies they believe would be ultimately beneficial for their polity.

2.1.3. A Principal-Agent Theory

In order to explain the trade policy-making process with regard to the inclusion of social standards in PTAs and to conceptualize the trade policy-making process as a combination of interests and institutions, this dissertation develops a principal-agent theory. Literature that utilizes the principal-agent approach investigates the relationships between principals and agents and the conditions under which the former delegate agenda-setting to the latter, as well as the strategies used by agents to escape the control of principals with the resulting agency losses (Kassim and Menon 2003). While originally developed for the analysis of regulatory policy-making (McCubbins et al. 1987; Cook and Wood 1989; Spiller 1990), this framework has been recently very fruitfully applied to the analysis of both EU and U.S. trade policy (Conceição-Heldt 2010; De Bièvre and Dür 2005; Dür 2010; Dür and Elsig 2011; Ehrlich 2008; Reichert and Jungblut 2007). And given that the bulk of new trade issues is precisely regulatory in nature, using the principal-agent theory becomes ever more appropriate. This approach is also advantageous for the purpose of comparing political processes and trade policy-making institutions in the United States and the EU, as it allows focusing on the relationships between their domestic groups and executives within a single analytical framework.¹⁴

In addition, the principal-agent framework allows conceptualizing institutional rules as endogenous to actors' preferences. Many studies of international trade view domestic political

¹⁴ Two-level game theory (Putnam 1988) is also often used by the students of trade policy to understand the domestic pressures of negotiating partners. This study's focus is on domestic processes in the EU and the United States and it explicitly controls for the negotiating dynamic.

institutions channeling societal preferences as rather fixed, i.e. exogenous to the preferences and strategies of these actors (Milner and Mansfield 2012). Yet, we know from the large body of literature on comparative political institutions that political rules of the game, in spite of having locking in effects, can be an object of political choice and, therefore, can be amended and manipulated in accordance with changing preferences of actors (Lohmann and O'Halloran 1994). Treating institutions as endogenous is particularly important for the studies of international trade issues, as changing rules can become part of the actors' response to the new distributional consequences of trade liberalization that become politically salient, as international economic integration deepens, bringing to the forefront new actors and new conflicts of interests.

The principal-agent approach employed by this study treats institutional rules as the result of purposeful design by rational actors who want to maximize their utility, delegating policy-making authority and creating control mechanisms in response to the changing political-economic conditions they are confronted with, while being nested in the larger constitutional structure of their political system. Thus, the principal-agent theory developed in this dissertation, while being part and parcel of the rational institutionalist approach (Peters 1999), treats institutional rules as endogenous.¹⁵ In doing so, it takes seriously the recent criticism of the principal-agent theory that calls for more refined models allowing the possibility of agent-induced institutional change (Büthe 2007). Overall, this dissertation offers a variant of the actor-centered institutional approach (Scharpf 1997) adapted for the *problematique* of modern trade policy-making.

The principal-agent approach traditionally focuses on two types of conditions under which agents' autonomy, known as agency loss or agency slack, might increase. First, the

¹⁵ Sociological institutionalists tend to have a different view of institutions as endogenous to actors' interests, ideas, and identities (see Hall and Taylor 1996). This dissertation maintains rationalist ontology.

divergence of principals and agents' preferences might lead to what is known as agency shirking. Second, the structure of delegation itself can potentially result in informational asymmetries favoring agents that would lead to the so-called agency slippage (Conceição-Heldt 2011). Thus, the goal of principals is to create control mechanisms to monitor the behavior of agents and prevent agency losses. These mechanisms range from specification of the range of possible behaviors for agents to oversight conducted either directly by principals or by third bodies and sanctioning of in-compliant agent's behavior through various procedures, including agent's dismissal. The degree of agent autonomy is a function of control mechanisms which vary by issue area and from one agent to another (Pollack 1997).

According to the principal-agent approach to trade policy-making, principals in the EU and the United States, i.e. the EU Member States' governments in the Council of Ministers¹⁶ and legislators in the U.S. Congress respectively, delegate the authority to conduct trade policy, including negotiating free trade deals, to agents, i.e. officials in the European Commission, particularly the Directorate General (DG) Trade, and the U.S. President acting through the United States Trade Representative (USTR).¹⁷ Existing studies of regulatory policy-making acknowledge that both interests groups and politicians try to exert control over regulators and pursue their own interests that might differ. Interest groups want politicians to design policies on their behalf. They can influence the behavior of executives directly, by using available lobbying channels, or indirectly, by relying on electoral connection and putting pressure on legislators (Spiller 1990). When legislators' re-election depends on approval from special interests, they will try to design policies benefiting those interests. Thus, legislators for whom labor and the

¹⁶ Please note that I will use both the Council of the EU and the Council of Ministers to denote this institution.

¹⁷ Both DG Trade and USTR work with other executive agencies (e.g. DG Employment or the Department of Labor), depending on an issue at hand but remain leading agencies responsible for the formulation of the negotiations' agenda.

environment are major constituencies will be responsive to their interests. On the other hand, legislators whose re-election prospects do not directly depend on the support of these two constituencies will be more prone to pursue other interests, either responding to other interest groups or acting upon their own ideological beliefs. The nature of the principals' relationship with interest groups to whom they respond is an important driver of authority delegation and control mechanisms in the EU and the United States.

The degree of principals' control and the agent's ability to escape it will depend on the formal institutional rules delineating the delegation of authority. When delegating authority to the agent, principals also simultaneously devise powerful control mechanisms in the form of new institutional rules to insure against agency losses (De Bièvre and Dür 2005). These mechanisms take the form of *ex ante* control, whereby principals specify the range of possible behavior for the agent, or *ex post* control, whereby principals can revert a policy implemented by an agent or dismiss the agent itself. In trade policy-making, the main *ex ante* control mechanism is the negotiating mandate given to executives who negotiate trade agreements. The primary *ex post* control is agreement ratification by principals. In turn, agents try to respond strategically to these mechanisms, trying to obviate them and shape the agenda, using issue-framing and exploiting informational asymmetries.

Both principals and agents try to act strategically when pursuing their preferences and the institutional rules largely determine the degree of their success. Some political arrangements are particularly conducive to the weak principals' control. In such cases agency loss increases and "civil servants and political appointees of bureaus insulated from political overseers are . . . empowered to pursue independent courses of action. Protection from coalitional drift comes at

the price of an increased potential for bureaucratic drift” (Shepsle and Bonchek 1997: 375 quoted in Kassim and Menon 2003: 125).

Importantly, agency losses increase proportionately to the increase in the number of principals and disagreements among them. First, the existence of multiple principals presents the agent with an opportunity to play up the differences among them and pursue its own interests. As Elsig (2007) notes, competing interests among principals in the context of EU trade policy only enhance the agent autonomy, especially when the Commission has the agenda-setting power, allowing it to create differentiated access to various principals and build *ad hoc* coalitions among them. Second, the increase in agency losses can occur even when principals’ interests in monitoring the agent’s behavior converge because of the coordination problem among principals (Gailmard 2009). The institutional arrangement analyzed here can be conceived as a problem of one agent with multiple principals, considering the large number of legislators with a wide array of preferences over the design of trade policy, both in the EU and the United States. Furthermore, this kind of principal-agent dynamic is even more acute in multi-level political systems, such as the EU (Lyne et al. 2006; Pollack 2006).

Specifying the preferences of principals and agents is paramount for the principal-agent analysis. However, the existing studies of trade policy using the principal-agent framework fail to systematically explore the sources of preferences of agents (e.g. Elsig 2007). This is coincidental with the current trend in the literature to focus more on the principals’ control mechanisms at the expense of agent behavior. Yet, Hawkins and Jacoby (2006) show how independent agent strategies can affect both the delegation patterns and the agent’s autonomy, especially when the small pool of agents exists and the costs of creating new agents are high, which is the case of delegation dynamic in the EU. Thus, it is important for the purposes of this

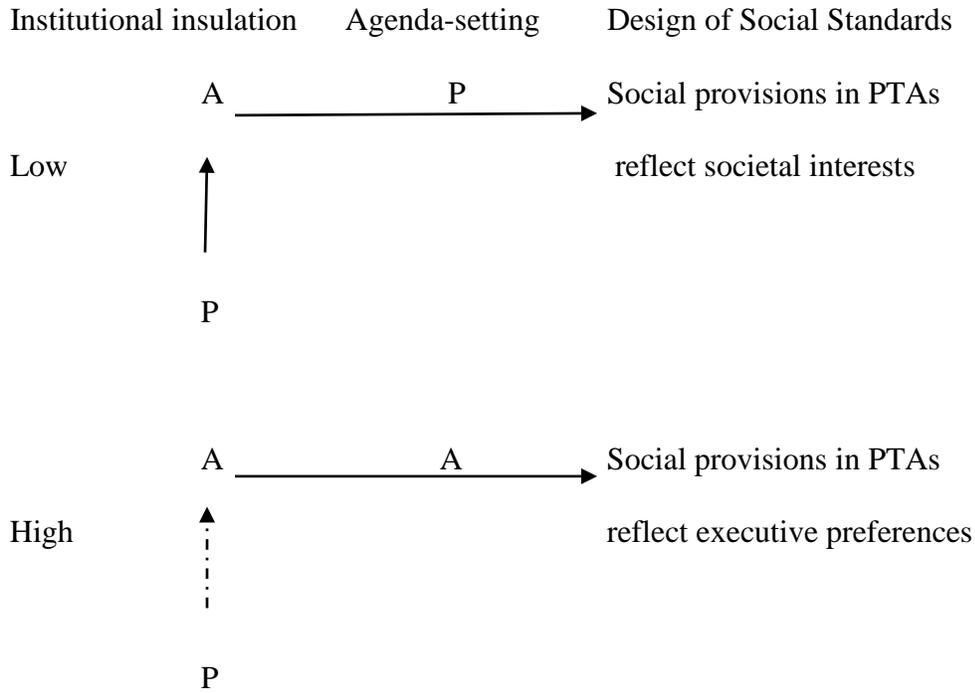
analysis to account for both the preferences of trade policy executives and their strategies with regards to their principals, which will be done in a rigorous way in the following empirical chapters empirical chapters.

In sum, the number and characteristics of principals, disagreements among them, the nature of an issue at hand, and diverging preferences between principals and agents all determine how successful actors will be in pursuing their preferences. A certain configuration of these factors can increase the institutional insulation of agents (executives) from principals (legislators), allowing executives to realize their preferences and determine the design of social standards. The following hypothesis is derived from this theory:

Hypothesis 1: Agents institutionally insulated from principals will be able to shape PTAs' social standards, irrespective of societal interests.

Hence, I expect that in the EU, where the degree of executive autonomy over trade policy is greater than in the United States due to the supranational character of EU trade policy-making and the multi-level system of governance, agents will be more likely to escape the weak control of principals. Thus, social standards in EU PTAs will mirror the preferences of trade policy executives in the European Commission rather than the interests of NGOs, labor unions, and businesses. In the United States, the degree of principal control is higher due to the powerful control mechanisms put on the executive authority conducting trade policy. Therefore, social standards in U.S. PTAs will reflect the preferences of principals and interest groups connected with them but not trade policy executives. Figure 3 below represents the argument graphically.

Figure 3: Institutional Insulation and Agreement Design



A = agents (trade policy executives), P = principals (legislators)

Delegation of trade policy-making authority does not automatically lead to executive preferences dominating the trade policy agenda because it is done to ensure the protection of public good from special interests. Thus, thicker institutional insulation could result in better reflection of societal interests in trade agreements (Ehrlich 2008). Yet, as will be shown in the next chapter, this was not the case in the EU where these interests represented by the European Parliament did not become the part of trade deals. The goal of the principal-agent approach is to explain how this happens by untangling specific control mechanisms that lead to agency loss by encouraging agency shirking and agency slippage. This will be done in the following empirical chapters.

2.1.4. *The Effects of Social Provisions: Fear versus Learning*

This study also aims to investigate the effects of the two different approaches the EU and the United States are pursuing toward social provisions in their PTAs on the respective agreement outcomes. Does the inclusion of labor and environmental standards in bilateral trade agreements have a positive effect on labor and environmental conditions in partner states? Do social standards in PTAs lead to the improvement of workers' rights and environmental regulations in EU and U.S. PTA partners? And if yes, which approach, sanctions or dialogue, is more effective? A recent study shows that there has been such a positive effect on labor conditions in U.S. trade partners, referred to as "*ex ante* diligence" due to a fear of potential sanctions in the future as the United States pursues a coercive approach toward the enforcement of labor standards (Kim 2012). This mechanism seems plausible since sanctions have never been enacted to enforce social provisions and yet there has been a demonstrable improvement in labor standards in US PTA partners. This mechanism can also be plausibly extended to the case of the environment as labor and environmental provisions are part of the broader social trade agenda, as argued above.

However, I argue that the implementation process and ultimate effects of the PTAs' social provisions is much more nuanced. In particular, Kim's (2012) study does not recognize the importance of specific design features of PTA provisions, which may affect agreement implementation and, in turn, could influence long-term policy changes. International agreement design should matter for agreement outcomes, as the international relations (IR) literature has long argued (e.g. Rosendorff and Milner 2001). Thus, the design of social standards is an important variable that would mediate the effects of social provisions. As highlighted previously,

social standards in EU and U.S. PTAs differ in terms of their design, i.e. scope, enforcement, and the degree of legal binding. This difference is particularly striking when it comes to the enforcement which is coercive in the U.S. case and non-coercive in the EU case.

I maintain that it is not simply fair trade preferences of the constituents in the developed world but the enforcement provisions attached to these standards that matter for the effectiveness of social standards in PTAs. Hence, my theory refines Kim's argument to demonstrate that the PTA design is integral to the effectiveness of social standards. I argue that the improvement of labor rights and environmental regulations in PTA partners occurs not so much because of the awareness about fair trade preferences of the constituents in the developed world but due to the enforcement mechanisms of these PTAs.

In regards to U.S. PTAs, trading partners will be worried that if they do not initiate the change in domestic regulation they might be punished, i.e. they engage in *ex ante* due diligence due to the fear of possible sanctions in the future. For example, the United States has recently filed a case against Guatemala for the failure to comply with the labor rights chapter of the U.S.-Central America-Dominican Republic FTA (CAFTA-DR), making the threat of sanctions even more credible (USTR 2010). However, the very seriousness of the coercive enforcement strategy in U.S. PTAs should be sufficient to make rational agreement partners adopt reforms needed to avoid being sanctioned. Thus, sanctions signify credibility on the part of U.S. negotiators and generate fear of punishment for non-compliance even if they are not enacted.

In a similar vein, EU trading partners should be incentivized to act in response to the enforcement provisions in EU PTAs. Does the fact that the EU does not envision sanctions in its agreements mean they are less effective? I argue to the contrary. Social provisions in EU PTA do lead trading partners to improve labor rights and environmental standards, but through a different

causal mechanism: the improvement will be *ex post* rather than *ex ante*. EU agreements do not rely on sanctions and, therefore, do not generate fear. Instead, EU agreements are implemented through consultation and dialogue with civil society actors and government officials.

In general, international institutions are thought to increase transnational communication through a variety of channels (Holzinger et al. 2008). For example, interacting bureaucracies might develop similar structures over time, as argued by the scholars of institutional isomorphism (DiMaggio and Powell 1983). This interaction also creates incentives for rational policy learning among policy-makers and is conducive to the formation of transnational epistemic communities. Overall, the regularized interaction between the EU and its partners throughout the implementation process of social provisions in PTAs should increase the density of the informational environment, enhance communication channels, and bring attention to the importance of labor and environmental issues.

I argue that this transnational communication can lead civil society actors in EU PTA partners to learn successful strategies from their EU counterparts and pressure their state authorities to improve social regulation. Without such pressure from civil society, state authorities will not have an incentive to introduce required regulatory reforms, as there will be no punishment on the part of the EU for non-compliance. Thus, EU PTAs become the institutionalized channels of policy diffusion through learning (Simmons et al. 2006). The logic of this argument is similar to that in the study of social effects of NAFTA by Aspinwall (2009) mentioned above, which shows how civil society actors in Mexico use NAFTA as a capacity-building mechanism to improve environmental standards.

Furthermore, state officials in EU PTA partners actively participate in the implementation of social provisions. These officials mainly come from the ministries of labor, the environment,

and foreign affairs. As they engage in communication with their EU counterparts and the implementation of specified standards, they can also socialize into becoming more aware of and responsive to the needs of civil society actors in their countries. Thus, EU PTAs become focal points for collaboration between governments and non-state actors. Furthermore, through this process, state officials can also become more familiar with the EU's own social regulations and use those as roadmaps for regulatory reforms in their countries. Building on EU regulations can reduce the transaction costs of designing new legislation and satisfy civil society demands more efficiently.

Finally, international agreements also supply monitoring capacity and increase the credibility of state commitments (Büthe and Milner 2008). Thus, civil society actors in EU PTA partners, who have now also gained recourse to dispute settlement provisions (which became a feature of the new generation of EU PTAs), should be better equipped to make state authorities more attentive to their demands even if sanctions are not legally possible.

Therefore, I expect that social standards in U.S. PTAs will be effective by providing a stick required for domestic reform and the possibility of sanctions will generate fear required for enacting it. In the case of EU PTAs, in the absence of coercion, the effect will still be positive but more gradual than in the case of U.S. agreements. As civil society actors in EU PTA partners learn successful strategies from their EU counterparts they can pressure their own governments to improve social standards. Furthermore, governments of PTA partners themselves can learn from cooperation with EU officials during the process of agreement implementation. The following hypothesis is then derived:

Hypothesis 2: *U.S. provisions will have positive ex ante effects due to a fear of future sanctions, while EU provisions will have positive ex post, resulting from learning by domestic actors in PTA partners.*

Thus, I expect that particularly in developing countries with weak or nascent democratic institutions, where there is room for improvement with regards to labor rights and environmental provisions, PTAs' social standards can trigger this process of improvement which will be affected by the implementation mechanisms, differing between EU and U.S. agreements. I anticipate finding the strongest effects of social standards in the case of Chile because both EU and U.S. PTAs have been in force for more than a decade and because Chilean democratic institutions are rather new, which means that the window of opportunity for domestic reform is still wide open. I also expect to elucidate some of the implementation dynamic at least partially in a much more recent case of South Korea.

2.2. Alternative Explanations

Various scholars of PTA formation have used the veto players' theory (Tsebelis 2002) to account for the domestic politics of PTA formation. While these studies provide a good snapshot of the domestic political arena and key actors and institutions engaged in trade policy-making with respect to signing PTAs, they are less attentive to the political *process*, which is the crux of this study. Notably, Hafner-Burton (2009) applies the veto players' theory to the process of making human rights clauses in PTAs. This theory could be potentially used in this study as an alternative to the principal-agent approach. Its main proposition is that the greater number of

veto players should always restrict executives' options in pursuing their agenda. Therefore, it would yield an expectation that trade policy executives in the EU, whose political system arguably has a greater number of veto players' than in the United States, would be more constrained than their U.S. counterparts when formulating the agreement agenda.

Furthermore, another alternative explanation would hold that trade policy executives will be immune from some lobbying pressures on the part of interest groups but not others. This expectation is particularly relevant for the case of the EU whose social standards appear weaker than those in U.S. agreements. Scholars have long argued that the EU is ultimately a neo-liberal market-making project and policy-makers in the European Commission are particularly responsive to the interests of organized businesses (McNamara 1998; Moravcsik 1998). Thus, these accounts would expect that EU social standards are simply a reflection of business interests due to their successful lobbying efforts and the responsiveness of the European Commission to their interests.

Finally, Hafner-Burton (2009) in her study of the effects of EU and U.S. PTAs' human rights' clauses on human rights' record of trading partners argues that "hard," i.e. legally binding PTAs, are more effective in producing positive change than "soft" PTAs. While this dissertation is concerned with social standards, similar logic might be in place when it comes to their effects. Thus, it is important to account for the possible independent effect of legally binding provisions that might influence agreement outcomes irrespective of enforcement strategies and the implementation mechanisms they produce. These alternative explanations will be juxtaposed with the main findings of this study and evaluated in the concluding chapter.

2.3. Methodology

The purpose of this dissertation is two-fold. First, the study aims to explain why there is variation in social standards in EU and U.S. PTAs by making causal inferences about the role of domestic political factors and the process through which those are translated into agreement outcomes. Second, it aims to explain how these social standards affect agreement outcomes. Thus, the study largely has two main parts dealing with the causes (Chapter 3 and 4) and consequences (Chapter 5) of PTAs' social standards. In order to answer both research questions, the dissertation will employ the method of structured focused comparison of labor and environmental provisions in EU and U.S. PTAs (George and Bennett 2005).¹⁸ The method used here is structured because it will ask the same set of questions for the set of the selected cases, i.e. what were the actors' preferences, what delegation and control mechanisms were devised, and what strategies did the agent pursue, and what mechanisms were at play during agreement implementation? It is focused because the questions will be asked with regards to two issues in EU and U.S. PTAs – labor and environmental standards.

Qualitative methodology is chosen because this study is comparative in nature, deals with a relatively restricted universe of cases, and aims at an in-depth analysis of the policy-making *process*. It is not a secret that studies of PTAs are dominated by large-*N* analyses. Yet, many of these studies treat PTAs in a monolithic fashion, not differentiating among their various provisions and the mechanisms that produce them. However, as argued above, the design of PTAs is characterized by a lot of variation that cannot be fully captured by statistical approaches.

¹⁸ According to George and Bennett (2005: 67), “The method is ‘structured’ in that the researcher writes general questions that reflect the research objective and that these questions are asked of each case under study to guide and standardize data collection, thereby making systematic comparison and cumulation of the findings of the cases possible. The method is ‘focused’ in that it deals only with certain aspects of the historical cases examined.”

Thus, these approaches are only of limited utility for exploring causal processes behind this variation.

Furthermore, because this study is concerned with the causal mechanisms responsible for the design of social provisions and the way in which this design affects outcomes, the method of process-tracing will also be used. Process-tracing is a notoriously tricky method and there exist different legitimate ways of conducting it acknowledged by scholars (Beach and Pedersen 2013). The literature agrees that the primary purpose of process-tracing is to disentangle the causal process by breaking it into small steps to show how a cause produces an effect (George and Bennet 2005). Yet, the main challenge is doing it in a systematic and rigorous way. To analyze the causal processes in the first part of this study, I employ the principal-agent framework. It represents a trade policy-making process as a series of sequential moves made by principals connected to societal actors who delegate autonomy and create mechanisms of control and agents who select strategies to escape those mechanisms. Thus, it can serve as a systematic way of tracing the causal processes across cases representing different institutional contexts. The process-tracing used here can be defined as a theory-testing kind (Beach and Pedersen 2013).¹⁹

In short, I will identify preferences of various interest groups over social standards in PTAs and legislators (principals), as well as those of trade policy executives (agents), and investigate to what extent the agreement agenda reflected those preferences in the cases of EU and U.S. PTAs. I will then trace strategies that were used by these actors in order to get what they wanted and whether they were enabled or constrained by existing institutional factors. The study will compare and contrast these processes in the EU and United States, which provides an

¹⁹ In theory-testing process-tracing “What is being traced is not a series of empirical events or narratives but instead the underlying theorized causal mechanism itself, by observing whether the expected case-specific implications of its existence are present in case” (Beach and Pedersen 2013: 15).

additional rationale to use the comparative method as the primary tool of empirical analysis in this dissertation.

2.3.1. Variables

The main dependent variable (DV) in the first part of this dissertation is the design of social standards in EU and U.S. PTAs. It is operationalized along three dimensions – the scope of coverage, enforcement, and the degree of legal binding. Much like in the case of other regulatory standards, the design of social provisions can follow three distinct patterns (Nicolaidis and Shaffer 2005; Schmidt 2007). The agreement parties can agree to use the existing international rules, try to export their own domestic standards to an agreement partner, or choose national treatment. States can also choose to make social provisions legally binding or not. Furthermore, these provisions can be made enforceable either through sanctions, such as withholding trade privileges in cases of non-compliance, or through soft measures, such as reaching a settlement through consultations between agreement parties.

There is variation on all three dimensions across the PTAs analyzed here. As mentioned in Chapter 1, U.S. agreements are stricter, i.e. wider in scope, as they incorporate American domestic rules in addition to international standards. EU agreements emphasize international standards, such as ILO core labor rights and multilateral environmental treaties. The United States also pursues a more coercive approach toward the enforcement of its social provisions, while the EU emphasizes the no-sanctions approach. U.S. social standards are also more legally binding. I will also compare two issue areas in the selected agreements – labor and the environment – in order to explore a different political dynamic that is a function of differences

among the two implicated constituencies described above. Moreover, these two issues are often linked together in PTAs, especially at the interest aggregation and negotiation stages.²⁰

My main independent variable (IV) used in the first part is institutional insulation of principals from agents. It is operationalized as the scope of delegation and strength of control mechanisms that principals devise over agents. I expect these mechanisms to vary between the EU and United States, i.e. be weaker in the former than in the latter due to the supranational arrangement of EU trade policy-making and a greater number of veto players resulting in more power delegation to the bureaucrats (Tsebelis 2002). Furthermore, I expect institutional insulation to vary across time, as new institutional rules mediating relationships between principals and agents can change within the timeframe of this study.

My main empirical strategy will be to investigate actors' preferences over the scope, enforcement, and degree of legal binding of social standards, as well as the lobbying efforts of societal actors and the way legislators and executives respond to their demands when formulating the agreement agenda, i.e. the extent of delegation that occurs, control mechanisms principals devise, and escape mechanisms use by agents to avoid that control. I expect that in the EU the degree of agent autonomy will be the greatest and powerful supranational executives from the European Commission will be able to shape the agreement agenda in accordance with their preferences better than their US counterparts.

Furthermore, as mentioned previously, international trade agreements and their various provisions are often parts of broader package deals and, therefore, can also be influenced by the negotiation process among agreement partners. Thus, the bargaining power of EU and U.S. trading partners can be potentially decisive for the design of social standards. Hence, in order to

²⁰ In the new generation of EU PTAs, both issues became linked together in one chapter on sustainable development, as mentioned above.

investigate the extent to which the bargaining power played a role, I will also need to inquire into the details of negotiation process behind the issue of PTAs' social standards, controlling for the bargaining power differentials among the EU, the United States, and their trading partners.

2.3.2. Case selection

The unit of analysis in this study is a bilateral PTA. Because the agreement agenda might be influenced by certain economic or political features of partners, it is important to control for the idiosyncratic characteristics of third countries when comparing EU and U.S. PTAs, to keep an analytical focus in the first part of the study on their respective policy-making processes. There are a number of countries that have signed PTAs with both the EU and the United States that include social standards.²¹ Furthermore, it is essential to focus on those states that do not have any plausible prospect of the EU membership in the future or are not part of different governance arrangements that the EU created for its neighboring countries because those can generate a very different dynamic. Thus, this study excludes the cases of states from the EU's periphery, such as Morocco or Algeria. Even though those countries are not expected to become member states of the EU any time soon, they are part of the EU's external governance approach, manifested in the Euro-Mediterranean Partnership, which makes them subject to very different EU foreign policy instruments and creates a very political dynamic between these countries and the EU.²²

Chile and South Korea are two countries that have signed PTAs with both the EU and the United States and who are not in the EU's vicinity. Thus, the paired cases of EU-Chile, EU-

²¹ See Appendices 1 and 2 for the list of all EU and U.S. PTAs.

²² For example, countries might be more incentivized to improve their social regulation and make it compatible with the EU's rules in anticipation of benefits of closer integration. On the EU external governance and how it affects societal actors see Lavenex and Schimmelfennig 2010.

South Korea, U.S.-Chile, and U.S.-South Korea are selected for the analysis. These cases are rich not only in terms of included social provisions but also in terms of cross-time variation, as they represent both old and new generation of EU and U.S. bilateral agreements.²³ This allows tracing the evolution of respective EU and U.S. approaches with regard to the inclusion of social standards into PTAs, as well as the evolution of domestic actors' preferences and strategies. Moreover, unlike other FTAs (e.g. U.S.-Jordan), their primary purpose is to gain market access and not to achieve strategic or geopolitical benefits, which is evidenced by the large volume of trade between the parties to these agreements. Both Chile and South Korea are also some of the fastest growing economies in the world and the potential for investment resulting from these agreements is vast, which further demonstrates their economic significance.

Furthermore, these cases are ideal for controlling for the potential influence of EU and U.S. agreement partners as they represent PTAs signed with the countries with weaker bargaining power relative to that of the two leading economic powers. This further allows focusing on the domestic political processes in the EU and the United States, as well as gauging the agreement effects in Chile and South Korea, the countries who have to act as policy-takers when dealing with two of the world's largest economies.²⁴ These cases are also rich in terms of cross-regional variation which allows for generalizing to the wider universe of EU and U.S. PTAs. I also use circumstantial evidence to increase within-case variation.

In sum, I conduct a structured focused comparison of labor and environmental standards in the set of four cases, specifying actors' preferences, juxtaposing them with agreement outcomes, and process-tracing the principal-agent dynamic that led to them in each case, also

²³ U.S. PTAs with Chile and South Korea were ratified in 2004 and 2011 and EU PTAs with Chile and South Korea in 2003 and 2011 respectively.

²⁴ Recent cases of negotiations between more equal market powers, such as the EU and Canada or India, show that labor standards, in particular, can become a bone of contention and the other side can have a significant sway over the European Commission's negotiating position.

controlling for the bargaining power of agreement partners. In order to gain observational equivalence, I compare social standards in four PTAs, focusing on EU and U.S. agreements with Chile and South Korea, the two countries with which both the EU and the United States have signed an agreement that includes social provisions and that represent both old and new generations of agreements.

The second part of this study that deals with the consequences of labor and environmental provisions in EU and U.S. PTAs necessitates a different research design. Here, the main DV, i.e. the design of social provisions, will become the IV in order to explore the agreement effects. The study will examine the behavior of partner states as the four agreements selected here were negotiated and implemented. It will also trace if signed PTAs led to any improvement in labor and environmental standards in Chile and South Korea and will uncover the mechanisms leading to this change, tracing them back specifically to concrete incentives of EU and U.S. PTAs, to test the second hypothesis. Process-tracing will be again used as a method for making causal inferences within the selected cases. Importantly, there might be interaction effects of EU and U.S. PTAs' social provisions in the two countries analyzed here which could be potentially problematic for unpacking the effects especially in a large-*N* analysis. However, in-depth qualitative analysis and process-tracing used here allow tracing certain agreement outcomes back to specific incentives stemming from either EU or U.S. PTA.²⁵

Finally, the cases of Chile and South Korea should be particularly revealing, as it is a democratic country. Autocracies tend to have more repressed labor rights and laxer environmental regulation which means the effects of social standards in PTAs signed by them can be potentially greater due to a misfit between the agreement expectations and the situation on

²⁵ It should be noted that due the recent nature of PTAs with South Korea the implementation has only started and only preliminary conclusions can be drawn.

the ground. Thus, finding the hypothesized dynamic in less likely cases of democratic countries should provide a more rigorous empirical test.

2.3.3. *Data*

Data collected for this dissertation come from a variety of sources, including primary documents, such as position papers, actors' statements in the media, NGO and government reports, as well as secondary sources, such as writings by academics studying these issues. This evidence will be triangulated by primary data collected from semi-structured, in-depth interviews conducted with both societal actors and policy-makers. Interviews as a source of data were chosen because they are ideal for inquiring into human motivation (Weiss 1994) and, thus, should allow for understanding of the sources of actors' preferences and the strategies they used to realize them. Interviews are also helpful for avoiding the pitfall of deducing actors' preferences from their observed behavior. Furthermore, agents might pursue certain strategies irrespective of principals' interests which, on the surface, could look like satisfying the mandate given to them, thereby obscuring their independent behavior. This observational equivalence has been particularly problematic for some studies of EU trade policy analyzing the allegedly independent behavior of the European Commission which, on the surface, did not deviate much from the interests of the Member States (Dür 2006). Carefully crafted interview questions that were used in this study can help to address this problem as they provide tools for inquiring into the real motivations of actors and reconstructing their behavior based on those.

My respondents included the purposive sample of key actors involved in the making, negotiating, and implementing PTAs selected for this study. Snowball sampling procedure was

also used to identify relevant actors and gain access to them. Among societal actors, I interviewed representatives from civil society, including environmental and human rights NGOs, labor unions, as well as business associations. Among policy-makers, I interviewed trade policy executives and legislators responsible for determining the agreement agenda and the negotiation process. I also interviewed actors involved in the implementation of agreements which included both governmental officials and civil society groups in EU and U.S. trading partners, i.e. Chile and South Korea. Finally, I also interviewed academic and policy experts with the first-hand knowledge of the issues analyzed here. Forty-two in-depth, semi-structured interviews and one focus group were conducted in summer 2012 in Brussels, in spring 2013 in Washington, D.C., and in summer 2013 in Santiago and Seoul.²⁶

While interview methodology is admittedly not without some limitations, mainly pertaining to the validity of responses (Atkinson et al. 2003), the interview protocol was constructed in such a way as to minimize threats to validity and elicit an accurate picture of actors' motivations and behaviors.²⁷ Furthermore, interviews were used as a way to triangulate the already available data and to account for the missing observations. Additionally, as interviewed actors included some key decision-makers, responses were also used to explicitly test the plausibility of postulated conjectures about the policy-making process and roughly eighty per cent of the respondents corroborated the expectations of this study.

²⁶ See Appendix 3 for the list of interviewees.

²⁷ See Appendix 4 for the interview protocols used for the first and second parts of the study.

CHAPTER 3: EU PTAS WITH CHILE AND SOUTH KOREA

3.1. Introduction

According to the principal-agent approach delineated in the previous chapter, principals, i.e. the Member States' governments, delegate competencies of conducting trade policy, including negotiating free trade agreements, to agents, i.e. officials in the European Commission, particularly DG Trade. This chapter seeks to explain the preferences of these principals and their constituents, as well as the preferences of agents, and establish who was most able to influence the agenda of EU agreements with Chile and South Korea, in accordance with the case selection criteria mentioned earlier. My goal is to explore the factors and processes behind the design of labor and environmental provisions in these agreements in terms of their scope, enforcement, and legal binding, testing the institutional insulation hypothesis introduced in Chapter 2.

Much like in the case of other regulatory standards, the design of social provisions can follow three distinct patterns (Nicolaidis and Shaffer 2005, Schmidt 2007). The agreement parties can agree to use the existing international rules, try to export their own domestic standards to an agreement partner, or choose national treatment. States can also choose to make social provisions legally binding or not. Furthermore, these provisions can be made enforceable either through sanctions, such as withholding trade privileges in cases of non-compliance, or through soft measures, such as reaching a settlement through consultations between agreement

parties. As the following discussion will demonstrate, the EU preferred to rely heavily on international rules when negotiating social provisions in its bilateral FTAs instead of trying to export its own comprehensive domestic rules on labor and the environment or bargaining over some middle-of-the road approach with its trading partners. It has also eschewed using sanctions as a means of enforcement but started leaning towards more legally binding social provisions.

The rest of this chapter is structured as follows. Section 2 maps out the EU trade policy approach during the timeframe of this study, paying attention to the role of social issues in it. Section 3 describes the coverage of social provisions in the EU-Chile and EU-South Korea FTAs. Section 4 explains actors' preferences, focusing on societal actors, the Member States' governments, and executives from EU institutions. Section 5 examines the agreement outcomes looking at whose preferences they reflect most. Section 6 explains the principal-agent dynamic and institutional mechanisms of interest aggregation prior to signing the agreements. Section 7 probes to what extent bargaining power of the agreement parties mattered during the negotiation processes and Section 8 concludes.

3.2. The EU Trade Policy Approach

Since the establishment of the WTO in 1994, the EU has been an adamant supporter of the multilateral approach toward international trade liberalization. Initially, it eschewed the move towards bilateralism initiated by the United States under the Bush administration throughout the 1990s and early 2000s, although making a notable departure from this principle by signing an FTA with Mexico in 1997 in response to the formation of NAFTA.²⁸ The EU had initially

²⁸ NAFTA itself was signed as a response to the EU's Single Market (see Sbragia 2010).

avored the inclusion of the social clause in the WTO but eventually relegated it to the ILO on the eve of the Doha Development Rounds, fearing that the negotiations could be jeopardized.

The inclusion of the labor standards and multilateral environmental norms in EU bilateral agreements becomes a norm after the publication in 2001 of the European Commission's communication titled "Promoting Core Labour Standards and Improving Social Governance in the Context of Globalization" which outlined the approach known as "the social dimension of globalization." It stressed the importance of the ILO core labor rights as part of the EU external trade policy, including bilateral agreements, and eschewed the use of sanctions to promote these standards. Pascal Lamy, the EU Commissioner for Trade at the time, was a fervent proponent of this new approach, popularized by him a number of influential speeches and interviews. His successor, Peter Mandelson, further developed the social dimension of EU trade policy, emphasizing the idea of "Social Europe" and the importance of promoting core labor standards across the world in a non-coercive fashion. Further, the Commission published the communications on decent work (European Commission 2006a) and employment (European Commission 2007), siding with the ILO's broad and non-binding approach (Orbie and Babarinde 2008).

The new EU approach toward international trade emerged in the mid-2000s when the Commission published its communication titled "Global Europe: Competing in the World" (2006b). The proposed strategy signified a departure from the previous approach prioritizing the multilateral trade regime and sought to actively negotiate bilateral FTAs to increase access to new markets for EU producers which would boost their global competitiveness. This was part and parcel of the "competitive liberalization" initiated by the United States when it embraced bilateralism under the Bush administration (Sbragia 2010). The communication does mention

making sustainable development issues, including labor and the environment, part of these FTAs but does not go into specific details about how they should be addressed, prioritizing the goals of economic competitiveness.

Thus, sustainable development issues were put on the sidelines of the new Commission's approach which was not welcomed by civil society, trying to bring those issues to the attention of EU trade officials ever since the end of the 1990s. Orbie et al. (2011) also point out that the EU commitment to core labor standards in its trade policy in general and bilateral agreements in particular became subordinated to commercial considerations, citing the broad scope of behind-the-border provisions which prioritize other important issues, such as competition, investment, and transparency in government procurement, at the expense of social provisions.

As sustainable development was put on the agenda of EU trade policy, the Commission also introduced in 1999 the sustainability impact assessments (SIAs) which since then became an integral part of all EU agreements. The SIAs are conducted prior to and during the agreement negotiation stage. Their goal is to explore the social and environmental effects of trade liberalization on an agreement partner and help the Commission formulate its position. The next section traces the evolution of labor and environmental provisions from the time they were first included by the EU in its bilateral agreements (EU-Chile) to the time they became an integral part of the new generation of trade agreements (EU-South Korea).

3.3. Social Standards in EU PTAs with Chile and South Korea

The EU concluded the FTA with Chile as a part of the broader association agreement (AA) in 2002, and the agreement entered into force in 2003. It is among the so-called old generation

bilateral agreements signed by the EU. According to Dür (2007), the rationale for negotiating the agreement can be attributed to fears about losing competitiveness among EU exporters. This fear stemmed from the attempts by the United States to negotiate a Free Trade Agreement of the Americas (FTAA) which would extend NAFTA to include Chile and the desire by the EU to achieve parity with the FTAA. This decision to pursue a bilateral agreement with a Latin American country also signified the departure from the commitment to inter-regionalism in dealings with countries of the Southern Cone evidenced by the proposed association agreement between the EU, Mercosur, and Chile earlier (Garcia 2011).

Labor issues are addressed in the Article 44 of the EU-Chile FTA, which is devoted to broader cooperation on social issues. The article makes a reference to the importance of ILO conventions but does not specify that the content of domestic laws needs to be harmonized with ILO rules.²⁹ Modernizing labor relations, working conditions, and social security are mentioned as broad priorities for the parties. No particular means of enforcement are envisioned and the implementation mechanisms are not specified. The participation of civil society from both sides is mentioned with regards to social cooperation in the separate Article 48.

Cooperation on the environment is covered in the Article 28 under Title 1, focusing on economic cooperation. Preservation of the environment and fighting environmental degradation is stated as a goal. The article also mentions the importance of improving Chile's environmental policies and talks about information sharing and joint research and educational activities but does not specify any precise mechanisms for implementing these objectives. There are also no references to concrete means of enforcement. Labor and environmental provisions are also not

²⁹ The ILO Declaration on Fundamental Principles and Rights at Work specifies the core labor rights as: 1) freedom of association and the effective recognition of the right to collective bargaining; 2) the elimination of all forms of forced or compulsory labor; 3) the effective abolition of child labor; and 4) the elimination of discrimination in respect of employment and occupation.

legally binding in the EU-Chile FTA, unlike many other non-trade issues included in the agreement.

The EU-South Korea (KOREU) FTA was signed in 2010 and entered into force in 2011 and is the first one among the new generation of bilateral FTAs negotiated by the EU. The agreement builds on already strong and increasing trade and investment flows between the EU and South Korea and is quite similar to the U.S.-Korea FTA, except for social provisions described below (Cooper et al. 2011). For the first time, labor and environmental issues are dealt with together in one chapter dedicated to sustainable development (Chapter 13). The EU-South Korea agreement is also the first one to make the chapter on sustainable development legally binding. Chapter 13 is supposed to be used as a model for all future EU FTAs.

Labor issues are addressed with reference to the ILO core labor standards. The agreement also commits South Korea to the ratification of all ILO conventions which it has signed.³⁰ As far as the coverage of environmental issues is concerned, the FTA stresses the importance of multilateral environmental agreements (MEAs), including the Kyoto protocol, signed by the parties and their effective implementation into domestic laws. The agreement also specifies that the parties can retain their domestic level of social regulation, as long as it is consistent with international standards, but cannot weaken labor or environmental protection for the sake of gaining an unfair competitive advantage in trade (Articles 13.3 and 13.7).

The KOREU FTA envisions a consultative approach towards the implementation of social standards which would include reviews of sustainability (Article 13.10), governmental cooperation, including the establishment of domestic advisory bodies and the Committee on Trade and Sustainable Development (Article 13.11), and the participation of civil society actors through a civil society dialogue mechanism, known as the Civil Society Forum (Article 13.13).

³⁰ At the time of signing of the agreement, South Korea had only ratified four out of eight ILO conventions.

The Chapter also envisages a soft mechanism of dispute resolution which is supposed to be conducted through inter-governmental consultations and the appointment of a panel of experts whose decisions will be only recommendatory in nature. Non-compliance with decisions made by these panels will not be sanctioned and the parties are encouraged to come to a mutual understanding regarding the matters of dispute.

Table 1 below compares the coverage of labor issues in EU FTAs with Chile and South Korea. Several observations can be made. First, the EU has increasingly opted for the reliance on international rules when dealing with labor and the environment in its bilateral FTAs instead of trying to export its Social Europe agenda³¹ and the elements of its comprehensive environmental policy. Second, there has been a move towards making labor issues more legally binding. Third, the means of enforcement remain soft. There is no mentioning of withholding trade privileges as a sanction for failure to enforce labor or environmental provisions. This has led some scholars to argue that social provisions in EU FTAs are unlinked from trade and constitute only a part of the broader political dialogue with agreement partners. As Orbie and Babarinde (2008: 473) put it, “huge walls between the trade regime and the social regime” characterize the EU’s external trade agenda despite the inclusion of social clauses into bilateral agreements – the approach quite distinct from that of the United States.

The emphasis on political dialogue when dealing with social provisions in FTAs is also quite different from the traditional EU conditionality, used when dealing with both countries in the neighborhood and countries in the EU Generalized System of Preferences (GSP) or the

³¹ The idea of Social Europe refers to the principle of balancing economic growth with social development which can be viewed as the foundational principle of the EU’s legislation in the field of social policy. Five main characteristics of Social Europe are: 1) fundamental social rights, including freedom of association and the right to strike; 2) social protection and wealth redistribution measures; 3) social dialogue and consultation with workers; 4) social and employment regulation; 5) state responsibility for full employment, services of general interest, and economic and social cohesion (<http://www.etuc.org/european-social-model>).

Common Foreign and Security Policy (CFSP).³² The next three sections analyze key actors' preferences with regard to social standards in the reviewed FTAs.

Table 1: The Design of Social Provisions in EU PTAs

	Scope		Enforcement		Legally binding	
	Labor	Environment	Labor	Environment	Labor	Environment
EU-Chile FTA	ILO standards	Domestic rules	Soft measures	Soft measures	No	No
KOREU FTA	ILO standards	International and domestic rules	Soft measures	Soft measures	Yes	Yes

3.4. Actors' Preferences

According to the theory outlined in Chapter 2, societal actors' preferences are derived deductively from the Stolper-Samuelson theorem, i.e. in terms of losses and benefits accruing to actors from trade liberalization, as well as their institutional roles in the EU trade policy-making

³² GSP provisions envision withholding trade privileges for violating the human rights clauses and have been enacted several times, for instance in the cases of human rights violations in Belarus and Burma.

in the absence of such material effects. First, I analyze the preferences of societal actors, including various interest groups. Next, I explore the preferences of the Member States' governments, i.e. legislators in the EU Council of Ministers or principals. Then, I look into the preferences of the agents, i.e. trade policy executives in the European Commission.

3.4.1. Societal actors

There are multiple societal actors, such as labor groups, environmental NGOs, and organized businesses who lobby the EU to realize their preferences with regard to social standards in trade agreements. As far as labor issues in EU FTAs are concerned, organized labor is the key constituency represented nationally by their respective national labor unions and by the European Trade Union Confederation (ETUC) at the EU level. According to the theory of international trade, labor in the developed world is a scarce factor of production negatively affected by trade liberalization, especially since capital would find it easier to escape to other jurisdictions with lower labor costs, according to the race to the bottom logic. The latter is also known as social dumping in EU parlance. The fear of social dumping on the part of organized labor in the EU has been well documented.

The ETUC which is composed of the trade unions from the Member States aggregates labor interests across the Union and lobbies EU institutions directly on their behalf. It is the top level of labor interests' representation in the EU and the most effective lobbyist who can exert leverage at the highest political level. The ETUC has been an active defender of EU workers' interests concerning multilateral and bilateral trade liberalization whose major interest was to

protect labor across the Union from potentially adverse effects of FTAs with Chile and South Korea and, perhaps to a lesser degree, also improve labor conditions in those countries.

The ETUC was never in favor of the shift in the EU trade policy toward bilateralism. It stated that “the EU is in danger of missing a historic opportunity to use its capacity to promote development and fair international exchange, to create the basis for a new approach to external relations” (ETUC 2006a). As bilateralism became the reality, it wanted new agreements to protect the workers’ rights following the EU’s own Charter of Fundamental Rights (ibid) – a very comprehensive interpretation of labor rights that departed widely from the Commission’s view. In its resolution dealing with the Commission’s communication “Global Europe: Competing in the World” the ETUC expressed its “disagreement with the proposed general reorientation of European trade policy in favour of an extremely aggressive liberalisation agenda in the developing countries, without consideration for possible social and ecological implications, both positive and negative” (ETUC 2006b). It insisted on the inclusion of social dimension in bilateral agreements to make them the vehicles of improving workers’ conditions in EU trading partners and lamented about the absence of such dimension in the new Commission’s agenda.

As far as the role of the ETUC in the EU-Chile FTA is concerned, Kerremans and Gistelinck (2009) describe the efforts by the ETUC to advocate for the inclusion of more labor rights in trade agreements in the early 2000s but note that such efforts were generally unsuccessful, as the final texts of FTAs contained only vague social provisions. Concerning the EU-South Korea agreement, the ETUC expressed its concern with the fact that South Korea was the only Organization for Economic Cooperation and Development (OECD) member not respecting basic workers’ rights, such as freedom of association, and stated that the exclusion of

the ILO core labor standards from the EU-South Korea would be “totally unacceptable” (ETUC 2006b). South Korea has only ratified four out of eight ILO conventions, which was viewed as worrisome by the ETUC (author’s interview May 31, 2012). In terms of the agreement scope, it wanted a rather broad coverage of social issues that would include not only the ILO core labor standards but also additional social rights prevalent in the EU, such as the right to employment and protection of maternity, as well as occupational health and safety. Thus, it desired to see the EU relying not only on the international norms and standards but also exporting parts of its own domestic regulation through FTAs: “*Europe should seek to project its standards outside the Union through all its policies*” (ETUC 2006b, italics mine).

In terms of agreement implementation, the ETUC called for the creation of a social dialogue committee on a tripartite basis which would include labor groups from both the EU and its agreement partners. Importantly, the ETUC wanted the EU to be much more assertive about the enforcement of the agreements’ labor standards. It looked admirably at the example of the United States that uses the sanctions approach to enforce its own labor provisions and was dissatisfied with the lack of it in EU agreements. As stated by an ETUC representative, it is “not enough to have sustainable development chapters; the question is how to enforce [them]” and “the EU always says ‘no’ to sanctions and that’s really the heart of the problem” (author’s interview May 31, 2012). The interviewed ETUC representative also lamented how “The Commission says that the U.S. has sanctions and nothing comes out of it and there should be cooperation process but we would like [to see] both!”

The European Parliament (EP) is another institution that represents societal interests in the EU. Therefore, its input in the making of trade agreements needs to be considered when dealing with societal preferences. An important aspect of EP activity is that it needs to balance

inputs from various societal actors, including both industry and labor and environmental groups, as stated by one interviewed member of the EP (MEP) from the International Trade Committee (author's interview June 29, 2012a). The role of the EP in the EU-Chile negotiations was very negligible as historically the EP did not play any role in trade agreements ratification. During the negotiation stage of the KOREU FTA, the International Trade Committee published a report where it advocated for the establishment of a comprehensive social development chapter and complained about the lack of enforcement of labor standards in the FTA, also referring to the example of U.S. FTAs and their sanctioning mechanisms as a model for this chapter. It stated that the

“effective enforcement also requires that the Sustainable Development chapter is subject to the same dispute settlement treatment as other components of the agreement. The US Administration and Congress having agreed that ‘all of our FTA environmental obligations will be enforced on the same basis as the commercial provisions of our agreements – same remedies, procedures, and sanctions,’ it is hard to see why Europe should settle for less” (European Parliament 2007: 9).

The EP wanted the EU to rely on the ILO core labor standards and additional multilateral conventions as well as the EU's own Decent Work Agenda. It insisted on making the tariff reduction conditional on the successful implementation of social standards, which was outlined in its resolution on human rights and social and environmental standards in trade agreements. The EP also wanted the FTA to be more legally binding than what was considered at the time by the Commission by opening the dispute settlement procedure to all social partners and making recourse to it equal with other parts of the agreement (European Parliament 2010).

In sum, actors in both the ETUC and the EP wanted labor provisions in EU's FTAs to be in line with the ILO core labor standards and conventions, but also include some of the elements of the EU's own domestic regulation and preferred a legally binding approach with stringent enforcement of these standards modeled after the U.S. approach.

The European Economic and Social Committee (EESC), a tripartite consultative body representing both employers and employees in the EU policy-making process, also provides a forum for societal actors to express their preferences on international trade issues. During the negotiation of the EU-Chile FTA, the EESC was explicitly concerned with social dumping and the lack of labor rights protection in Latin America, highlighting the importance of "social dimension" in EU agreements (EESC 1999). It insisted that the ultimate goal of trade liberalization is to promote economic and social development and was adamant about including the ILO core labor standards in the agreement's social provisions, making them a priority for the EU's position, along with the general commitment to the protection of human rights (EESC 2001). It also wanted a greater participation of civil society from both the EU and Chile during the negotiation and implementation phases of the agreement in the form of consultative bodies (ibid).

During the negotiation of the KOREU FTA, the EESC was again explicitly concerned about social dumping, especially in the so-called free zones in agreement partners, which might be exempt from the normal national regulation and the ILO standards. In terms of the implementation, the EESC wanted the EU to make the ratification and implementation of eight basic ILO conventions the prerequisite for bilateral trade negotiations. It also wanted the EU to stress other four conventions dealing with health and safety issues and labor inspections. Importantly, the EESC's position also included the development of national decent work

programs in agreement partners, modeled after the EU's own approach towards its internal market (EESC 2008).

As far as the enforcement is concerned, the EESC stressed the robust input of civil society from both the EU and its trading partners and providing financial assistance for the implementation. It envisioned the delegation of monitoring of the implementation to local and regional bodies and imposing sanctions in the case of infringement of agreements' labor provisions (ibid). Overall, as an interviewed representative of the EESC stated, it was satisfied with the progress made from the EU-Chile to the EU-South Korea agreements in terms of the involvement of civil society in the monitoring process but was more critical about its role during negotiation process (author's interview June 5, 2012b).

Like elsewhere, environmental interests in the EU represent a more diffuse constituency than labor since the latter is a factor of production. Furthermore, there are fewer institutionalized channels for environmental activists in the EU to express their concerns, aside from trying to create publicity through media campaigns (author's interview June 25, 2012a). Traditionally, environmental lobbyists also have fewer material resources and have to rely on such strategies as naming and shaming to persuade policy-makers to enact the desired policy change.

Several environmental NGOs, including the World Wildlife Fund (WWF) and Friends of the Earth Europe, were following the EU's external trade policy during its shift toward bilateralism. However, over time environmental groups stopped their activity on this front due to the perceived ineffectiveness of their lobbying efforts. In general, environmental NGOs insisted on moving away from viewing trade liberalization as the sole objective of EU trade policy toward more synergy between trade and sustainable development and including fully fledged

environmental protocols as part of EU trade agreements (WWF 2001). The WWF has also criticized EU SIAs for failing to incorporate environmental NGOs in any meaningful way (ibid).

Hence, the decision to include environmental clauses into the EU's bilateral FTAs was viewed positively by environmental NGOs and the decision to have such clauses in the first place could be to some extent attributed to the success of environmental activists in bringing these issues to the attention of policy-makers in the late 1990s. Yet, environmental NGOs largely perceived the EU as "mercantilist," as it focused too much on export promotion at the expense of the environment (author's interview June 25, 2012a). Overall, the intensity of preferences over environmental clauses in EU FTAs was less than in the case of labor issues and environmental NGOs did not hold any specific views regarding the design on environmental provisions in EU PTAs.

Organized businesses are also a major stakeholder affected by bilateral trade liberalization. Their collective interests at the EU level are expressed through the BUSINESSEUROPE, formerly known as the Confederation of European Business, which provides a forum for forty-one national business associations from thirty-five European countries to represent their interests in Brussels and who is directly involved in lobbying EU policy-makers on behalf of European businesses. Businesses can potentially benefit from increased trade liberalization due to market expansion and the realization of economies of scale. Hence, European producers should be in favor of free trade agreements and their quick negotiation. They would also be likely to oppose provisions that can potentially impede signing an agreement. Social provisions can be such sticking points, as improving lax social standards in developing countries could be very costly and insistence on doing so might interfere with the

negotiation process, just as was the case with the WTO negotiations on labor standards in the 1990s.

Furthermore, multinational businesses might be actually in favor of laxer social standards in agreement partners since those can result in a competitive advantage for firms, allowing them to reap the benefits of cheaper labor and less stringent environmental regulations. The paper outlining the BUSINESSEUROPE strategy towards the new generation of EU bilateral agreements focuses on tariff and non-tariff barriers to trade, investment, and competition policy, leaving out labor or environmental issues (BUSINESSEUROPE 2006). It is also revealing that BUSINESSEUROPE did not address sustainable development issues at all in its main position paper on the EU-South Korea agreement, exclusively focusing on the benefits of the agreement in terms of its economic gains which would accrue from liberalizing trade in goods, services, and investment protection (BUSINESSEUROPE 2007). All other business associations in the EU and the Member States also fully embraced the agreement based on its projected benefits to EU producers (Platzer 2010).

However, it would also be increasingly irrational for businesses to deny the importance of social provisions in trade, as it might irritate the public, so eventually organized businesses started to view the inclusion of labor and environmental clauses as somewhat of a *fait accompli* (author's interview May 31, 2012). Thus, as stated by one interviewee, BUSINESSEUROPE generally had a very neutral view on the inclusion of social provisions in EU FTAs, favoring a generally softer, non-binding approach to their implementation (author's interview June 29, 2012a). As far as the environmental issues were concerned, an interviewed official has indicated that while environmental NGOs had very ambitious expectations prior to negotiations, for EU businesses the environment was not a major concern at all (author's interview June 7, 2012).

Overall, it is revealing that BUSINESSEUROPE did not adopt any official position regarding social standards (European Commission 2008).

In sum, the societal actors' positions did not change much from the time of the EU-Chile FTA to the time when the KOREU agreement was signed. Both labor and environmental groups were the main advocates of including social provisions into EU FTAs. They insisted on a greater scope, enforceability, and the degree of legal binding of social provisions, and this position remained quite constant throughout the time framework of this study. It is also noticeable that labor unions had stronger preferences and were more mobilized than environmental groups, representing a large, diffuse constituency which confirms the expectation from the previous chapter.

3.4.2. Legislators

The EU Member States are represented by the Council of Ministers that gives its approval to trade agreements negotiated by the European Commission. Already in the 1990s, when including social standards in the WTO was deliberated in the EU, different Member States had diverging views on this. For example, more conservative governments in Germany and Britain at the time were opposed to the inclusion of such standards into PTAs, whereas more social democratic governments in Belgium and France were in favor of it (Waer 1996: 26 quoted in Orbie et al. 2011). For instance, the Conservative governments in the United Kingdom led by Margaret Thatcher and John Major opposed labor rights regulations in EU trade agreements (Hafner-Burton 2009: 77).

Furthermore, there were sharp ideological disagreements among social-democratic and liberal parties within the Member States as to what extent social issues should be a part of the trade agenda as many believed they might jeopardize the overarching goal of trade liberalization (Hafner-Burton 2009; Waer 1996 quoted in Orbie et al. 2011). In 1995, when the Council created rules for new EU PTAs, extending protection of labor rights, France, Ireland, the Netherlands, and Portugal were led by Socialist or Labor parties who viewed such protections very favorably. Furthermore, governments of the three new EU members, Austria, Finland, and Sweden, were also social-democratic (Hafner-Burton 2009: 79).

Notably, the French presidency attempted to build compromise in the late 1990s but was unsuccessful which led to a vague stance of the Council of Ministers during the Marrakesh ministerial conference and pushed social issues on the sidelines later during the Singapore ministerial conference (Orbie et al. 2011). Only under the majority of social-democratic governments was the EU able to formulate a coherent stance on social issues in the WTO at the Seattle ministerial conference in 1999.

Similar political dynamic was also evident in the area of the environment. Some Member States, especially the Nordic countries, tried to make the environment a bigger part of the EU trade agenda, using such channels as the EP's International Trade Committee, while others were more cautious (author's interview June 7, 2012). Elsig (2007) notes that EU enlargement only increased the degree of heterogeneity among the governments with regard to these issues.

As far as the Member States' specific position on the EU-Chile agreement is concerned, the Council's Working Party on Latin America mentioned in its position paper strengthening cooperation on sustainable development issues but did not make any specific points about the extent of this cooperation (Council 2001). The EU General Affairs Council Conclusions on EU-

Latin America relations also mention social provisions, including strengthening environmental cooperation, but do not specifically link them to trade (Council 2006).

Bossuyt (2009) notes that the Member States in the Council were generally in favor of including social provisions in FTAs but these issues were not treated as a priority and the Council conclusions preceding the negotiation of the new generation of FTAs made only a few vague statements regarding sustainable development issues. She also points out that in the wake of EU-South Korea negotiations there was no unanimous agreement among the Member States as to what extent social issues should be addressed. For example, with regards to the KOREU FTA, Germany, Belgium, Denmark and, surprisingly, the UK, all had a high level of ambition as far as the inclusion of social provisions was concerned, whereas other countries, such as Poland, had no clear preference on these issues. She concludes that social provisions became almost a non-issue for the Council of Ministers.³³ According to one interviewed MEP from the International Trade Committee, the relative importance attached to social issues depends greatly on the composition of the Council of Ministers in terms of the prevalent party ideology with social-democratic government paying more attention to labor and the environment (author's interview June 29, 2012a).

In sum, there was no clearly identifiable collective preference of the Member States' governments as to what extent sustainable development issues needed to be addressed. Overall, governments wanted to include social provisions in bilateral FTAs but had no well formulated position on their scope, enforceability, and the degree of legal binding, reflecting heterogeneity among them.

³³ She further notes that this divergence in interests only enhanced the entrepreneurial role of the Commission and that the EU would most likely not have been promoting social standards had it not been for the Commission's agenda.

3.4.3. Executives

As mentioned in Chapter 2, I arrive at trade policy executives' preferences deductively, in the same way I treated the preferences of societal actors, assuming that executive policy preferences are institutionally derived. The interview data collected for this study helps to illustrate this point. Who are the EU trade executives? Although DG Trade in the European Commission is entrusted with negotiating trade agreements, formulating the overall trade policy agenda, other DGs provide their input on the matters related to their realm of competence. DG Employment, Social Affairs & Inclusion and DG Environment help DG Trade to set the agenda for labor and environmental clauses in trade agreements respectively. However, DG Trade has a clear dominance due to the hierarchy of policy issues with trade being on top of the agenda (author's interview June 18, 2012c).

What accounts for the preferences of EU trade policy executives? As argued above, these preferences can be derived from the institutional position of European Commission officials in the EU policy-making process, which endows them with the role of the "guardians of the Treaty" expected to advance the goal of ever-closer union outlined in the Treaty of Rome (1957) and further developed in the subsequent treaties. Thus, the overarching preference of the European Commission can be discerned from the foundational documents laying out the EU's approach toward its foreign economic policy, in line with a certain idea of Europe and how it is viewed by Commission officials based on their institutional role.

Two main documents outline the basic features of the EU's approach toward social standards in trade agreements. The "social dimension of globalization" approach promoted by Pascal Lamy emphasizes the importance of the ILO core labor standards and social cooperation

in a non-binding, non-coercive fashion (European Commission 2001). The “global Europe” approach was advanced by Peter Mandelson in 2006 with the publication of “Global Europe: Competing in the World.” It prioritized trade liberalization, but also aimed at linking trade with sustainable development that would include both labor and the environment under the same heading.

Thus, as far as the scope of social issues is concerned, the officials in the European Commission had a strong preference for relying on international rules when dealing with both labor and environmental standards in the EU’s bilateral agreements, thereby demonstrating the EU’s strong commitment to a multilateral approach in world affairs. What were the reasons behind this preference? Commission executives, pre-occupied with negotiation’s success, maintained that the EU’s own rules could not be “the common ground” by default and, therefore, international labor standards and MEAs should be used instead, which would in turn influence negotiations’ success (author’s interview June 18, 2012a).

As far as the enforcement of social provisions is concerned, the Commission always expressed a clear preference toward a soft, no-sanctions approach, both in the old and new generation of EU agreements. Sanctions were perceived as being ineffective and jeopardizing the EU’s overall commitment to a political dialogue on the world stage. Peter Mandelson (2006) summarized the EU’s approach toward the new generation of trade agreements in the following way:

“The EU has always rejected a sanctions-based approach to labour standards – and that will continue. But equally, we can do more to encourage countries to enforce basic labour rights, such as the ILO core conventions, along with environmental standards - not simply in principle, but in practice. Cooperation and social dialogue are certainly important. Transparency, through an

independent mechanism, will also help us highlight areas where governments should take action against violations of basic rights. We are also considering an incentives approach.”

Interviews with Commission officials involved in trade further support this view. An official from DG Trade has stated: “Why don’t we have sanctions? Because the question is – do you improve the conditions there? And with sanctions you end at your starting point” (authors interview June 19, 2012). Another official pointed out that trade is only one part of the EU’s foreign policy and that it is important for the EU to maintain a consistent approach toward its external relations, which would help it ascertain its international identity of an actor preferring cooperation and dialogue to coercion (author’s interview June 18, 2012a). A different interviewee has stated that the EU “is not an organization that would go first for punishment; the philosophy that defines the EU is that of a compromise” (author’s interview June 13, 2012).

As stated by a top official from the cabinet of the EU Commissioner for Trade, Karel de Gucht, the Commission also believed that the use of trade bans remains limited under the WTO law and sanctions might potentially contradict it, which would compromise the EU’s overall commitment to multilateralism in world affairs (author’s interview June 19, 2012). Furthermore, the majority of international labor and environmental treaties do not allow resorting to sanctions, and it was important for the EU to follow their spirit (author’s interview June 18a, 2012). The Commission also wanted to differentiate itself from the United States while negotiating social provisions by maintaining a very different “attitude” toward similar issues covered in U.S. PTAs, which indicates the importance of the EU’s international identity as a source of executive policy preferences (author’s interview May 29, 2012). One high-profile official aptly summarized it in the following way:

“[Having sanctions] would also put us in a position of a moral policeman of the planet – who are we? Are our values more superior to other values? Probably not. Don’t we have our problems? There might be companies that pollute, there may be labor abuses. We need to have in the Sustainable Development chapter just enough to make it meaningful but you cannot have change if the punitive measures are very strong” (author’s interview June 19, 2012).

As mentioned earlier, the EU-Chile agreement is the first EU FTA to include labor and environmental provisions, albeit in a non-legally binding fashion. The labor provisions relied on the ILO core labor standards while the environmental ones stressed the implementation of domestic environmental norms. Enforcement was also virtually non-existent. The interview record shows that the level of ambition of the European Commission concerning social standards in the EU-Chile agreement was rather modest.

Pascal Lamy in his speech in Santiago preceding opening of the negotiation stated that the EU wants “to make trade liberalisation fully compatible with domestic policies aiming at sustainable development” and called “for the definition of standards on workers’ fundamental rights, environmental protection” (Lamy 2000). As one interviewer from the EP’s International Trade Committee stated, DG Trade headed by Pascal Lamy was not much concerned with social issues in the EU-Chile FTA due to the fact that the Chilean government at the time was social-democratic (author’s interview June 25, 2012a). Both labor and the environment were part of the political cooperation part of the agreement, so the Commission insisted on making them not legally binding since doing otherwise would not resonate well with the EU’s approach toward international cooperation whereby the EU cannot “dictate” other countries what to do (author’s interview June 18, 2012a).

Furthermore, soft implementation of social clauses in the EU-Chile agreement which would include the civil society was viewed as “the learning by doing process” for both sides (author’s interview June 13, 2012). The European Commission also believed that bringing civil society on board during the implementation stage of both the EU-Chile and the EU-South Korea agreements was crucial, as peer pressure was thought to be more effective than sanctions (author’s interview May 29, 2012). DG Trade officials thought that the implementation and monitoring conducted through cooperation and consultation with civil society actors could be effective in terms of putting pressure on the authorities and shaming them into compliance with sustainable development clauses (author’s interview May 29, 2012).

The European Commission’s position on the degree of legal binding of labor and environmental standards has also evolved from the time of the EU-Chile FTA to the time of the EU-South Korea agreement. The officials in DG Trade decided that sustainable development provisions should be made legally binding and should be made part of the trade agreement proper. The reasons cited by an interviewed DG trade official were that the EU saw itself not only as an open market but also a socially oriented economy (author’s interview June 19, 2012). Overall, the interviewed Commission officials were quite positive in their assessment of the design of social provisions in both the EU-Chile and EU-South Korea FTAs, believing that the current provisions will work in practice. The Commission’s preferences on the two agreements are also fully in line with the “social dimension of globalization” and “global Europe” approaches which laid out the foundation for the EU trade policy, including the role of social issues in it.

In sum, the EU has become a major promoter of multilateralism when dealing with labor and the environment in its trade agreements, similarly to other trade-related issues comprising

the deep trade agenda, such as intellectual property rights (author's interview June 21, 2012). As the interview data shows, promoting multilateralism in world affairs was the overarching normative preference of executives in the European Commission entrusted with the making of EU trade agreements. This commitment to dialogue and multilateralism was seen as the role the EU should play in the global economy and was how trade policy executives interpreted the EU's institutional identity, constructing it in a differing way from their major "other," i.e. the United States with its coercive approach.

3.5. Agreement Design

As the previous section has shown, the preferences of principals and agents diverged significantly in terms of the scope, enforcement mechanisms, and the degree of legal binding of social provisions in the FTAs analyzed here. Table 2 below demonstrates that societal actors' preferences were never reflected in the final texts of these agreements. It is evident that the executives' preferences undoubtedly trump those of the societal actors as far as labor and environmental provisions in the EU-Chile and EU-South Korea FTAs are concerned. Societal actors in the EU never managed to realize their interests with regards to social standards. The next section explores how executive preferences became to determine the design of EU PTAs' social standards and the institutional mechanisms that played a critical role in this process, utilizing the principal-agent approach introduced in Chapter 2.

Table 2: EU Societal Actors' Preferences and the Agreement Design

	EU-Chile (2003)	EU-South Korea (2011)
Preferences (labor and environmentalists)	<p>Scope: <i>EU rules and int'l rules</i></p> <p>Enforcement: <i>sanctions</i></p> <p>Legally binding: <i>yes</i></p>	<p>Scope: <i>EU rules and int'l rules</i></p> <p>Enforcement: <i>sanctions</i></p> <p>Legally binding: <i>yes</i></p>
Agreement design	<p>Scope: <i>nat'l rules, ILO standards</i></p> <p>Enforcement: <i>weak, civil society dialogue</i></p> <p>Legally binding: <i>no</i></p>	<p>Scope: <i>nat'l rules, ILO standards, multilateral environ. agreements</i></p> <p>Enforcement: <i>weak, civil society dialogue</i></p> <p>Legally binding: <i>yes</i></p>

3.6. Institutional Dynamic

The EU trade policy has a supranational arrangement – authority is delegated by the Member States represented in the Council of Ministers to the European Commission, which acts as the agent of national governments entrusted with negotiating trade agreements. This delegation of authority to the supranational agent has been the case since the signing of the Treaty of Rome and the creation of Common Commercial Policy in 1957. Thus, the Commission acts as the primary agenda-setter in the EU trade policy (Meunier 2005). It drafts the negotiating mandate

that needs to be discussed and approved by the Article 133 Committee in the Council of Ministers that consists of senior trade officials from the Member States' governments chaired by the rotating Council presidency and acts through qualified majority voting (QMV).³⁴ This is a primary *ex ante* control mechanism used by the principals. However, throughout the 1990s, as trade-related issues were increasingly put on the agenda, both the scope of delegation to the agent and control mechanisms used by the principals were expanded simultaneously, as expected by the principal-agent theory (De Bièvre and Dür 2005). This resulted in the so-called arrangement on “mixed agreements” in 1995, where Member States' governments retained veto power on certain trade-related issues, such as intellectual property rights, trade in services, and social provisions (Meunier and Nicolaïdis 1999).³⁵ This veto is an important *ex post* control mechanism devised by the principals.

“Mixed agreements” should have allowed governments to remain in control seat. However, they also became laden with a sense of confusion because it is not clear what exact parts would need to be ratified by parliaments and what effect national ratification would have after the EU signed an agreement (author's interview May 31, 2012).³⁶ Furthermore, as shown above, the Member States already had diverging views on social standards in the 1990s, when they were first discussed in the WTO context. Orbie and Babarinde (2008) point at the lack of both vertical and horizontal coherence in the EU's promotion of social trade agenda, which is a function of disagreements among the Member States over the desirability of certain development

³⁴ Woolcock (2010) notes that QMV is rarely applied in the Article 133 Committee and most of the decisions are consensus-based.

³⁵ The practice of “mixed agreements” came to an end with the Treaty of Lisbon entering into force in 2009 and the Commission assuming full competence over the whole spectrum of trade issues.

³⁶ Perhaps for this reason the Commission would rather prefer to discontinue mixed agreements altogether (author's interview, June 19).

goals and over different foreign policy priorities for the Union. Bossuyt (2009) also finds that many Member States had only vague ideas about social issues in trade.

Thus, there was no clearly identifiable collective preference of the principals, the Member States in the Council of Ministers, over the extent to which sustainable development issues needed to be addressed in EU PTAs. Governments wanted to include social provisions but could not come up with a well formulated position on their scope, enforceability, and the degree of legal binding. Therefore, the negotiating mandate given to the agent to act upon was rather ambiguous, diluting the effectiveness of this particular *ex ante* control mechanism and leaving it open for interpretation by the agent.

As stated in Chapter 2, the degree of principals' control is inversely proportionate to their number and disagreements among them. The previous sections have shown that the preferences of the governments of the Member States and interest groups were rather inchoate and potentially conflictive. In many instances, those preferences also significantly differed from those of the agent. These disagreements increased the agent slack, enabling trade executives in the Commission to pursue their own agenda.

Thus, DG Trade officials had to act strategically, foreseeing potential differences among the governments and balancing carefully among various ideological platforms when designing PTAs' social standards. An attempt to export the EU's own social policy through PTAs and make social provisions more enforceable through sanctions, favored by labor and environmentalists, could certainly invite a harsh response from more liberally oriented Member States, whereas not paying enough attention to social concerns would likely displease social-democratic governments. Therefore, Commission officials needed to be "careful," "testing the waters" when they drafted the negotiating mandate in order to find the appropriate "balance" that

would not be “too tight” to obstruct negotiations, according to an interviewed representative of the Council of the EU’s DG on Foreign Affairs (author’s interview June 18, 2012a).

As a result, in the institutional environment characterized by the uncertainty over preferences of the principals, the reliance on ILO rules and MEAs became a way for the European Commission to satisfy the Member States in order to avoid potential conflicts (author’s interview June 18, 2012b). As one EU trade official has noted: “with twenty-seven Member States we are trying to make decisions that everybody could live with” (author’s interview June 13, 2012). All EU members have ratified all eight ILO conventions so they can serve as “the focal point” or “the common denominator” (author’s interview June 13, 2012).

As the Council of Ministers composed of national executives is the main actor in EU trade policy and the European Parliament’s role has been inconsequential, EU interest groups became distanced from key principals and could not use accountability mechanisms available when the principals are directly elected.

Due to shared competencies between the Commission and national governments over “mixed agreements,” interest groups are prompted to lobby at several different levels, including the Commission itself, the Council of Ministers, legislators in the European Parliament, and national executives. Thus, interest groups could also use other channels, in addition to their connection with the principals when this connection proved to be weak. Thus, interest groups actively engage in venue-shopping, projecting at what level their lobbying efforts will be most successful and chose lobbying venues correspondingly, be that at the level of Member States’ governments or the level of EU institutions.

However, scholars have found that the over-supply of lobbying channels contrasted with the scarce resources of interest groups poses a real problem and undermines lobbying

effectiveness (Long and Lörinszi 2009). The multi-level nature of the EU decision-making system makes lobbying efforts more diffuse and less effective, as societal interest groups need to target different levels of government simultaneously, which is especially problematic for labor unions and environmentalists as they lack crucial resources. Furthermore, lobbying in the EU differs from that in national systems and has been traditionally top-down, with the Commission itself playing a central role in terms of selecting interest groups whose input it wants to have in the policy-making process (Woll 2009). Brussels has become the prime location for interest groups' venue shopping in terms of securing best access to policy-makers and influence over outcomes (Long and Lörinszi 2009). This has been especially relevant for EU external trade policy, as the Commission used top-down lobbying as a mechanism to increase its legitimacy of the agenda-setter, much like in other issue areas (Broscheid and Coen 2007; Coen 2007).

In 1998, the Commission created a novel institutional mechanism for interest groups to voice their concerns about the EU trade policy, known as the Civil Society Dialogue (CSD). It includes various civil society actors, such as public and private actors' associations, NGOs, and businesses that regularly meet with Commission officials and receive updates about the course of trade negotiations. Through the CSD, the Commission can give preferential access to various groups, which further enhances its legitimacy of the agenda-setter in the EU trade policy. Interest groups are encouraged to use this mechanism to provide their input in the negotiation process.

However, the CSD plays only a consultative role, and societal actors are not able to directly influence the course of negotiations and are not given access to the negotiation texts, which makes it largely ineffective in terms of lobbying (Jarman 2011). As mentioned by one Commission official, the Commission uses the Civil Society Dialogue as a mechanism to simply

provide “an update on the course of events” and they are not bound by the comments received from their interlocutors there (author’s interview June 7, 2012).

Interests groups have voiced their concerns in the CSD about both the EU-Chile and EU-Korea agreements, as evidenced by the published CSD minutes, but realized their influence was only negligible (author’s interview June 7, 2012). Thus, the CSD could play only a minor role and societal actors were not able to directly influence the course of FTAs’ negotiations and were not even given access to negotiation texts. This has become their major complaint to the Commission (author’s interview May 31, 2012).

Lobbying became particularly difficult for environmental NGOs, lacking crucial material resources even more than organized businesses or labor. For example, at the beginning of the era of bilateralism in the EU trade policy, the WWF advocated for making the Commission’s negotiating proposal open to all stakeholders (WWF 2003); however, it did not succeed. As one interviewee noted, eventually “WWF realized they were pretty marginal when knocking on the EU’s door as it could not make an impact on the mental framework of the Commission” (author’s interview June 25, 2012a). Perhaps, the best indication of the inability of environmental NGOs to lobby the EU successfully and seriously influence the agenda of the European Commission with regard to environmental provisions in FTAs is the fact that both the WWF and the Friends of the Earth Europe eventually abandoned working on EU trade policies all together. The perceived ineffectiveness of bilateral trade agreements as a channel to promote environmental norms in the developing world was cited by the interviewed representatives of environmental NGOs (author’s interview June 27, 2012).

The CSD is not the only mechanisms which interest groups can use to influence Brussels officials working on trade. Other EU institutions mentioned above societal interests can provide

additional channels for societal actor lobbying at the EU level. The EP and the EESC are both supposed to act as representatives of civil society in Brussels. However, the role of the European Parliament in trade policy has been inconsequential during the timeframe of this study and did not change until after the ratification of the Treaty of Lisbon in 2009.³⁷ As revealed by one interviewed official from DG Employment, there were some discussions between the EP and the Commission over the course of FTA negotiations which not have any direct effect on the agreement outcomes, as EP resolutions were only the way to express opinion and the Commission thought it could pursue its own approach (author's interview June 7, 2012). As stated by one interviewee from in the cabinet of the Commissioner for Trade, Karel de Gucht, the EP is viewed inherently with suspicion by the Commission as the epitome of protectionist interests in the Union (author's interview June 19, 2012).

In the same vein, the EESC performs only a consultative function in EU policy-making and did not play any role in the negotiation process. Interest groups were also not successful in using SIAs created by the Commission and, as scholars note, SIAs had very little actual impact on the course of negotiations, remaining largely an “academic exercise” (Raza 2007: 80 quoted in Orbie et al. 2011).

In short, the EU's institutional arrangement on trade policy-making contributed to the weakness of control by the principals over the agent. *Ex ante* control mechanisms in the form of vague mandate proved to be weak and there was no expansion of *ex post* control mechanisms since the 1995 arrangement, which was also rather ambiguous. This vagueness came as a result of disagreements among the principals, i.e. legislators in the Council of Ministers. Societal interests not well connected with the principals had to rely on the top-down lobbying instituted

³⁷ Please note that even though the KOREU FTA was the first FTA that had to be ratified by the EP, the latter was not involved in the negotiation process which started several years before the institutional reform finalized by the Treaty of Lisbon.

by the agent itself. This has greatly contributed to agency slack in the making of EU PTAs' social standards.

As a result, the European Commission was able to act as a policy entrepreneur, shaping the agreement agenda.³⁸ It acted strategically to account for potentially conflicting preferences among the principals and designed agreement provisions accordingly, while at the same time advancing its own preferences regarding the role of labor and the environment in EU agreements. In doing so, it resorted to international rules, i.e. ILO standards and MEAs (author's interview June 18, 2012b). These international standards are defined very broadly and represent the least controversial, most minimal set of principles, echoing the interests of all involved parties. They also reflect best the agents' own ideas. In other words, appeal to international rules allowed DG Trade officials to circumnavigate the main *ex post* control mechanism, i.e. the Member States' veto power over "mixed" agreements.

The institutional memory about the Member States' disagreements over social issues at the WTO in the 1990's explains the strategic approach used by the Commission during FTA negotiations. Commission officials used vague institutional mandate given by the principals, when negotiating social issues in FTAs to pursue its own agenda, simultaneously accounting for the possibility of divergent positions among the various Member States. This strategizing was a way for the executives in DG Trade to also act upon their own normative beliefs. According to one trade policy official: "If in the past we had problems with certain Member States we try to be

³⁸ Mintrom (1997) defines policy entrepreneurs as political actors who promote policy ideas. Pollack (1997) further argues that the European Commission has three necessary characteristics of a successful policy entrepreneur, such as expertise, brokering skills, and institutional persistence which endows it with a comparative advantage relative to other potential agenda-setters. The important requirement for a policy entrepreneur is not the formal agenda-setting rules but the provision of a certain ideas around which bargaining can converge and without which no equilibrium is possible.

cautious, but we are going to speak to [our] principles first and then try to solve it with the Member States” (author’s interview June 13, 2012).

European Commission officials did pay attention to the demands of civil society and the fact that labor and the environment, treated separately in the EU-Chile FTA, became a part of a more comprehensive sustainable development chapter in the EU-Korea FTAs can be attributed to the pressure of civil society groups, as stated by one high-level EU official (author’s interview June 29, 2012a). However, due to the top-down lobbying this societal pressure was carefully evaluated by the Commission officials in the light of their own normative preferences about the appropriate role of the Union in international trade. It also resonated with the Commission’s own new approach on sustainable development promoted by DG Trade headed by Pascal Lamy. Thus, the fact that social issues were made legally binding also reflects the change in the ideas of the Commission officials (see Table 3). Thus, the success of societal lobbying owed much to the proximity between the preferences of interest groups and EU executives.³⁹

As seen from the above discussion, promoting multilateralism in world affairs was the overarching normative preference of EU trade policy executives in the Commission. The EU itself is thought to be the most successful exercise in multilateralism and the latter can be conceived as its constitutive norm, thoroughly ingrained in the EU’s approach toward external affairs with its clear self-image of a role model for others.⁴⁰ As a promoter of collective EU interests, the Commission relies on this norm, using it as a *roadmap* when negotiating social provisions in trade agreements.⁴¹ As remarked by one Commission official (author’s interview

³⁹ This echoes the finding from the research on trade and human rights linkage that human rights activists can be successful only when their cause serves the political or economic interests of policy-makers (Hafner-Burton 2009).

⁴⁰ Scholars described the EU as a “normative power” in world affairs (Manners 2001).

⁴¹ According to Goldstein and Keohane (1993: 12, italics in the original), the use of ideas as roadmaps “derives from the need of individuals to determine their own preferences or to understand the causal relationship between their goals and alternative political strategies by which to reach those goals. On this pathway, ideas become

June 19, 2012): “These are [social] provisions that allow us to maintain the dialogue with the other party; in the world of diplomacy you are able to influence when you are still able to talk and this would apply to the way we do our trade diplomacy.”

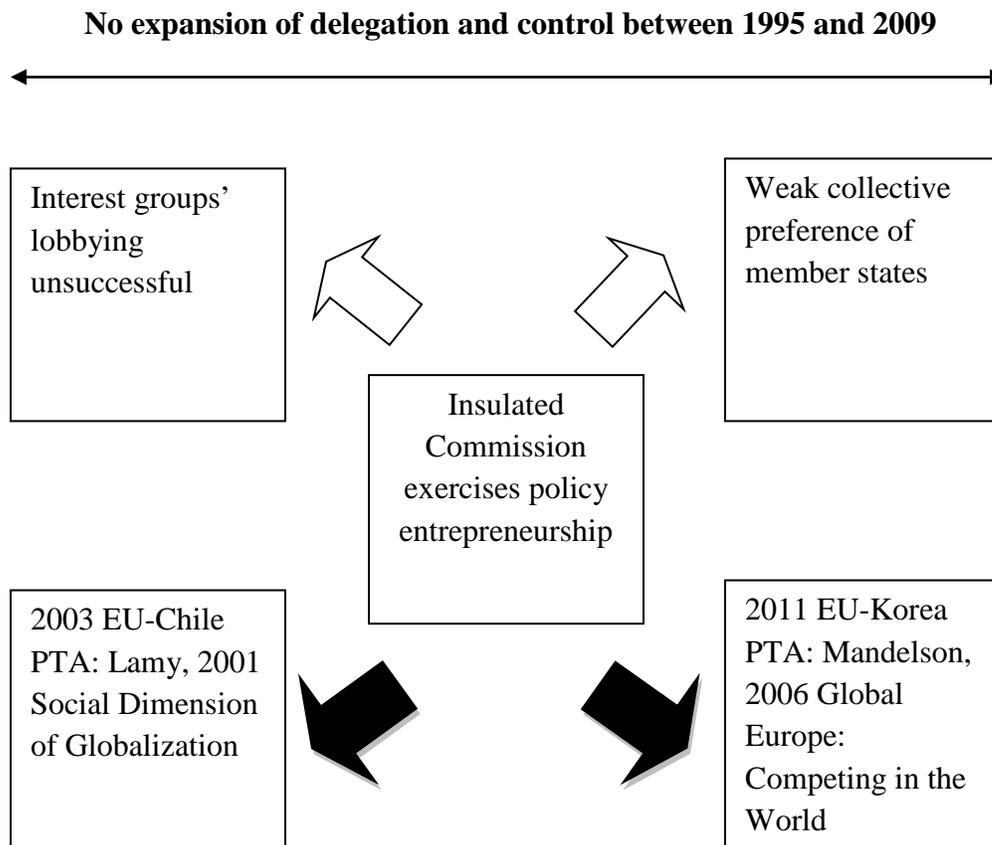
The institutional factors analyzed here facilitated the agents’ pursuit of their normative regarding the design of social standards in PTAs. The principal-agent theory allows understanding of the weak control mechanisms devised by the principals over the agent and the conditions under which the agent’s ideas become causally relevant. Accordingly, the EU-Chile FTA reflects the Commission’s approach under Pascal Lamy. The EU-Korea FTA is fully in line with Peter Mandelson’s approach. Normative preferences of EU trade policy executives explain the absence of sanctions and reliance on ILO rules and MEA norms, as opposed to domestic rules, in EU PTAs. International standards have a more global outlook and by incorporating them into PTAs the EU can advance its *cause célèbre* of championing multilateralism in world affairs. Figure 4 below provides the causal diagram to illustrate the process of EU social standards’ design traced in the chapter.

Two contrasting examples further illustrate the importance of the Commission’s role in designing EU PTAs’ social standards. The EU’s unilateral GSP provides for the possibility of sanctions in the form of withholding trade privileges for violations of labor rights.⁴² Importantly, the Commission is not a negotiator in the GSP, as the Member States themselves retain this role. Its reduced institutional importance, as well as better defined state preferences, can explain the GSP difference from the EU’s bilateral approach in terms of enforcement strategies.

important when actors believe in the causal links they identify or the normative principles that they reflect. Thus *ideas serve as road maps.*”

⁴² It has been applied in the cases of Sri-Lanka, Myanmar, and Belarus.

Figure 4: The Process of Social Standards' Design in the EU



Furthermore, after the Lisbon Treaty, the European Parliament has gained the power to ratify EU trade agreements. This should have provided interest groups with more influence, which, in turn, should have led to stricter social standards in PTAs. Indeed, the scope of social standards in new EU agreements with Peru and Columbia has broadened. However, the no-sanctions approach has remained intact, reflecting the locking effects of previous policy choices and the continued importance of executive preferences.

In sum, treating the EU's institutional arrangement on external trade policy as a game of multiple principals and one agent allows us to understand the success that the European Commission had realizing its preferences vis-à-vis both the Member States and interest groups when designing social standards in PTAs. This confirms the institutional insulation hypothesis outlined in the previous chapter. This finding also challenges the conventional wisdom that a greater number of veto players always restricts executives' options in pursuing their agenda (Tsebelis 2002, Hafner-Burton 2009). Thick institutional insulation can mitigate the effect of multiple veto players, allowing policy-makers to exploit existing institutional complexities to their own benefit when the institutional insulation reduces their accountability to both legislators and societal interests. The next section looks at the remaining intervening variable – bargaining power – to control for the possible third party influence over the design of social issues.

3.7. Bargaining Power

It is commonplace in the literature on EU trade policy to refer to the enormous bargaining power that the EU is able to exercise in negotiations with its trading partners to achieve outcomes it wants (Meunier and Nicolaïdis 2006; Damro 2012). EU trading partners often have no option other than to act as policy-takers, willing to concede to various EU demands in order to receive preferential access to the lucrative European market, making the EU not only a formidable “power in trade” (Meunier and Nicolaïdis 2006).⁴³ Yet, disagreements over social provisions in FTAs can arise, as evidenced by the ongoing negotiations of EU agreements with Canada and

⁴³ The extent of EU power through trade in the case of social standards in bilateral PTAs is tested in the subsequent chapter.

India delayed due to intransigent positions of these countries over labor rights and environmental issues favored by the EU.

However, unlike these current EU negotiations with such large economies, the design of social provisions in the two FTAs analyzed in this chapter did not become a hostage to a complicated bargaining process. One reason could be the asymmetries in the bargaining power between the EU, Chile, and South Korea. Another reason could be the initial cooperative stance of the European Commission whose insistence on the no-sanctions approach had an explicit goal to make social provisions acceptable by the other side in the first place as part of its broader dialogical stance (author's interview June 18, 2012a).

As far as the EU-Chile FTA is concerned, negotiating social provisions proved to be a rather smooth process, as Chile was itself willing to have social provisions in the FTA and was content to follow EU norms and values, living up to its image of the most European country in Latin America (author's interview June 13, 2012). For instance, an interviewed Chilean negotiator mentioned that when his team faced EU requirements after dealing with the United States and its sanctions approach, it experienced "a sigh of relief" and was ready to accept the EU requirements for non-legally binding social standards (author's interview June 5, 2013).

South Korea has only ratified four out of eight ILO conventions but acquiesced to the EU's insistence on core labor rights following the lead of the European Commission. The sustainable development chapter did not become a bone of contention in the negotiation process (author's interview June 18, 2012a). Thus, the final texts of both FTAs reflect the outcome of the intra-EU policy-making process regarding the inclusion of social provisions and the interviewed officials in DG Trade had a very positive assessment of the final texts of agreements in terms of the goals they wished to achieve.

3.8. Conclusion

As an institution comprised of the twenty-seven Member States, the EU has already been named “a recipe for a weak principal control” (Hooghe and Marks 2001:76). The particular institutional arrangement of the EU trade policy-making on social issues in PTAs characterized by the multitude of principals and a vague institutional mandate given to the agent made such a diagnosis ever more compelling. The European Commission was encouraged to play a role of a policy entrepreneur due to thick institutional insulation from the principals embodied by the weak *ex ante* and *ex post* control mechanisms. This insulation allowed DG Trade officials to influence the agenda of EU PTAs when it came to including both labor and environmental clauses in accordance with their deeply held normative preferences, while interest groups and the Member States became equally marginalized in this process.

Both labor unions and environmental NGOs shifted the locus of their activity from the respective national capitals to Brussels and the Commission’s sponsored Civil Society Dialogue became the primary channel for societal actors’ lobbying. By usurping such an important channel of domestic interest aggregation the Commission was able to dominate the FTA agenda and the Civil Society Dialogue came to play little more than a legitimating role for DG Trade officials realizing their preferences with regard to the EU trade policy approach. Agents in the Commission also acted strategically in their dealings with the principals, i.e. the Member States’ governments, anticipating possible disagreements among them and framing the agreements’ social provisions accordingly, in the least contentious way by resorting to the international rules. Yet, these seemingly uncontroversial provisions reflected the deeply held normative convictions

of Commission officials about the appropriate role of the EU in international trade and world affairs more generally.

In sum, agents, i.e. EU executives from DG Trade, were fully in the driver's seat when designing social standards in EU PTAs. This chapter has demonstrated that the change in the design of the agreements' social provisions is driven by the change in the agents' preferences. Societal actors lobbying efforts were only successful when falling in line with the Commission's own objectives, owing to the peculiar institutional arrangement of trade policy-making in the EU. Agents not accountable to the principal's interests become immune from societal pressure and could act upon their normative beliefs, influencing the design of social standards in PTAs, as expected by the first hypothesis outlined in Chapter 2. Thus, the design of social standards in EU PTAs is yet another compelling case of the role of policy-makers' ideas in trade policy noted earlier by scholars (e.g. Goldstein 1993).

CHAPTER 4: U.S. PTAS WITH CHILE AND SOUTH KOREA

4.1. Introduction

This chapter deals with the causes of social provisions in U.S. PTAs, applying the principal-agent approach developed above to the case of U.S. agreements. It investigates the preferences of societal actors and legislators (principals) in Congress and trade policy executives in the USTR (agents) with regard to labor and environmental standards in U.S. FTAs with Chile and South Korea, in accordance with the case selection criteria stated in Chapter 2. It aims to explain which actors were able to assert their preferences and influence the design of social provisions in these agreements in terms of the scope, enforcement, and degree of legal binding, focusing on the institutional mechanisms of interest aggregation.

As mentioned previously, the design of social standards can take three distinct forms (Nicolaidis and Shaffer 2005, Schmidt 2007). Agreement parties can choose to rely on international rules, mutually recognize domestic rules, or stick to national treatment when it comes to the scope. They can also use either sanctions or non-coercive means of enforcement. Furthermore, regardless of particular enforcement strategies, agreement provisions can be made legally binding or not. As this chapter will demonstrate, the United States from the outset decided to pursue stricter social standards than the EU, choosing a more legally binding approach, resorting to the use of sanctions to ensure compliance, and relying on international

rules, while at the same time trying to export its own domestic standards. The institutional insulation hypothesis introduced in Chapter 2 would expect that this should be the direct result of stricter control of principals – legislators responding to societal interests – over the agent – trade policy executives. It will be shown that this was, indeed, the case and interest groups, particularly labor unions and environmental NGOs, were able to set the U.S. trade policy agenda, effectively lobbying policy-makers negotiating trade agreements through legislators accountable to them and translated their preferences into the design of PTAs’ social standards.

This chapter proceeds in a similar fashion to the previous one. Section 2 outlines the overall U.S. approach towards bilateral trade agreements. Section 3 explores the coverage of labor and environmental provisions in agreements with Chile and South Korea. Section 4 explores actors’ preferences regarding these provisions, scrutinizing the positions of societal actors, legislators, and executives. Section 5 examines whose preferences are reflected in agreement outcomes. Section 6 investigates the institutional mechanisms of interest aggregation to explain the process by which these preferences came to dominate the PTAs’ agenda. Section 7 probes the bargaining power of agreement partners and Section 8 concludes.

4.2. The U.S. Trade Policy Approach

Following the failure of multilateral talks in Seattle, the United States has become a fervent proponent of bilateralism in world trade as the Bush administration engaged in the process of “competitive liberalization” and successive U.S. administrations made it their top priority to aggressively seek new markets for U.S. producers (Sbragia 2010). As mentioned in Chapter 1, the United States was the first one to advocate for the social clause in the WTO in the 1990s. The

Clinton administration attempted to include this clause both during the ministerial meetings in Marrakesh and Singapore in 1994 and 1996 respectively and later in Seattle in 1999. It did not succeed due to disagreements among developed and developing among countries revolving around the issue of disguised protectionism. Thus, it started including social provisions in its bilateral PTAs.

The U.S. approach toward social standards in PTAs has evolved quite significantly since the early 1990s. The first U.S. PTA to include social provisions is the North American Free Trade Agreement (NAFTA) which entered into force in 1994. Labor and environmental issues are covered in two separate side chapters of NAFTA – the North American Agreement on Labor Cooperation (NAALC) and the North American Agreement on Environmental Cooperation (NAAEC). The side agreements are legally binding and require the United States, Canada, and Mexico to enforce their domestic labor and environmental regulations and not to derogate from them to attract trade or investment. They are enforceable through the dispute settlement mechanism and envision the imposition of trade sanctions for non-compliance with three of the eleven labor principles enshrined in the NAALC (minimum wage, child labor, and occupational health and safety) (Bolle 2001). While the NAALC and the NAAEC represent a clear step forward in connecting free trade with social issues, they remain side chapters and are not part of the main body of the agreement dealing with trade issues. Thus, they were heavily criticized for failure to effectively link trade and social issues by environmentalists and labor activists alike.

The U.S.-Jordan FTA signed in 2000 and implemented in 2001 is the first bilateral PTA signed by the United States that includes labor and environmental chapters in the main text of the agreement, treating them on par with trade issues. The chapters are similar to NAFTA as they only require parties to enforce their existing domestic rules and prohibit the departure from those

as a means of attaining unfair competitive advantage. Similar to NAFTA provisions, the labor chapter of the U.S.-Jordan FTA also contains the minimum wage requirement and obliges parties to maintain proper health and safety conditions for workers. Importantly, these provisions are not part of the ILO core labor standards but rather mimic the existing domestic standards in the United States. The U.S.-Jordan FTA for the first time makes the full range of U.S. social provisions not only legally binding through the use of the dispute settlement mechanism but also enforceable by specifying sanctions for non-compliance. These sanctions involve effectively withholding trade privileges for deviating from the commitments made by the parties in the labor and environmental chapters. Later U.S. PTAs continue the coercive approach developed in NAFTA and the PTA with Jordan, while also expanding the scope of social standards. The next section explores this with regard to the two agreements selected for the analysis in this study.

4.3. Social Provisions in U.S. PTAs with Chile and South Korea

Chile was preparing to become a member of NAFTA soon after its conclusion but negotiations had to stop due to the stalemate in the U.S. Congress. Negotiations with Chile over the new FTA started in 2000 and the agreement was concluded in 2003 and entered into force in 2004. It contains two separate chapters dealing with labor (Chapter 18) and the environment (Chapter 19). Similar to the U.S.-Jordan FTA, these chapters are legally binding as they require parties to enforce their existing domestic rules on labor and the environment, commit to better labor practices and a higher level of environmental protection, and prohibit the weakening of existing rules as a means of gaining an unfair competitive advantage. As far as the scope of the labor chapter is concerned, the reference is made to the ILO core labor standards, however, the parties

only commit to enforce their existing level of labor rights protection and, while recognizing the right to set their own levels, not to weaken the current ones in order to attract trade or investment. They also oblige to have proper health and safety standards for laborers. The scope of the environmental chapter follows the same pattern. It also creates the Environmental Affairs Council to help parties cooperate on environmental protection, identifying eight priority areas for environmental cooperation and foreseeing the signing of a separate Environmental Cooperation Agreement.⁴⁴

As far as the enforcement of the labor chapter is concerned, the agreement envisions the appeal to the dispute settlement mechanism (Article 22.16) for failure to enforce domestic rules and the imposition of sanctions in the form of a fine for not complying with rulings of a dispute settlement panel. This fine in the maximum amount of \$15 million would be paid into a governmental fund to be used to improve labor conditions in a country. Any stakeholder has the right to petition the USTR for violation of labor rights commitments. The chapter also establishes the Labor Cooperation Mechanism to help parties share information about labor rights protection. The enforcement of the environmental chapter is similar and stipulates the same monetary fine and suspension of trade privileges through the dispute settlement procedure.

The negotiation of the U.S.-South Korea (KORUS) FTA started in 2006 and the agreement was concluded in 2007 with the addition of new elements designed to protect autoworkers in 2010. The agreement went into effect in 2012, following the ratification by the U.S. Congress and the Korean National Assembly in 2011. The agreement covers labor and the environment in separate comprehensive chapters. Chapter 19 deals with labor standards and

⁴⁴ The eight projects identified by the FTA are: 1) developing a pollutant release and transfer register in Chile; 2) reducing mining pollution; 3) improving environmental enforcement and compliance assurance; 4) sharing private sector expertise; 5) improving agricultural practices; 6) reducing methyl bromide emissions; 7) improving wildlife protection and management; and 8) increasing the use of cleaner fuel.

Chapter 20 is devoted to environmental standards. In the same vein with previous U.S. agreements, it requires the enforcement of existing domestic laws and prohibits their weakening in order to gain competitive advantage. It also contains provisions for occupational health and safety. But the KORUS FTA goes much further in expanding the scope of social standards: it places a much stronger emphasis on the ILO core labor standards and requires the parties to also fully comply with them. The chapter establishes the Labor Cooperation Mechanism to help the parties promote these rights. The Labor Affairs Council comprised of government officials and stakeholders is also created to ensure the implementation of labor provisions.

As far as the enforcement of labor provisions is concerned, the KORUS FTA envisions sanctions, and not a fine, in the form of suspending trade privileges for failure to enforce domestic rules. However, as a significant departure from the U.S.-Chile FTA, it commits parties to also enforce the ILO core labor standards and stipulates sanctions for failure to do so. Thus, it becomes among the first U.S. FTAs to make these internationally recognized fundamental labor rights legally binding.⁴⁵ Furthermore, the FTA requires the United States to periodically review South Korean labor laws to ensure their compatibility with the ILO core labor standards. Any stakeholder has the right to appeal to the USTR for violations of labor provisions. Overall, the agreement provides the United States with a lot of opportunity to hold South Korea accountable for meeting the stipulated labor provisions.

The scope of environmental provisions follows similar pattern, signifying the expansion of scope in comparison with the previous PTAs. Chapter 20 requires the parties to not only enforce their own domestic environmental regulations and not to weaken them for competition pressures but also enforce the multilateral environmental agreements (MEAs) they mutually

⁴⁵ Together with U.S. FTAs with Peru, Columbia, and Panama that were negotiated around the same time.

joined.⁴⁶ The emphasis on MEAs is new as it was absent from previous U.S. FTAs.⁴⁷ Chapter 20 establishes the Environmental Affairs Council and envisions a separate Environmental Cooperation Agreement to help the parties implement the agreement's environmental provisions. As far as the enforcement of environmental provisions is concerned, the agreement also stipulates trade sanctions if the parties fail to arrive at a mutually agreeable solution after consultations following the ruling by the dispute settlement body.

Table 3 below compares social provisions in U.S. PTAs with Chile and South Korea. While both PTAs include comprehensive and legally binding social provisions, the overall level of commitment with regard to labor and environmental standards in U.S. PTAs has increased with the signing of the KORUS FTA. The scope of social provisions has evolved to include references to international norms, such as MEAs and the ILO core labor standards. The reference to some of the U.S. domestic regulations, such as health and safety standards for workers, has remained unchanged, as well as the requirement to enforce the parties' existing laws. The enforcement provisions remained largely constant – coercion in the form of fine or sanctions remained the preferred U.S. approach in a striking contrast to the EU approach. The next section explores key actors' preferences with regard to the agreement design.

⁴⁶ There are seven MEAs the parties commit to implement mentioned in the Annex 20-A: 1) Convention on International Trade in Endangered Species of Wild Fauna and Flora; 2) Montreal Protocol on Substances that Deplete the Ozone Layer; 3) Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships; 4) Convention on Wetlands of International Importance Especially as Waterfowl Habitat; 5) Convention on the Conservation of Antarctic Marine Living Resources; 6) International Convention for the Regulation of Whaling; and 7) Convention for the Establishment of an Inter-American Tropical Tuna Commission.

⁴⁷ U.S. FTAs with Peru, Columbia, and Panama that were negotiated around the same time also contain similar environmental provisions.

Table 3: The Design of Social Provisions in U.S. PTAs

	Scope		Enforcement		Legally binding	
	Labor	Environm ent	Labor	Environm ent	Labor	Environm ent
U.S.-Chile FTA	Domestic rules, some U.S. rules	Domestic rules	Sanctions (fine)	Sanctions (fine)	Yes	Yes
KORUS FTA	ILO standards and domestic rules, some U.S. rules	MEAs and domestic rules	Sanctions	Sanctions	Yes	Yes

4.4. Actors' Preferences

To account for whose positions are reflected in U.S. PTAs, I first analyze preferences of interest groups and legislators. The latter, conceived as principals in the trade-policy making process, respond to the former because of re-election incentives. I also delineate the preferences of agents responsible for the negotiation of trade agreements. I then show whose preferences were reflected in the agreements and analyze the institutional factors that led to specific design of social standards, analyzing delegation and control mechanisms, in accordance with the principal-agent framework.

4.4.1. *Societal Actors*

The main stakeholders of social issues in trade are labor unions and environmental NGOs, as well as organized businesses. In accordance with the suppositions of the Stolper-Samuelson theorem described in Chapter 2, labor in the United States is a scarce factor of production expected to lose from trade liberalization. Thus, U.S. workers should prefer stronger guarantees of a level playing field with their counterparts in the developing world in the form of strict labor standards. The main interest group representing U.S. laborers is the American Federation of Labor-Congress or Industrial Organizations (AFL-CIO). It is a major lobbyist for the interests of American workers in international trade with a specialized bureaucratic structure working to advance this kind of protection. The AFL-CIO has been long concerned with the race to the bottom resulting from trade liberalization.⁴⁸ For example, it has stated that

Free trade agreements, like the North American Free Trade Agreement (NAFTA) and the Agreements of the World Trade Organization (WTO) are hurting U.S. workers. These agreements allow imports made under inhumane conditions to flood our markets, undercutting U.S. jobs and wages. They encourage U.S. companies to scour the world looking for the lowest wages, the weakest labor laws and the most vulnerable workers (AFL-CIO cited in Rogowsky and Ghyn 2007).

As the outright denial of FTAs has become less politically feasible, the overarching preference of organized labor in the United States with regard to free trade deals has been rather constant: strict and fully enforceable labor standards that would include the full spectrum of ILO

⁴⁸ An interviewed AFL-CIO staff member expressed the organization's overall dissatisfaction with the neoliberal model of U.S. trade policy (author's interview, May 8, 2013).

rules, as well as U.S. rules, such as acceptable working conditions and a minimum wage.⁴⁹ On the eve of the negotiation of the U.S.-Chile FTA, the AFL-CIO made clear that it would only support an agreement that would provide “appropriate guarantees in order to benefit the workers in both countries” (AFL-CIO 2002). It wanted the new FTA’s labor provisions to resemble those of the U.S.-Jordan FTA and vehemently insisted on expanding the scope of the agreement to include the ILO core labor standards. It also wanted to see the full use of the dispute settlement procedure and trade sanctions as an effective enforcement mechanism, akin to the one embedded in the U.S. GSP (ibid).

In the same vein, labor unions were adamant proponents of fully enforceable labor provisions that would include the ILO core labor standards in the KORUS agreement. The AFL-CIO wanted the KORUS FTA to ensure that South Korea does not weaken its domestic labor rules to attract trade and investment and that it would enforce its own laws, especially pertaining to employment discrimination, as evident in the first Labor Advisory Committee report on the KORUS FTA (USTR April 27, 2007). Overall, the insistence on sanctions can be described as the *prima facie* preference of American labor unions. As one representative of AFL-CIO remarked, “consultations can be fruitful but if there is no stick in the end, no penalty, then a government uninterested in making any improvements will just talk to our face and won’t really ever make any changes” (author’s interview May 8, 2013b).⁵⁰

The main constituency favoring the linkage between international trade and the environment represents a rather loosely organized value community as explained in Chapter 2. Because the environment is not a factor of production, the intensity of societal preferences is

⁴⁹ AFL-CIO representatives also indicated that the organization believed that minimum wage and acceptable conditions of work should be the integral part of labor standards and should be beefed up (author’s interviews May 8, 2013; May 8, 2013b).

⁵⁰ Another AFL-CIO representative referred to the soft enforcement mechanisms as “a ministerial cup of coffee” (author’s interviews May 8, 2013).

lower in this issue area. In accordance with this expectation, it is hard to discern an overarching preference among environmental NGOs with regard to U.S. trade agreements, as there is a schism between pro-trade and anti-trade environmental NGOs (author's interview May 06, 2013). Some of them tend to oppose free trade altogether and, therefore, do not even seriously consider the inclusion of environmental standards in trade agreements. Others are less unequivocal in their opposition to trade liberalization, as long as environmental safeguards are provided.

The latter was a rather constant position of several major environmental lobbyists in the United States ever since the discussion about environmental concerns became part of the American trade agenda. These lobbyists insisted on the link between trade and the environment in the U.S.-Chile FTA and, in addition to the requirement to enforce domestic laws, wanted MEAs to be covered within the scope of trade deals (Center for International Environmental Law 2001). They also advocated for the inclusion of legally binding environmental provisions, as strong as those in the NAAELC and wanted the parties to commit to improving their domestic standards, as indicated in their collective letter to the USTR (USTR February 15, 2001). As far as the enforcement of environmental provisions in the U.S.-Chile FTA was concerned, these environmentalists were strong proponents of the sanctions approach and not simply a fine, especially since sanctions could be imposed without consent of the other party (ibid).

The preference of environmental groups for environmental provisions in the KORUS FTA was largely similar. As evident from the Trade and Environmental Protection Advisory Committee's (TEPAC) report, they believed that the agreement needs to address environmental issues in the main body and not a side chapter and needs to stress the enforcement of domestic environmental rules, including those required to be covered under the MEAs that the parties have

signed. They also advocated for the full use of the dispute settlement mechanism and trade sanctions (USTR April 25, 2007).

Because American capital is a factor of production destined to gain from trade liberalization, according to the theory of international trade, organized businesses should prefer free trade uninhibited by strict labor and environmental regulations. The latter could be potentially costly and could preclude them from fully reaping the benefits of free trade in overseas markets. The position of organizations representing big businesses in the United States was in line with this expectation. Their resistance to the inclusion of social provisions covering both labor and the environment has been rather unequivocal and quite well documented. With regard to the U.S.-Chile FTA, the U.S. Chamber of Commerce has explicitly stated in its press release that

“While President Clinton announced his intent to include labor and environmental provisions along the lines of the pending U.S.-Jordan free trade agreement, the Chamber does not believe that it is appropriate to address these issues within trade agreements (U.S. Chamber of Commerce 2000).”

It believed that “linking trade with labor and environmental rules will slow the process of trade liberalization” (ibid). Furthermore, it was strongly opposed to the introduction of coercive enforcement mechanisms, unambiguously stating that “the longstanding policy of the U.S. Chamber is that trade agreements should not hold out trade sanctions as a remedy in response to labor and environmental disputes” (U.S. Chamber of Commerce 2003).

In the same vein, American organized businesses were not in favor of the inclusion of social provisions in the KORUS FTA. In this regard, the U.S.-Korea Business Council and the American Chamber of Commerce in Korea have stated in their joint position paper that they

“prefer that the U.S. government negotiate an FTA that does not include labor and environmental provisions. Guaranteeing adequate labor conditions and environmental protection is important; however, our two organizations advocate that discussions on how to address these concerns be done in multilateral forums (U.S.-Korea Business Council and American Chamber of Commerce in Korea 2006).”

They further encouraged the South Korean government to independently promote labor market flexibility based on the supply and demand factors in order to enhance global competitiveness (*ibid*). The reference to international norms was not welcomed by the organized businesses either. For example, in its press statement preceding the negotiation of the KORUS FTA, the U.S. Chamber of Commerce has mentioned that it was “encouraged by assurances that the labor provisions cannot be read to require compliance with ILO Conventions” (U.S. Chamber of Commerce 2007).

Overall, much like their EU counterpart *BUSINESSEUROPE*, organized businesses in the United States did not attach much importance to social provisions in PTAs and were even more opposed to their inclusion, being mostly concerned with trade liberalization and access to new markets.⁵¹ They were pushing the USTR for the speedy negotiation of trade agreements and were willing to tolerate social standards, as long as this could help the agreements get passed.

⁵¹ For example, in its testimony before the Senate Committee on Finance the U.S. Chamber of Commerce applauds the KORUS FTA for its economic benefits and does not reference any social provisions (Committee on Finance, S. Hrg. 112-727).

For example, with regard to the enforcement of labor and environmental chapters in the U.S.-Chile FTA, the Chamber was rather content that the sanctions would be used as the last resort after the option of monetary fine had been exhausted:

“Our interpretation of the enforcement mechanism of the labor and environmental provisions of the Chile free trade agreement is that monetary compensation is the remedy of first choice and that trade sanctions would be employed only as a last resort (U.S. Chamber of Commerce 2003).”

However, it should be also noted that a business association that brings together chief executives of major American corporations – the Business Roundtable – has gradually shifted its position from opposing social provisions in PTAs in the 1990s altogether to their gradual acquiescence in the early 2000s (author’s interviews May 6, 2013; May 3, 2013b). This reflects the fact that business in advanced industrialized economies has to be conscious of public attitudes toward free trade and globalization.

4.4.2. Legislators

Legislators in the U.S. Congress are the principals making trade policy on behalf of their constituents. Thus, even if individual Congressmen might have their own preferences regarding trade issues, their position in Congress will mainly reflect the concerns of their constituencies who directly control their tenure, as well as the overall party ideology also reflective of certain societal interests. Thus, the Democrats are likely insist on strict and enforceable social standards as those are favored by labor and environmental groups to whose interests they respond. The Republicans, on the contrary, would prefer trade deals favored by organized businesses, their

major constituency, who would prioritize trade issues over social standards. The ensuing debate in the U.S. Congress over social standards was split along party lines, fully reflecting this distribution of societal interests (Sek 2003).

The main preferences of legislators over social standards in PTAs can be discerned from the debate over the renewal of trade promotion authority (TPA) that took place in the 1990s. Because later positions over the U.S.-Chile and the KORUS FTAs become locked in the negotiated deals between the two parties, it is important to focus on the positions expressed during the period of time preceding these agreements. The Democrats, acting upon their constituency interests, were in favor of including strong labor and environmental provisions in all U.S. trade deals ever since the NAFTA debate (Destler 2007). In the 1990s, they sponsored the fast track renewal proposals, both of which would link trade with labor and the environment (Martin 2005).

The Democratic Senate Finance Committee Chair Max Baucus, who came from Montana, a state with low proportion of export-oriented production, was instrumental in the TPA debate and was always a proponent of regulating free trade by linking it to social issues, such as human rights (Hafner-Burton 2009: 67). His view of social standards was generally positive, even if not initially supportive of the sanctions approach. During the Congressional debate over the TPA extension, he stated that

“It is not realistic to suggest that we can take our labor environmental laws – impose them on developing countries – and slap sanctions on them if their laws don’t live up to our standards... That’s not to say that we must wait a century for progress; labor and environmental standards are on the agenda now, and every trade agreement must recognize that reality” (Baucus 2002 quoted in Hafner-Burton 2009: 67).

However, further along the debate, he became more supportive of the punitive approach and expressed that all U.S. FTAs must follow the U.S.-Jordan model and contain enforceable social standards with the majority of Democrats insisting that this was the accurate view of social provisions (Elliott 2003).

His colleague, a Democratic Senator Carl Levin, who comes from Michigan, a state with strong manufacturing base, has been a strong advocate of social standards in FTAs since NAFTA, expressing concerns about American workers losing their jobs (Hafner-Burton 2009: 66). He voted against the TPA, arguing that

“trade should not be a race to the bottom in which US workers must compete with countries that do not recognize core international labor standards and basic worker rights... Writing labor and environmental standards into trade agreements is an important way to ensure that free trade is fair trade” (Levin 2005 quoted in Hafner-Burton 2009: 66).

The Democratic members of the House, especially representing the Northeast and Midwest, were even more vehement about protecting workers’ right and the environment as part of the trade agenda to protect their constituents from foreign competitors (Destler and Balint 1999 quoted in Hafner-Burton 2009: 68). For example, Representative Richard Gephardt from a large manufacturing state Missouri, who the House minority leader during the TPA debate, while favoring free trade also defended the protection of workers and the environment. In 2002, he stated that

“The business community cares about intellectual property and so they insist on it being protected... but when it gets to labor rights and environmental concerns and human rights, the

proponents of trade and many in the business community don't care. They don't think it should be part of trade negotiations because, frankly, they don't care about those things. I understand that, but I think it's inconsistent and I think it's wrong" (PBS 2002, quoted in Hafner-Burton 2009: 69).

Other key Democratic Congressmen, such as the Chair of the House Ways and Means Trade Subcommittee Sander Levin and the Chair of the House Ways and Means Committee Charles Rangel, were adamant supporters of free trade balanced with strong social standards, voting against the TPA and FTAs with countries whose labor and environmental laws they considered too weak (Hafner-Burton 2009: 70).

The Republicans in both the Senate and the House have long opposed the inclusion of labor and environmental provisions in U.S. trade agreements. As one Republican Congressman has noted, labor and environmental provisions could only be put into trade agreements "over my dead body" (author's interview May 6, 2013). Thus, they disagreed to grant the renewal of TPA if it included social standards (Martin 2005). In the later debates over TPA extension that took place in 2006-2007, the Congressional Republicans continued to uphold their position inimical to the inclusion of social standards in U.S. FTAs (Destler 2007).

In sum, legislators in the U.S. Congress were largely split across the party lines over social standards in PTAs, reflecting the positions of their major constituencies, with the Republicans being generally against social standards and the Democrats being generally supportive of them, despite being also somewhat split on this issue (author's interview May 2, 2013a).⁵²

⁵² Kerremans and Gistelinc (2009: 693) argue that "the inclusion of worker rights in fast-track would hurt its adoption as much as their exclusion would do. The former was a consequence of the resistance of the economic

4.4.3. Executives

In the 1990s, the Clinton administration became the staunch supporter of social provisions in international trade advocating for the inclusion of labor rights and environmental standards as safeguards in the WTO and NAFTA in an attempt to gain support from labor and environmental constituencies who were an important part of the Democratic coalition (Destler 1996). However, both U.S. agreements with Chile and South Korea were negotiated under the Bush administration, which aggressively sought bilateral trade liberalization and was much less supportive of social provisions in PTAs, being solely preoccupied with a goal of increasing access to new markets for American businesses.

George W. Bush, elected in 2000, was not in favor of social provisions in U.S. bilateral trade deals which he announced early in his campaign (DePalma 2001). In his 2001 Trade Policy Agenda presented to Congress, he announced that “free trade is about freedom” which, in his view, meant that “when countries open markets, they also open their societies to ideas about private and civic causes - including labor movements and environmental protection” (USTR March 6, 2001). As will be shown further, while this overarching preference did not change, Bush’s position had undergone significant transformation as a result of internal political struggles.

The Office of the USTR is another important executive as it is charged with the making of the U.S. trade policy, so it is important to account for their preferences as well. Interviews with USTR officials indicate the absence of a strong institutional view on social standards which means that most of the time their preference coincides with the presidential and party view on

conservatives within the Republican caucuses in Congress. The latter was due to the resistance of a number of so-called labour Democrats. Neither party could rely on an automatic majority in favour of fast-track.”

trade, reflecting the appointed nature of the USTR (author's interviews May 2, 2013a; May 2, 2013b). Some of the USTRs might hold independent views and try to ascertain them by virtue of being a high-level executive figure in the presidential administration. This was partly the case of Robert Zoellick, who became the USTR in the first Bush administration. According to some observers, he

“has enthusiastically taken on the role of Republican attack dog on trade. In his speeches and articles, he has attacked President Clinton and Vice-President Gore for craven pandering to protectionists in the labor and environmental movement” (Washington Post, January 13, 2001).

However, according to some accounts, aside from this political maneuvering, Zoellick's personal views might have been quite different. Initially, social provisions were not viewed as valuable by the USTR which was the case when NAFTA's side chapters were negotiated (author's interview, May 6, 2013). However, Zoellick eventually became more positive about environmental provisions in FTAs, effectively becoming in private “the only person in the Bush administration willing to discuss trade with environmentalists” (author's interview May 3, 2013b).

Increasingly, other officials in the Office of USTR started to believe that trade can be consistent with good environmental practices. However, they were quite agnostic as to what the proper means of enforcement should be (author's interviews May 3, 2013a; May 3, 2013b). Later on, when Susan Schwab assumed the post of the USTR on the eve of the KORUS FTA negotiation, she did not exhibit any strong personal views on social provisions, endorsing the position of the President. Her main concern became the achievement of a new bipartisan compromise on U.S. trade policy in the wake of TPA expiry in 2007 and she realized that the

only way to do this was to satisfy the demands of the Democrats to include social standards in trade agreements (Destler 2007). The new Obama administration has been generally supportive of strong social standards in PTAs (author's interviews May 3, 2013b). The next part shows whose preferences came to be reflected in the agreement design.

4.5. Agreement Design

While the executive branch considered social standards in the U.S.-Chile FTA largely successful (author's interview April 30, 2013), labor groups in particular were less satisfied with agreement outcomes. For example, the AFL-CIO called Congressmen to reject it, together with the U.S.-Singapore FTA negotiated around the same time, because, as its President John Sweeney stated,

“The agreements are weaker than existing trade policies and a step back from the US-Jordan Free Trade Agreement which has enforceable provisions to protect the core rights of workers. The weak workers' rights provisions in the Chile and Singapore agreements are deeply troubling, and will be disastrous if applied to future free trade agreements with countries and regions where labor laws are much weaker to begin with, and where abuse of workers' rights has been egregious” (AFL-CIO 2003).

Furthermore, the Labor Advisory Committee (LAC) at the USTR, representing roughly sixty labor unions, considered the agreement “woefully inadequate” in its report because of the failure to include the requirement to comply with international labor standards and fully use sanctions (USTR February 28, 2003). For that reason, the agreement was considered “a step back” from the previous U.S.-Jordan FTA (Martin 2005).

On the other hand, environmentalists were generally more satisfied with the shape of the environmental chapter in the U.S.-Chile FTA. Notwithstanding some dissenting views, the TEPAC report noticed that integrating environmental issues into negotiations with Chile “is a singular achievement which should not go unacknowledged” (USTR February 27, 2003).

On the whole, it must be noted that the agreement did not depart very drastically from the overarching preference of societal actors, i.e. to include enforceable social provisions. Despite the lack of sanctions in the form of withholding trade preferences, it still contained legally binding labor provisions enforceable through a fine. Furthermore, social provisions in the U.S.-Chile FTA became the part of the main text, signifying the improvement of the NAFTA side agreements’ model. Thus, some influential NGOs, for example, the Global Trade Watch, implied that fears that the enforcement solely based on a fine would be ineffective were not necessarily justified as trade sanctions in the previous U.S.-Jordan FTA were quite weak (DePalma 2001). This means that the general preference of labor and environmental groups was satisfied, albeit not to a full extent. An interviewed AFL-CIO staff member expressed that the organization has been able to obtain “progressively better terms for enforcement” (author’s interview, May 8, 2013a). According to the Assistant USTR for Labor William B. Clatanoff, the agreement has met the preferences of labor unions by including binding and enforceable labor and environmental provisions coupled with effective dispute resolution mechanism, especially since Chile already had quite strong labor rules (USTR 2003).

As far as the KORUS FTA is concerned, labor unions were more satisfied with the labor chapter than previously because of the inclusion of internationally recognized labor rights, as noted in the comments by the AFL-CIO before the USTR (AFL-CIO, September 15, 2009).⁵³ However, some concerns remained over the composition of the Labor Affairs Council and the

⁵³ But the overall conclusion about the agreement was not as welcoming.

way petitions for dispute resolution would be handled by the USTR. Furthermore, the unions want to see all eight ILO conventions and not only the 1998 Declaration on Fundamental Principles and Rights at Work being eventually reflected in U.S. PTAs (author's interview, May 2, 2013a).⁵⁴ The environmentalists were generally more satisfied with the provisions of the KORUS FTA, noticing significant progress in terms of improving environmental standards, as stated in the TEPAC report (USTR April 25, 2007).

In sum, both labor and environmental groups were generally more content with the outcome of the KORUS FTA than the U.S.-Chile agreement. It is also evident that the preferences of organized businesses were not reflected in the agreements. Thus, labor and environmental interest groups have become the primary beneficiaries of social provisions in U.S. PTAs. Table 4 below contrasts societal actor preferences delineated above with the terms of the two U.S. agreements. It becomes evident that, unlike societal actors in the EU, they were progressively successful in translating their preferences over social standards into the agreement design. The next section explains this success by exploring the principal-agent dynamic in the making of the selected agreements.

4.6. Institutional Dynamic

What was the process that allowed societal actors, i.e. labor groups and environmentalists, in the United States to get their preferences reflected in both agreements more so than any other actor? This section will demonstrate that institutional mechanisms of societal interest aggregation and delegation of the authority determine this success, unlike in the case of the EU analyzed in the previous chapter where such mechanisms weaken the effectiveness of societal actors. The

⁵⁴ Currently, the United States has only ratified two conventions.

principal-agent theory introduced earlier in this dissertation will help to explain these institutional control mechanisms used by the principals over the agent which help certain interest groups assert their preferences, shaping the design of PTAs' social standards.

Table 4: U.S. Societal Actors' Preferences and the Agreement Design

	U.S.-Chile (2004)	KORUS (2012)
Preferences (labor and environmentalists)	<p>Scope: <i>U.S. rules and int'l rules</i></p> <p>Enforcement: <i>sanctions</i></p> <p>Legally binding: <i>yes</i></p>	<p>Scope: <i>U.S. rules and int'l rules</i></p> <p>Enforcement: <i>sanctions</i></p> <p>Legally binding: <i>yes</i></p>
Agreement Design	<p>Scope: <i>U.S. rules and nat'l rules</i></p> <p>Enforcement: <i>fine</i></p> <p>Legally binding: <i>yes</i></p>	<p>Scope: <i>U.S. rules, nat'l rules, ILO standards, multilateral environ. agreements</i></p> <p>Enforcement: <i>sanctions</i></p> <p>Legally binding: <i>yes</i></p>

The case of social standards in U.S. PTAs reveals a very different principal-agent dynamic from that in the EU. According to the institutional arrangement of the U.S. trade policy, principals in the U.S. Congress, responding directly to societal actors, delegate negotiating authority to the agent, i.e. the U.S. President acting through the Office of the USTR. This can be done in the form of the Trade Promotion Authority (TPA), also known as fast track, which

allows for the accelerated ratification of trade agreements. This procedure is designed to allow trade policy executives to conclude agreements in a speedy manner and without holding them possible hostage to Congress, which cannot amend or filibuster the terms of an agreement.⁵⁵

However, as stated in Chapter 2, the principal-agent theory also holds that when delegating authority to the agent, principals simultaneously try to devise powerful control mechanisms (De Bièvre and Dür 2005). Thus, principals in the U.S. Congress will make sure that they remain fully in control seat when trade agreements are negotiated through both *ex ante* and *ex post* control mechanisms. The *ex post* control mechanism involves the power to reject an agreement as a whole through the ratification process if the majority of votes is against it. The *ex ante* control mechanism involves delineating the negotiating mandate for the trade policy executives to make sure they do not deviate too much from principals' preferences. Furthermore, it also involves direct oversight by principals over the fast track procedure through its regular renewal that is required from time to time and that needs to be approved by the Congressional majority. As Congress is the major institution representing societal interests in the U.S. policy-making machinery, it is the major channel for societal actors to express their preferences and influence policy outcomes.

The last TPA was renewed by the 2002 Trade Act and stipulated that all U.S. trade agreements must contain labor and environmental safeguards to be included in the main body of agreement, unlike the case of NAFTA's side chapters. The inclusion of labor standards in U.S. trade deals was required as a condition to renew the TPA, which ensured that the President would always have to appeal to labor and environmental interests when negotiating agreements falling under the fast track. Various observers attribute this to the stalemate over the TPA due to

⁵⁵ The first TPA was granted in 1974 and was extended until 1980 eventually being renewed in 1988 and 1993. President Bush made the renewal of TPA his top priority in 2000 and succeeded with the signing of 2001 Trade Act.

the importance of labor and environmental issues for Congress in the 1990s when a number of bilateral agreements were negotiated (Brainard and Shapiro 2001). According to Carbaugh (2010: 203), when it came to the renewal of TPA in the 1990s and early 2000s labor unions in particular pressed for putting labor standards on the agenda as they thought that laxer labor regulations in developing countries will create a competitive disadvantage for U.S. producers. As the above discussion demonstrates, they also argued that making environmental and labor rules part of secondary agreements, as was done in the past with the NAFTA, would result in weaker enforcement of labor and environmental standards by agreement partners.

Furthermore, as the Democrats in the House of Representatives were largely opposed to PTAs in the 1990s, following the interests of organized labor and environmental groups, their key constituency, the Bush administration came under immense pressure to incorporate social standards into trade agreements to receive the required support for the TPA renewal (Teslik 2007). The pressure on the executive was, indeed, very strong, as labor and environmental interests were crucial for having the House to endorse future PTAs. Furthermore, the rules of the U.S. trade policy-making process ensure that a party holding Congressional majority will always need a handful of votes from the minority to get an agreement passed (author's interview, May 2, 2013a). Thus, "the Republican administration made a cold calculation that they won't get enough Democratic votes if they don't make a concession to what the AFL-CIO and the others [proponents of social provisions] wanted" (author's interview, May 8, 2013b).⁵⁶

⁵⁶ According to Kerremans and Gistelink (2009: 693), "the story of constructing a Congressional majority in favour of fast-track between 1994 and 2002 was one of Republican leaders in Congress struggling to keep as much support as possible within their own caucus, while constructing a minimum winning coalition with the support of at least some members of 'the other side of the aisle'." Furthermore, "the story of the conclusion of FTAs by the US since 2002 is partly a story of individual members of Congress that successfully pressurized the Bush Administration to pay attention to labour rights in trade agreements by credibly threatening to successfully counter their Congressional approval" (ibid: 695).

Hence, in May 2001, George W. Bush introduced a draft proposal that addressed labor and the environment but did not include specific enforcement provisions, which invited criticism from the Democrats who wanted to see social issues treated on par with other trade objectives. The next version introduced by the Republican Ways and Means Committee of the House did not mention social standards at all, prompting the House Democratic leader Gephardt call the bill “‘my way or the highway’ solution to the problem” (Sek 2003: 5). The new bill (H.R. 3005) was introduced in October 2001 by the Republican Chairman of the Ways and Means Committee Bill Thomas and was the result of bipartisan compromise that included the Democratic Representatives Cal Dooley and the committee members William S. Jefferson and John S. Tanner. After much of the political bickering, the bill granting the TPA was finally approved by a narrow vote in the House of 219-214 long party lines in December 2001 and was later approved by both chambers in July and August 2002 (ibid).

As authority was delegated through the renewed TPA in 2002, the *ex ante* control mechanisms also had to be expanded, as the principals in Congress were directly accountable to societal interests. Accordingly, the negotiating mandate for the USTR stipulated in the TPA specifies that all U.S. agreements need to have enforceable social provisions. It is not surprising then that the U.S.-Chile FTA negotiated under the TPA contains strong labor and environmental provisions, reflecting the preferences of both labor and environmental groups. It also represents a significant improvement from NAFTA-style social provisions because labor and the environment are covered in the main body of the agreement and not in the side chapters which puts them on par with trade issues in terms of dispute settlement procedure. Moreover, the inclusion of the minimum wage and health and safety requirements is a direct reflection of the concern unions had over unequal competition with cheap labor in the developing world (Grynberg and Qalo

2006). Such an agreement design is fully reflective of societal actors' preferences, excluding organized businesses that had to make concessions to get the TPA renewed and new PTAs ratified, fulfilling their main preferences for free trade.

The TPA expired in 2007, and so did its stipulation requiring the proper safeguards for labor and environmental interests. However, the Democrats had control of both the House and the Senate in 2006 and believed that social provisions in trade had to be strengthened, as was demanded by their key constituents. Thus, even after the expiry of the TPA, any future agreement would have to include enforceable labor and environmental standards in order to be ratified by Congress. The Democrats made clear that there would be no movement toward any new trade deals until the issue was resolved (author's interviews April 30, 2013, May 2, 2013a).⁵⁷

After four months of negotiations between the House Democrats led by the Chair of the Ways and Means Committee Charles B. Rangel, the USTR Susan Schwab, the Treasury Secretary Henry M. Paulson Jr., and the Ways and Means Republican Jim McCrery, the new agreement known as "A New Trade Policy for America" was reached in May 2007 (Destler 2007). Rangel realized that a bipartisan compromise on U.S. trade policy was needed to move forward and was also willing to engage with the Republicans, gaining the support of his committee which allowed Nancy Pelosi to press on this issue even when her caucus remained divided. Schwab also proved instrumental for reaching the agreement, as she was a strong advocate of a bipartisan base (ibid). Max Baucus from the Senate Finance Committee, in turn, endorsed the new agreement and the ranking Republican Charles Grassley also helped to

⁵⁷ According to one interviewee, Nancy Pelosi was most instrumental in indicating that there would no further movement toward new FTAs unless social standards were addressed, which brought the Bush administration to the table (author's interview May 8, 2013).

convince the hesitating Republicans.⁵⁸ The agreement was thought to be a victory for the Democrats but also a “shrewd compromise” by the White House (Weisman 2007).

This new arrangement, also known as the Bipartisan Trade Deal (BTD) or the May 10 agreement, ensured not only the continuity of labor and environmental principles in PTAs but also strengthened the level of safeguards. The new mandate given to the USTR specified that all U.S. trade agreements must include sanctions for not only non-compliance with domestic labor and environmental laws, as was the case with previous PTAs, but also for the failure to enforce the ILO core labor standards and MEAs the parties signed. This mandate allows the principals to further expand their *ex ante* control over the agent. The new measures enshrined in the BTD largely reflect the dissatisfaction of unions and environmentalists with the U.S.-Chile FTA and previous agreements that did not have such clauses.⁵⁹ In this situation, organized businesses again had no choice but acquiesce in social standards for the sake of securing future FTAs (author’s interview May 8, 2013a).

Similar to the case of the EU, interest groups in the United States can also lobby the USTR directly through the LAC and TEPAC, who are functionally equivalent to the CSD in the EU. The two institutions are comprised of the representatives of labor unions, NGOs, and industry, as well as some academics. Their role is to provide forum for interest groups to voice their concerns directly at the USTR level on the eve of and during trade talks through a process of public hearings and submission of oral and written comments (author’s interview May 2, 2013b). Just like in the case of the CSD, both committees can only issue opinions about the agreement agenda but do not have the power to amend it. Lobbying the USTR directly is less

⁵⁸ The final version of the agreement removes the reference to ILO conventions which was present in the earlier version drafted by the Democrats and refers only to the 1998 ILO Declaration on the Fundamental Principles and Rights at Work (Destler 2007).

⁵⁹ The agreements that include these new provisions are the U.S.-Columbia, U.S.-Panama, and U.S.-Korea FTAs.

important when societal actors are able to use their direct connection with principals in Congress and interests groups themselves view this platform as the most efficient channel, as indicated by interviewees (author's interview, May 7, 2013).⁶⁰ According to an interviewed TEPAAC representative, the Committee was only instrumental for introducing the public participation mechanism in the KORUS FTA; however, this did not drastically affect the design of the agreement's social standards (author's interview, May 3, 2013b).

In sum, the fact that the U.S. administration had to bow to Congress and included labor and environmental standards in U.S. PTAs is the result of a great degree of control exercised by the principals over the agent. The oversight mechanisms in the form of renewal of the TPA, the BTDA, and ratification process ensure that labor and environmental interests are reflected in U.S. agreements. Thus, principals – legislators in Congress – devised powerful *ex ante* and *ex post* control mechanisms over trade policy executives thereby decreasing the executive authority's insulation from societal interests. This control, in turn, decreased incentives for the executives to pursue their own agenda, irrespective of those interests. Unlike their EU counterpart, U.S. labor and environmental interests have a powerful and well-institutionalized channel for lobbying – the U.S. Congress – in addition to influencing the USTR directly.⁶¹ This ensures that the principals are directly connected with their constituents, acting on their behalf.

Thus, an interviewed USTR official indicated that the USTR, indeed, had no choice but to respond to the pressures from Congress if it wanted agreements to pass (author's interview April 30, 2013). Therefore, it is not surprising that the coercive approach towards social standards, ubiquitous in U.S. PTAs, as well as the expansion of the scope of coverage and

⁶⁰ The same interviewee also pointed out that advisory committee meetings are not effective as discussions tend to be open-ended and interest groups cannot see the negotiated text. An interviewed AFL-CIO representative stated that the USTR is “a much harder nut to crack” when it comes to lobbying (author's interview, May 8, 2013).

⁶¹ Societal actors lobby the House of Representatives most heavily, beginning with the Labor caucus and expanding the base from it (author's interview, May 8 2013).

enforcement of labor and environmental provisions, directly reflect the unions' and environmentalists' concerns and the success of their lobbying efforts. Moreover, the failure of organized business to translate their preferences into the agreement design reflects the package deal nature of domestic politics of PTAs, whereby various actors make concessions to one another in order to achieve their main benefits.

Furthermore, despite the fact that labor and environmental actors represent different constituencies, the Congressional politics is conducive to creating an alliance between the two groups as it allows them to lobby legislators more effectively, as well as legislators themselves to appeal to a wider range of societal interests (author's interview May 3, 2013b). Thus, according to an AFL-CIO representative, environmentalists have become natural allies of the unions with some NGOs, such as the Sierra Club, now also advocating for labor standards (author's interview May 8, 2013a). This alliance further increased lobbying effectiveness of societal actors, unlike in the case of EU labor and environmental actors who did not join their forces together, potentially undermining their influence. The effects of joint lobbying became particularly important for the disjointed environmental lobby, resulting in the same level of treatment given to labor and environmental standards by policy-makers.

In sum, contrary to the behavior of European Commission officials, bureaucrats in the USTR whose hands are tied by the Congressional mandate cannot pursue their own preferences with regard to the agreement agenda. As stated by one USTR official, in the end "you need to go to Congress and show that you met its objectives" and USTR officials' own views or party orientation do not play any role in this process (author's interview May 3, 2013a).⁶²

Furthermore, Congress provided interest groups with a very effective channel to realize their

⁶² Another USTR official stated that "the relationship with Congress is the most important part of the equation" (author's interview April 30, 2013).

preferences – much more effective than direct lobbying of the USTR. Such a channel is absent for interest groups in the EU who can only control agents in the European Commission through the weak CSD, lacking a functional equivalent of the U.S. Congress.

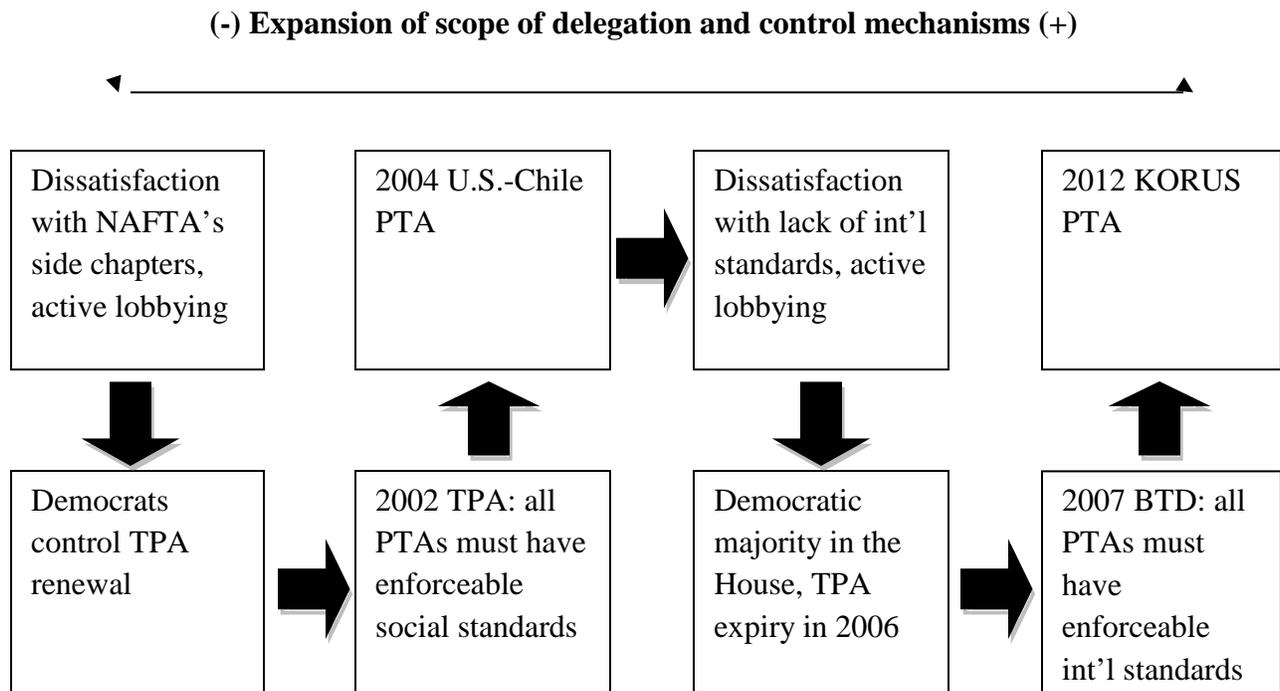
Thus, the existing institutional structure of the U.S. trade policy-making process prioritizes the preferences of principals, especially when these principals are directly accountable to societal actors with high preference intensity, such as labor. It also gives priority to the preferences of environmentalists who, unlike labor, represent a more diffuse constituency but who are able to exploit the existing institutional structure by forming a coalition with another major constituency due to their overlapping interests. Most importantly, this structure is not conducive to the realization of agents' preferences due to their thin institutional insulation from society embodied by the strong control mechanisms, unlike in the case of the EU. This process of interest aggregation determines the behavior of principals and agents and influences the design of social standards in U.S. PTAs, fully in line with the institutional insulation hypothesis. Figure 5 below provides the causal diagram to illustrate the process of U.S. social standards' design traced in the chapter. The next section probes into the bargaining power of agreement partners to control for the possible influence of another party.

4.7. Bargaining Power

As mentioned in Chapter 2, international agreements are always a result of the negotiation process and may be influenced by the other party, so it is important to control for the bargaining power of states negotiating a PTA with the United States. However, there is no evidence of third countries' influence over the design of social provisions in the two U.S. PTAs analyzed here.

Just like the countries negotiating PTAs with the EU, U.S. trading partners want to get access to the lucrative American market and are forced to act as policy-takers. It is important to remember that developed countries decided to relegate WTO-extra provisions to bilateral PTAs precisely due to the fact that they have more bargaining leverage at the bilateral level, as opposed to the multilateral one where developing countries collectively have more sway.

Figure 5: The Process of Social Standards' Design in the United States



In addition, the stipulation to include enforceable social standards in all U.S. PTAs is secured legally through the TPA and the BTM which severely restricts the win-set of American

negotiators (Putnam 1988).⁶³ For this reason, an interviewed USTR official stated that U.S. partners have to accept social provisions as a *fait accompli* if they want an agreement with the United States (author's interviews May 2, 2013a, April 30, 2013). Moreover, in some instances U.S. negotiators indicate to potential agreement partners that they should not start the negotiation process if they are not ready to submit to strict social provisions (author's interview May 8, 2013b).

As far as the U.S.-Chile FTA is concerned, a Chilean negotiator mentioned that the U.S. preference for enforceable social provisions had to be taken seriously and generated a lot of anxiety among the Chilean negotiating team due to the sanctions approach. Thus, when the same team had to negotiate the EU-Chile FTA, the EU's much softer requirements "were met with a sigh of relief" (author's interview June 5, 2013). Yet, the Chilean team was able to secure some concessions from the American side. According to the negotiators, Chile was successfully able to reject the trade sanctions approach that it was strongly opposed to and bargain successfully over the size and terms of the fine imposed for the failure to enforce social standards (Bierman and Campbell 2004). These terms included the stipulation that the fine would be paid to a governmental fund used to improve labor right in Chile. However, importantly, despite the Chilean opposition, the coercive approach remained and the size of the obtained concessions was predicated upon the degree of executive autonomy made available by the TPA mandate, as U.S. negotiators had their hands tied by the Congressional mandate that required social provisions to be fully enforceable.

As far as the KORUS FTA is concerned, the South Korean negotiators were not in favor of the United States dictating social provisions enforceable through sanctions but could not

⁶³ According to Putnam's logic of two-level games, the win-set in international negotiations is the range of all possible agreement outcomes that can be accepted by the domestic level constituency. It determines a country's position at the negotiating table in the view of domestic ratification (see Putnam 1988).

effectively influence their design because of the requirements placed on the American side by the BTB. It is instructive that an interviewed South Korean negotiator from the Ministry of Employment and Labor has remarked that the negotiation process over the labor chapter of the KORUS FTA “was not really a negotiation,” as the American team simply dictated what it wanted to the Korean side (author’s interview July 11, 2013). These accounts suggest that the bargaining power of American trading partners could not influence the fundamental design of social standards in U.S.PTAs, just like in the case of the EU. Instead, domestic level political factors in the United States played the decisive role.

4.8. Conclusion

The existing institutional structure of the U.S. trade policy-making gives the principals the upper hand in their relationship with the agent. The U.S. Congress is closer to societal interests than governments in the EU Council of Ministers. As a result, interest groups can exploit their direct electoral connection with principals, especially when their preference intensity is high, as the case of labor unions shows. This structure is not conducive to the realization of agents’ preferences, unlike in the case of the EU. Neither the views of the President, nor those of the USTR, mattered for final agreement outcomes, as interest groups became empowered by the U.S. trade policy-making rules designed to allow the principals exercise strong control over the agent. These strong control mechanisms are responsible for the *thin* institutional insulation of trade policy executives from legislators in the United States.

Thus, two collective principals, the Democrats and the Republicans, are able to effectively coordinate among each other strengthening the mandate given *ex ante* to the agent, in

contrast to the situation with multiple principals and one agent that characterizes trade policy-making in the EU. Agreement ratification by the Congress is a powerful *ex post* control mechanism that also benefits certain societal interests controlling legislators. Furthermore, the degree of precision of the mandate given to the agent by the principals also determines the negotiation dynamic, augmenting the structural power of the U.S. negotiators and endowing them with extra leverage.

In sum, in the U.S. trade policy-making process, the executive authority is put under the tight control of legislators and interest groups. Due to strong and clearly delineated *ex ante* and *ex post* control mechanisms, principals remained fully in the driver's seat when social standards in U.S. PTAs were negotiated. These standards reflect their preferences and the lack of institutional flexibility precludes U.S. trade executives from formulating social trade agenda based on their own views. Hence, paradoxically, the U.S. appears to have higher social standards in its PTAs than the EU does.

CHAPTER 5: THE EFFECTS OF SOCIAL STANDARDS IN EU AND U.S. PTAS WITH CHILE AND SOUTH KOREA

5.1. Introduction

Do EU and U.S. social standards achieve their desired goals in terms of improving workers' rights and environmental policies in trading partners? In other words, are they effective? If so, to what extent are they and through which mechanisms? To answer this question, it is necessary to investigate the implementation dynamic of PTAs' social provisions. To date, only a few scholars have addressed the question of implementation of PTAs in general and non-trade provisions in particular (e.g. Gray 2014). The question of implementation of social provisions in PTAs and the process through which it occurs remain unaddressed in the literature and this chapter provides the first attempt to remedy this, drawing some preliminary conclusions.

I argue that understanding the implementation dynamic of social provisions in PTAs requires parsing out the exact effects of different enforcement mechanisms, analyzed in previous chapters, which create different incentive structures and influence the implementation dynamic in EU and U.S. trading partners. Thus, in accordance with Hypothesis 2 outlined in Chapter 2, I expect to see the *ex ante* effects of U.S. provisions, resulting from a fear of potential sanctions for non-compliance with social standards in the future, versus the *ex post* effects of EU

provisions, stemming from learning by domestic actors during the agreement implementation phase.

As stated in the methodological section above, the dependent variable from Hypothesis 1, the design of social standards in terms of the scope, enforcement, and the degree of legal binding, is treated here as the independent variable. The dependent variable, i.e. agreement effects, is operationalized as policy outcomes, or their lack of, resulting from the implementation of social provisions. I remain agnostic about the magnitude of policy outcomes which depend on idiosyncratic factors, such as a country's existing legislation on labor and environmental issues, its situation with the enforcement of this legislation, and overall state capacity and institutional strength, as well as the misfit between these characteristics and agreement requirements.

Process-tracing is also used in this chapter as it is well-suited to examine the intricacies and dynamic of agreement implementation process over time and identify contextual factors affecting it. Furthermore, this method allows tracing concrete policy outcomes and their timing back to the specific incentives provided by EU and U.S. PTAs, mitigating the problem of possible equifinality due to potentially similar effects of both PTAs in the same group of countries. Data from interviews with actors involved in the implementation process, as well as secondary sources, are used here to unpack this process and testing the second hypothesis.

A structured focused comparison of labor and environmental provisions' implementation in the cases of Chile and South Korea will show that there are positive effects of labor and environmental provisions attributed to the mechanisms postulated above but the *ex post* implementation is strongly mediated by the intervening domestic level variables. I will further demonstrate that labor and environmental provisions also have a different political dynamic in both cases which also determines their implementation success.

The chapter proceeds as follows. Section 2 examines the implementation of social standards in Chile. Section 3 analyzes the case of South Korea. Then, Section 4 compares and contrasts the two cases, drawing some preliminary conclusions about the effectiveness of EU and U.S. PTAs' social standards.

5.2. Implementation of Social Standards in Chile

Chile is a country that has been recovering after many years of dictatorial rule by the regime of Augusto Pinochet. Labor rights were significantly eroded and repressed during the dictatorship, and after the transition to democratic rule there was a strong commitment on the part of the new *Concertación* governments to remedy this erosion and institute some minimal form of protection of workers' rights and environment protective regulations (author's interviews, June 5, 2013; June 7, 2013). Furthermore, as the dictatorship fully embraced neo-liberal economic policies, the environment had to pay the price and environmental regulation was virtually non-existent. The discourse on the environment also changed quickly after the restoration of democratic rule (Carruthers 2010). External pressures became instrumental in solidifying these commitments and providing a template for needed reforms. This section explores how the implementation of labor and environmental standards in Chilean PTAs with the United States and the EU contributed to the improvement of social policies in Chile.

5.2.1. *Implementing Social Standards in the U.S.-Chile PTA*

The discussion of the effects of the U.S.-Chile PTA should not be separate from the discussion of NAFTA. Initially, Chile was expected to join NAFTA and the negotiations with the United States began in 1992, culminating in 1994 and ending in 1997 when the Clinton administration was unable to obtain the TPA extension from the U.S. Congress. As NAFTA and its side agreements were concluded in 1994, both labor and the environmental issues entered the negotiations between the United States and Chile and became thoroughly ingrained in the domestic discussions, re-entering the Chilean domestic debate on the eve of the U.S.-Chile FTA negotiations in the late 1990s and early 2000s.

The bulwark of the Chilean labor regime is the Labor Code which received a significant blow under the Pinochet regime as freedom of association was significantly weakened in the 1987 revision of the Code.⁶⁴ The successive democratic governments adopted some new reforms enshrined in the revised Labor Code in 1994, but this did not result in substantial strengthening of the protection of workers. Thus, despite some progress that has been made in the early years of *Concertación* regime, the woeful incompatibility of the Chilean labor law with the requirements of the NAALC became apparent during the negotiation about Chile's accession to NAFTA, creating the sense of urgency to reform certain pieces of the Chilean legislation (Pier 1997-1998).

⁶⁴ The Code envisioned “worker dismissal without cause; extensive controls regulating labor union activity; requirement that workers employed for less than six consecutive months obtain employer consent prior to exercising their organizational rights; minimum quorum requirements for union formation; abolition of closed shop and union shop; strict internal union election regulations to ‘isolate unions from government, political parties, and each other;’ exclusively voluntary, not mandatory, union dues, not to be deducted by employers from workers' paychecks; restriction of collective bargaining to a single workplace; limitation of collective bargaining to the single issue of wages; limitations on the right to strike, including provisions for hiring strikebreakers, employer declaration of lockouts, employer negotiations with individual strikers, and the right to fire strikers without severance pay after sixty days; and abolition of the labor courts” (Pier 1997-1998).

The major issue with the labor law in Chile was still the weak protection of freedom of association and collective bargaining and weak enforcement of the existing protections.⁶⁵ In 1995, President Eduardo Frei submitted a reform package to the Chilean Congress which amplified the provisions for collective bargaining (Franck 2002). Furthermore, the Chilean trade union federation, the *Central Unitaria de Trabajadores de Chile* (CUT), which was part of the domestic debate on NAFTA membership, declined to go the Summit of the Americas where the NAFTA accession was supposed to be discussed and withdrew from all of the government-led initiatives as a sign of protest against the delay in the 1995 reform package (Pier 1997-1998). Thus, the NAALC provisions began mounting already strong pressure on the Chilean government and Congress to pass needed labor reforms. Yet, the Congress failed to approve the reform package due to the opposition from several right-wing senators due to its possible threat to Chile's neoliberal economic orientation.

While only three NAALC provisions (minimum wage, acceptable conditions of work, and occupational health and safety) were enforceable through sanctions, following the expiry of the TPA in 1994, there has been a strong signal sent from the Democrats in the U.S. Congress that the fast-track renewal and all new trade deals will have to include fully enforceable social provisions, as discussed in the previous chapter. This condition became part of the negotiation of the U.S.-Chile FTA, which happened under the renewed TPA, as American negotiators acquired the new mandate from the Congress that stipulated sanctions for enforcing social provisions. Furthermore, there has been an implicit expectation placed on Chile to bring its inadequate labor regulations in line with the demands of the American unions and the U.S. Congress was expected

⁶⁵ The particular pieces of legislation that needed to be reformed in order to be compatible with the NAALC principles enshrined in the Annex 1 were the right to organize without impediment which was inhibited by the anti-union retaliatory dismissals envisioned in the old Code, the enhancement of the right to bargain collectively, the right to strike, and gender equality at work which were all parts of the 1995 reform package (Pier 1997-1998).

to monitor this. Thus, the Chilean officials knew that the failure to reform their labor law in a speedy manner might jeopardize the negotiation process. The possibility of sanctions was already built in the U.S. negotiating mandate and elevated the seriousness of labor provisions for the Chilean side.

As a result of the mounting pressure on Chile, the changes to the Labor Code were finally approved by the Chilean Congress in 2001, before the U.S.-Chile FTA went into effect in 2004. The Government Accountability Office (GAO) (2009) report to the U.S. Senate Committee on Finance positively assessed the reformed Code, mentioning that it had been strengthened as a result of the labor provisions in the FTA. The USTR has also reported in its response to worried American labor unions that Chile successfully revised its Labor Code, bringing it fully in line with the expectations of the Congressional mandate (USTR 2003). The new Code significantly improved the workers' rights to organize, reduced the work week from forty-eight to forty-five hours, streamlined overtime pay regulations, and set higher safety standards, according to the GAO report (2009). The report by the Department of Labor (DOL 2003) to the U.S. Congress mandated by the 2002 Trade Act also identified positive substantive changes made to the Chilean labor legislation with the 2001 Labor Code with regard to freedom of association and the right to organize and noted the improved enforcement of labor laws that occurred when the government increased the number of labor inspectors.

Hafner-Burton (2009) in her study of human rights' clauses in trade agreements also notes the improvement of the Chilean labor laws happening during the negotiation stage of its PTA with the United States in 2001, attributing it to the positive effect of the U.S. agreement. An interviewed Chilean negotiator complained about the anxiety generated by the American demands and possibility of sanctions among the Chilean negotiating team (author's interview,

June 5, 2013). The fact that revision of Labor Code in 2001 went further than previous revisions shows that these demands were taken quite seriously by the Chilean officials and the possibility of sanctions only increased the pressure on them. Moreover, during the negotiation period there has been a noticeable improvement in the enforcement of domestic labor regulation in Chile, as the government introduced better monitoring and new mechanisms for labor disputes, as demanded by the FTAs' provisions, and commissioned two studies of the enforcement of labor regulations in the main export sectors (GAO 2009). The possibility of sanctions generated a sense of fear among Chilean legislators and government officials that became instrumental in bringing domestic change on the eve of the agreement.

The implementation of environmental standards in the U.S.-Chile FTA reveals a similar dynamic. The Chilean environmental movement had been weakened by years of dictatorship and there had been no proper environmental regime in place during the Pinochet reign that produced harsh neoliberal policies (Carruthers 2001). The first *Concertación* governments of the 1990s strove to institute environmental reform and succeeded with the establishment of the national environmental framework law in 1994, which also created a new institution for executing it, the National Environmental Commission (CONAMA).

The timing of this reform is not coincidental. Proposals for the environmental reform began floating following the democratization process in 1990. They were further legitimized by the new international norms deriving from the Earth Summit in 1992. Yet, there had to be a critical driver to put those proposals in action, ameliorating the weakness of the Chilean environmental movement.

Tecklin et al. (2011) argue that NAFTA negotiations and the environmental provisions of the NAAEC created the sense of urgency needed to put dormant legislative proposals into law,

opening the window for needed reforms. Chile was expected to have environmental protection at least at the level of Mexico to be able to join NAFTA with its side agreement on the environment, which was stipulated in the mandate given to the U.S. negotiators. They quote one minister who remarked that “Lately, discussions of the environment tend to begin and end with the issue of NAFTA. If we begin with NAFTA we end up talking about national environmental policies and vice versa” (Tecklin et al. 2011: 885-886). Thus, the pressure from NAFTA with its stick in the form of enforceable environmental side chapter proved to be critical to build support for the environmental reform in Chile. Later, when the U.S.-Chile FTA negotiations resumed in the early 2000s, the USTR reviewed the existing Chilean environmental law, as was mandated by the U.S. Congress, and was satisfied with it (USTR 2003).

In sum, in line with the second hypothesis, there have been positive *ex ante* effects of U.S. labor and environmental standards in Chile, resulting from the fear of coercive enforcement that could be attributed to the previously negotiated NAFTA that paved the way for the later U.S.-Chile FTA. Changes in both labor and environmental regulations show that the possibility of sanctions can put pressure on U.S. trading partners and spur domestic reforms, creating the sense of urgency and incentivizing the improvement and better enforcement of domestic laws before an agreement enters into force.

Furthermore, after the pressure from negotiations with the United States dissipated and the necessary reforms were introduced before the agreement was concluded, later implementation of the FTA’s social provisions has been unsuccessful and there has been little positive *ex post* effects on either labor or environmental regulations in Chile. The GAO report (2009) has found that labor provisions were not taken as seriously in the post-agreement stage partly due to the lack of monitoring from the United States but also due to the lack of interest

from the Chilean officials who did not approach the U.S. Embassy with their concerns, demonstrating mutually low level of commitment to cooperation. This resulted in the weakening of enforcement of some parts of the Chilean labor legislation, such as the law on sub-contracting (Rosado Marzán 2009).

The same report also noted the lack of implementation of environmental standards after the initial improvement during the negotiation stage occurred. For example, despite the establishment of the fully fledged Ministry of the Environment in 2010 which superseded CONAMA, little has been done with regard to the implementation of eight projects proposed by the Article 19 of the FTA and the enforcement of the environmental regime has also been lacking. This lack of *ex post* implementation further confirms that sanctions are most effective in the pre-agreement stage, motivating reforms required to avoid possible complications in the future. The fear of sanctions dissipates later on, reducing incentives for continuing reforms, especially when major policy changes have already been introduced.

5.2.2. *Implementing Social Standards in the EU-Chile PTA*

EU PTAs, such as the one signed with Chile, do not envision sanctions for non-compliance and, instead, introduce novel mechanisms of cooperation among governments and civil society from both sides, producing a different implementation dynamic. Article 11 of the agreement stipulates that the parties need to hold annually Civil Society Dialogue meetings facilitated by the Joint Consultative Committee to discuss the implementation (Article 10). The Committee is supposed to be composed of governmental officials and civil society members. Moreover, one of the crucial expectations placed on Chile in the agreement Article 48 is the establishment of a

tripartite body which would serve as a functional equivalent of the EU's EESC, improving the quality of civil society participation in the policy-making process with regard to labor and environmental issues.

The EU-Chile FTA's expectations proved to be somewhat far-fetched. The Civil Society Dialogue has been able to convene only twice, in 2006 and 2011, since the agreement went into force in 2003.⁶⁶ While civil society actors were present from both the EU and Chile (represented by the EESC, CONCORD, and ACCIÓN respectively), little has been learned in practical terms, according to an EU diplomat participating in the dialogue (author's interview May 31, 2013).

Moreover, the Chilean counterpart of the EESC, envisioned by the agreement, has not yet been established, quite to the chagrin of the staff working in the EESC in Brussels (author's interview June 5, 2012b). The Chilean government, especially the Ministry of Foreign Affairs, has also shown little interest in taking the FTAs' provisions seriously (author's interview May 30, 2013). This lack of involvement on the part of the authorities can be attributed to the persistent administrative weaknesses of the Chilean government. For example, one interviewed official indicated that "it was difficult to locate the issue of an EESC equivalent within the state bureaucracy," as Chilean officials had a difficult time coordinating across different ministries that would be involved in the work of this new body, especially the Ministry of Labor and the Ministry General Secretariat of the Presidency. It was also difficult to decide which exact ministry would be in charge of the task of setting up the new structure (author's interview June 5, 2013).

Furthermore, there has been notable opposition from the Chilean organized businesses and their umbrella organization, *Confederación de la Producción y el Comercio* (CPC), who

⁶⁶ According to an EU diplomat nobody asked Brussels to reconvene the dialogue. This has been quite embarrassing for the Chilean authorities, as the Chilean administrative culture tends to be quite legalistic (author's interview May 31, 2013).

viewed the proposed structure as a potential threat to their autonomy (author's interview May 30, 2013). The Chilean labor movement with its main representative CUT should have been particularly vocal about the establishment of a tripartite body and the issue of labor standards more generally. Surprisingly, it has been lukewarm about both issues with only a minority of CUT members expressing genuine interest. This happened due to their own internal divisions, ideological predispositions, and distrust of both government and organized businesses (author's interview June 5, 2013). Preliminary reports by the EU also indicate that there has been very little progress made in terms of improving civil society participation in the social dialogue between workers and employees (European Commission 2011; EESC 2012).

In the absence of strong interest from major civil society actors, the Chilean government itself became the main actor involved in the implementation of labor provisions. The FTA has been successful in creating a new informational channel among officials from the EU and Chile, working on labor issues. It contributed to the exchange of ideas on employment issues in the form of five employment dialogues between the EU and Chile that occurred in the *ex post* implementation stage of the agreement. The major focus of these dialogues has been the problem of safety at work and there have been several visits to the EU's Centre for the Development of Vocational Training (CEDEFOP) and European Training Foundation (ETF) by the Chilean experts (author's interview May 31, 2013). These dialogues proved to be useful for opening the internal debate on reform within Chile's administrative apparatus entrusted with handling labor issues (author's interview June 7, 2013).

One notable achievement of these employment dialogues has been the proposal to model the workplace safety regulation revisions on EU regulations, following the mining accident in 2010. The EU's legislation became to be seen as a roadmap for the proposed reform by the

Chilean authorities who have learned about it through the FTA's implementation process, particularly the fourth dialogue on employment.⁶⁷ This dialogue has also contributed to the reform of the Chilean labor safety ombudsmen. Moreover, the fifth dialogue became instrumental in advancing the proposals for the reform of the Chilean employment service, the *Servicio Nacional de Empleo* (SENCE), and the EU model of certification system, skill training, and qualifications system became seen as the institutional template to be emulated in Chile. Furthermore, the Chilean government has recently become more open to the idea of the EESC, as suggested by some of practitioners involved in this process (author's interviews June 5, 2012b; May 31, 2013; June 5, 2013).

These instances suggest that there has been some diffusion of EU regulations in Chile resulting from learning through the intergovernmental channel created as part of the FTA's *ex post* implementation process.⁶⁸ Yet, despite these positive developments, Chile has made little progress in terms of addressing lingering issues with labor rights, as indicated by both GAO (2009) and EESC (2012) reports. Existing labor regulations are still not completely enforced and the internationally recognized labor rights are not fully protected, compromising the fulfillment of the EU-Chile PTA's labor provisions.⁶⁹

On the whole, progress has been hindered by two factors – the lack of organizational capacity of the Chilean civil society, as well as the lack of administrative capacity of the Chilean government. Chile, as a country with the institutional legacy of dictatorship, has a fragmented civil society, which undermines its effectiveness. According to Urzúa (2008), this weakness is due to a combination of structural, cultural, and political factors. The neoliberal economic model

⁶⁷ However, the new regulations are yet to be implemented and Chile still needs to ratify the ILO Convention 176 on mining safety.

⁶⁸ It should be noted that the dialogue also opened a two-way learning process as some EU member states became eager to emulate the elements of Chile's privatized pension system (author's interview May 31, 2013).

⁶⁹ The anti-subcontracting law remains the main culprit here.

adopted in Chile, coupled with a high proportion of informal sector workers, precludes effective organization of civil society. This model also contributes to the consumerist, individualistic culture exacerbated by income disparity that makes organizing more difficult. As a result, political elites become more distant from the citizenry. He even concludes that neither labor unions, nor NGOs were able to regain their strength after the return to democratic rule compared with the pre-dictatorship period.

The labor movement in Chile suffers from a lack of strong leadership, as the leaders of CUT, the major trade union confederation, have been split across party lines and paralyzed by distrust of each other (Pallacios-Valladares 2010). Especially in the 1990s, CUT leadership was still dominated by the Communist Party of Chile which preferred to distance itself from any neoliberal reforms to the detriment of effectively influencing the government (Herrerros 2010). Other scholars have noted that CUT's organizational weaknesses prevented its effectiveness as a negotiator in labor disputes (Traverso et al. 2012). In general, labor reform in Chile that occurred after the democratic transition was quite limited and served to preserve a liberally oriented economy, while securing consensus from organized businesses on the issue of democratic reforms. This put the leadership of the Chilean labor movement in a delicate situation where advancing democratic reforms required toning down the rhetoric of labor reforms not to upset the fragile balance between various sides of the political spectrum on the issue of democratization (Haagh 2002).

Thus, CUT leaders, pre-occupied with internal rivalries and careful political balancing, do not view the agreement's social provisions as important, eschewing constructive engagement with the FTA's mechanisms created for the participation of civil society (author's interview June 5, 2013). It is not coincidental that EU civil society groups were troubled by the inability to

identify a competent interlocutor on the Chilean side (author's interviews June 5, 2012b; June 20, 2012). The fragmentation of Chilean civil society, along with the lack of interest from the government, has not allowed the dialogue mechanism to be exploited to its full extent with regard to labor provisions of the EU-Chile FTA.⁷⁰

The Chilean environmental movement also exhibits certain pathologies it inherited from the Pinochet era (Carruthers 2001). It is even more eclectic than the labor movement and lacks institutional capacity, as well as crucial material resources (author's interview June 17, 2013). Its lobbying efforts are weak and virtually non-existent with few small NGOs mostly relying on personal ties with policy-makers (author's interviews June 10, 2013a; June 17, 2013).⁷¹ This difficulty is compounded by the fact that the Chilean political system has very few formal lobbying channels for societal actors, which can be largely attributed to the absence of law on lobbying. Unlike in other countries, the labor movement in Chile is also disinterested in environmental issues and the two constituencies do not join their forces together, which further erodes their effectiveness. In addition to this organizational weakness, the Chilean society is not well mobilized when it comes to environmental protection, as evidenced by the tolerance of high levels of air pollution in Santiago (author's interview June 10, 2013a). Thus, the degree of organizational capacity of the Chilean civil society is also an important variable mediating the implementation of environmental provisions in the EU-Chile FTA.

The lack of administrative capacity of the Chilean government has also intervened in the process of implementing environmental provisions in the EU-Chile FTA. For example, the Ministry of the Environment was established only in 2010, which occurred largely due to the

⁷⁰ Despite that, several interviewees pointed to the positive learning in terms of civil society mobilization, as NGOs became more used to working with the government (author's interview June 10, 2013).

⁷¹ For example, one of the key players among the Chilean environmental NGOs is the organization *Programa Chile Sustentable* led by a single person Sara Larrain.

pressure from the OECD (author's interview June 17, 2013). Despite this positive change, the new Ministry experiences administrative problems and has only limited enforcement capacity over the environmental regulations it inherited from its predecessor CONAMA (GAO 2009). Governmental officials also lack experience working with environmental legislation (author's interview June 10, 2013b). Thus, both civil society and government weaknesses have been even greater in the area of the environment in Chile, compared with the labor issues discussed above.⁷²

These deficiencies resulted in even fewer positive effects of environmental provisions in the EU-Chile FTA. The positive change could be seen only at the level of attitudes among the relevant Chilean officials and did not lead to any real policy change, unlike in the case of the U.S.-Chile FTA's environmental standards. An interviewed high-level Chilean diplomat involved in the EU-Chile relations mentioned that there has been certain legitimization of environmental issues within the government bureaucracy stemming from the general obligations created by the FTA (author's interview June 5, 2013). This legitimization has elevated the level of environmental concerns, especially in the south of Chile, where the cellulose plants are hurting the native flora, which has been increasingly brought to the attention of the Chilean public and policy-makers and which has also received a lot of attention in the EU.

There have also been several exchanges of views between officials from the EU and the Ministry of the Environment in Chile that did not lead to any substantive changes, beyond establishing a new informational channel, due to the lack of interest from Ministry officials, reflecting the administrative weakness of the latter (author's interview May 31, 2013).

⁷² The report by the EESC's echoes this frustration: "Chilean civil society's assessment of the results of the AA is not overly positive. Trade unions, SME's, NGOs and third sector organisations such as consumer organisations see the AA as little more than a free trade agreement, and regret that they have derived no benefit from it, not even in the area of development projects, where they accuse the government of intervening directly, without consulting the supposed beneficiaries beforehand" (EESC 2012).

Furthermore, despite the environment being discussed at the Civil Society Dialogue meetings, little progress has been made, as the discussion tended to focus mostly on the environmental impacts of trade and not the environmental provisions as such which were treated as marginal by the agreement parties (author's interview June 5, 2013). Thus, much like with the case of labor standards, the weakness of the Chilean environmental movement resulted in the lack of fulfillment of the agreement obligations and many "missed opportunities"⁷³

Yet, despite this lack of implementation, there has been one remarkable effect of social provisions in the case of Chile, which also points to the relevance of learning as a mechanism through which FTAs' effects are produced postulated in this dissertation. Chile has been the leader of bilateral trade liberalization among developing countries, signing twenty-one PTAs to date with both developed and developing countries and negotiating several others. Furthermore, it has been also championing the formation of South-South trade agreements. This active trade liberalization reflects the entrenched neoliberal economic discourse and the reliance on external markets in Chile's foreign economic policy, especially for the most important mining and agricultural sectors. Conspicuously, among the countries in the global South, Chile has become the first one to ever include social standards, labor and environmental alike, in its FTAs with other developing nations.⁷⁴ This decision is the result of learning Chile has undergone throughout the process of signing and implementing FTAs with its counterparts in the global North.

Wehner (2011) attributes Chile's "rush to FTAs" to the economic interests of domestic producers who seek to diversify foreign markets which is important for a country mainly relying on the export of raw materials, as well as to the political goals of contributing to the rule-based

⁷³ The term is borrowed from Reyes (2009).

⁷⁴ Chile's FTAs with China and Hong Kong, Peru, Panama, Columbia, and Turkey include social clauses.

economic order and legitimization of its place within it, important for the leading nation in the global South. These reasons, however, do not explain the inclusion of social standards in Chile's FTAs with countries in the global South. As noted above, Chilean organized businesses, while favoring the general policy of trade liberalization, tend to be largely hostile to the advancement of social standards. Additionally, there is little economic benefit associated with social standards as they play a regulatory role, remedying for market failure, as explained in the theory chapter. Furthermore, given the extent of neoliberal entrenchment in the Chilean political and economic system, social standards in the Chilean FTAs represent somewhat of an anomaly.

As argued in the previous chapters, the main advocates of social standards are societal actors who are expected to lose from trade liberalization. Their effectiveness in terms of translating their demands into specific policy outcomes with regard to FTAs hinges on their organizational capacity, as well as their proximity to legislators and the degree of control the latter exercise over trade policy executives, as has been shown Chapters 3 and 4. From the discussion in this chapter it becomes apparent that both labor and environmental movements in Chile experience serious difficulties when trying to get engaged in trade policy-making and do not have a lot of government support. For example, Herrero (2010) points out that CUT's role in trying to influence Chilean trade negotiations has always been rather limited. In this light, the inclusion of social standards looks even more anomalous, considering the persistent organizational weaknesses of Chilean civil society and the absence of well institutionalized lobbying channels to influence trade policy executives.

Thus, in the absence of strong pressure for the inclusion of social standards from organized businesses, labor unions, and environmentalists, the Chilean government itself becomes the key actor responsible for the design of South-South FTAs with regard to

incorporating social standards. The vast experience that the Chilean government has had negotiating and implementing social standards in FTAs with the EU and the United States is responsible for the diffusion of ideas on social regulation. In the absence of functional demands and economic imperatives, this emulation process became the main driver largely responsible for creating the perception among Chilean officials that to include social standards in FTAs is the right thing to do, as indicated by several interviewees in Santiago dealing with Chilean FTAs (author's interviews May 31, 2013; June 5, 2013; June 7, 2013).⁷⁵ This finding echoes previous studies done by the scholars of comparative regionalism, arguing that certain regionalist ideas can diffuse across various PTAs and become emulated by actors involved in them (Lenz 2013; Jetschke 2009). Thus, the learning mechanism postulated in the theoretical chapter has also manifested itself in the design of Chile's own FTAs with its counterparts in the global South.

5.3. Implementation of Social Standards in South Korea: A Preliminary Assessment

Both KORUS and KOREU FTAs are rather new agreements that became effective in 2012 and 2011 respectively and their implementation process has only begun. Thus, it might be somewhat premature to assess the full extent of the effectiveness of social standards in these agreements.

Yet, a preliminary enquiry into the implementation process allows discerning a dynamic similar to the one that occurred in the older agreements with Chile. South Korea is a developed country with already relatively high social standards, unlike Chile. On the one hand, its environmental regulation is at the same level of the countries in the global North and in some instances is even

⁷⁵ It should be noted that officials who are involved in the making, negotiation, and implementation of FTAs in different countries form a dense epistemic community, networking within different international and domestic forums, which facilitates the spread of certain ideas among them, including those pertaining to trade regionalism (see Haas 1992; Lenz 2013).

higher than that in the United States. On the other hand, despite its relative stringency, South Korean labor legislation and its enforcement have received quite a lot of criticism from both EU and U.S. labor unions and the ILO especially for failing to ensure an adequate level of freedom of association and for ratifying only four out of eight core ILO conventions (e.g. AFL-CIO 2009).⁷⁶

In 2011, on the eve of signing the KORUS FTA, the U.S. Department of Labor issued a report on the state of labor regulations in South Korea, in response to the requirements of the 2002 Trade Act with regard to labor provisions in trade agreements. It found that labor rights in South Korea are sufficiently protected and are fully compatible with the stipulations of Chapter 19 of the KORUS FTA that covers labor issues, notwithstanding some existing problems (DOL 2011).⁷⁷ The Korean government strengthened its labor laws in 1996, fulfilling its commitments made as part of the OECD accession. In 2010, the Korean government also updated the Trade Union and Labor Relations Adjustment Act.⁷⁸ Overall, the South Korean labor law was also found to be consistent with the ILO norms by the United States.⁷⁹ Therefore, there has been no misfit between the FTA requirements and the state of the South Korean labor regulation. Thus, there was no room for a positive *ex ante* effect of the agreement, unlike in the case of the U.S.-Chile FTA which was responsible for triggering significant political reform in Chile in anticipation of the enactment of both labor and environmental provisions. Furthermore, the United States only required compliance with the ILO Declaration and not the core conventions, which left South Korean negotiators feeling rather relieved (author's interview July 11, 2013).

⁷⁶ South Korea is yet to ratify the conventions on freedom from forced labor (#29 and #105) and freedom of association and collective bargaining (#87 and #98).

⁷⁷ Some of these problems included criminal charges related to the union activity, abuses of sub-contracted workers, and the denial of recognition of the migrants' trade union (DOL 2011).

⁷⁸ According to an interviewed official, this revision was driven solely by domestic factors and was not related to the FTA (author's interview July 11, 2013).

⁷⁹ To date, South Korea has ratified a higher number of ILO conventions than the United States.

Similarly, as the KORUS FTA was negotiated, it was found that South Korea already had a strong commitment to environmental protection (White House Factsheet n/d). The USTR also pointed that the state of environmental regulation in South Korea was sufficient and certainly at the level of that of the United States (author's interview July 8, 2013a). In fact, South Korea even had to lower its own standards on car emissions to satisfy export requirements for the U.S. market (author's interview July 8, 2013b). As a result of these positive assessments, the South Korean government did not have to change any domestic laws in order to meet the requirements of labor and environmental chapters of the KORUS FTA (author's interview July 10, 2013a).

While the experience of South Korea with the KORUS FTA's social provisions has been different from that of Chile, owing to Korea's high level of political and economic development, the nascent implementation of the KOREU FTA already reveals a dynamic that points in the direction of the EU-Chile agreement. The KOREU FTA's Chapter 13 on sustainable development stipulates a similar dialogue mechanism, known as the Civil Society Forum (CSF). To date, there has been one CSF meeting between the EU and South Korea in 2011. While the EU delegation at the forum was comprised of various social partners, including labor groups, the South Korean side was heavily represented by government officials and academics chosen by those officials (author's interview July 5, 2013a).⁸⁰ Besides, despite the requirements of the sustainable development chapter that such meetings need to be representative of all segments of civil society, there was only one representative of the Federation of the Korean Trade Unions (FKTU), while representatives of another major trade union confederation, the Korean Confederation of Trade Unions (KCTU) were suspiciously absent from the meeting (author's interviews July 5, 2013a; July 10, 2013a; July 11, 2013).

⁸⁰ For example, the representative of the environmental sector was a professor of law (author's interview July 5, 2013b).

As such, the CSF has a great potential to become a vehicle of positive change in the future. For example, the issue of ILO conventions' ratification became a big part of its first meeting due to the position of ETUC that was present there and repeatedly demanded more attention to be paid to the issue of non-ratification (author's interview July 5, 2013a). Joining forces together with their EU counterparts would have allowed the South Korean labor movement to put enough pressure on their authorities and create an impetus for positive change. Furthermore, the establishment of the Committee on Trade and Sustainable Development and Domestic Advisory Group comprised of various actors as part of the FTA implementation has already spurred the process of learning within the Korean bureaucracy, resulting in more attention paid to the demands from civil society (author's interview July 11, 2013).

Yet, much like in the case of Chile, South Korean labor movement is quite fragmented and split across two major trade unions, KCTU and FKTU, who have their own competing agendas. Furthermore, FKTU is thought to be co-opted by the government, according to various observers. Thus, labor leaders do not view the agreement's social provisions as serious, despite the fact that labor rights in South Korea are not fully protected (authors' interview July 5, 2013b). Furthermore, the Korean government arguably has a pro-business bias (Watson 1998). Thus, labor unions have not yet been able to reap the benefits of civil society participation mechanisms of the agreement due to their internal fragmentation (author's interview July 11, 2013).⁸¹

Furthermore, Korean civil society in general largely opposed the signing of the KOREU FTA, which has its roots in the active anti-neoliberal orientation of the Korean labor movement. It developed a very negative frame in the public discourse over the issue of FTAs and has kept

⁸¹ According to the same interviewed official, the KCTU received invitations to join the Civil Society Forum meeting three times but was still absent.

this frame intact after the agreement went into force. FTAs are seen as hurting the workers and the environment and their social provisions are perceived as little more than a sham, as revealed by interviews with a major umbrella organization of South Korean NGOs and their representative in the Korean National Assembly (author's interviews July 5, 2013b; July 6, 2013). Furthermore, the staff of this organization, while following closely the developments on the FTA signing process, was not well aware of social provisions and the opportunities they provide for civil society to benefit from them.⁸² The Korean civil society has become united in its unequivocally militant discourse towards both EU and U.S. PTAs. Therefore, this negativity precluded civil society actors from constructively engaging with the KOREU FTA and its social provisions, including the civil society dialogue mechanism. It is clear that the FTA is now fully in force and only time will show whether the Korean civil society will begin to embrace social provisions and try to use them fruitfully to achieve their goals, such as the ratification of ILO core conventions.

As mentioned earlier, the environmental protection in South Korea already meets high standards expected from an OECD country, which means very little room for domestic policy adjustment exists with regards to FTAs' requirements (author's interview July 10, 2013b). Remarkably, the Korean environmental movement has been able to achieve a lot of success in recent years, putting environmental issues at the forefront of the political agenda and successfully using various lobbying strategies, not unlike their counterparts in some of the "greenest" countries in western Europe, such as Germany (Ku 2010). This explains why the

⁸² An interviewed NGO representative was genuinely surprised that civil society actors can use the CSF even if they were opposed to the agreement (author's interview July 6, 2013).

discussion of the implementation of social standards in the KOREU FTA has revolved largely around labor issues.⁸³

The implementation of the KOREU FTA also shows that South Korea, despite having overall strong democratic institutions, is not unaffected by similar administrative problems identified in the Chilean case, including both intra-governmental coordination and the availability of resources. For example, the Ministry of Employment and Labor has only limited tools for the enforcement of labor laws (author's interview July 11, 2013). An interviewee from the Ministry of Environment also complained about a general lack of experience in implementing FTAs' provisions and the absence of consensus within the bureaucratic apparatus on how to handle this process (author's interview July 10, 2013b). Furthermore, the South Korean government is thought to be generally less open to the demands of civil society than governments in Europe (author's interviews July 2, 2013; July 5, 2013b, July 6, 2013). This explains why the Korean government had to be "on the defensive" during the first CSF meeting, according to an interviewee present there (author's interview July 5, 2013a).

Yet, similar to the case of Chile, the Korean government has not been immune from learning and a big achievement of South Korea's experience with the negotiation and implementation of social standards has been the emulation of social regulation, according to an interviewed South Korean negotiator (author's interview July 8, 2013b). As a result, the South Korean government decided to include both labor and environmental standards in its most recent PTAs with other countries in the global South (e.g. the South Korea-Peru FTA). Curiously, labor and environmental chapters are largely modeled after the KORUS FTA, covering both domestic and international labor and environmental regulations and envisioning the full use of the dispute

⁸³ According to an interviewee who was present at the EU-South Korea CSF meeting, environmental issues were not discussed much aside from the green growth policies of the South Korean government considered laudable by the EU (author's interview July 5, 2013).

settlement mechanism and suspension of trade privileges for non-compliance. Much like in the case of Chile, this emulation is another indication that social standards diffuse from North-South PTAs to South-South PTAs, as governments in the developing world begin to emulate familiar regulatory templates. And similarly, civil society in South Korea is largely disinterested in such provisions and is generally opposed to free trade, while organized businesses are inimical to social standards. This outcome can be largely attributed to the process of inter-governmental learning between South Korean officials and their counterparts from the EU and the United States and the establishment of the Domestic Advisory Group within the South Korean government overseeing the implementation of the KOREU FTA (author's interview July 8, 2013b).

In sum, both KORUS and KOREU agreements are rather new and the room for PTA-induced domestic policy adjustment is rather limited. While this does not allow for a fully fledged test of the second hypothesis, the nascent implementation of these agreements still elucidates similar political dynamic. Domestic level factors found in the case of Chile can already be seen to intervene in the process of *ex post* implementation of the KOREU FTA, even if it has only begun, which allows drawing some preliminary conclusions echoing those from the Chilean case.

5.4. Conclusion

The evidence presented here allows for a rather preliminary assessment of the effects of various enforcement mechanisms in EU and U.S. PTAs and this chapter should be considered a plausibility probe for the second hypothesis, i.e. a single case study conducted only to check the plausibility of a proposed theory (Odell 2001). Yet, it clearly shows positive *ex ante*

effects of U.S. social standards in the case of Chile, pointing at the fact that cases do not need to be brought to the arbitration panels and sanctions do not necessarily need to be enacted in order to be effective. The very fear of being sanctioned in the future can exert just enough pressure on domestic actors in U.S. trading partners and create a stimulus for needed reforms whenever a misfit between the PTA requirements and domestic regulations exists. This was the case of Chile in the 1990s when the stick of NAALC and NAAEC was sufficient to remove obstacles on the way to labor and environmental reforms within the Chilean political system and trigger the process of domestic policy adjustment. Moreover, the greatest positive effect of the U.S.-Chile PTA has occurred *ex ante* and there was no significant *ex post* effect, following the agreement implementation, which further corroborates the second hypothesis. Future research could generalize this logic and investigate *ex ante* effects of U.S. PTAs in other cases.⁸⁴

Furthermore, some positive *ex post* effect of an EU PTA in a less likely candidate with already relatively strong democratic institutions like Chile suggests that the EU' social provisions can work even in the absence of sanctions due to the learning process triggered by the PTA's implementation mechanisms. Remarkably, these mechanisms can work even when an agreement's social provisions are "soft," i.e. lack legally binding instruments. Furthermore, EU PTAs can serve as the channels of policy diffusion through the process of emulation of the EU's regulatory templates and institutional practices even when the pressure from civil society is weak.

In both Chile and South Korea, the process of learning also manifested itself in the diffusion of social standards in their recent PTAs formed with trading partners in the global South. Thus, social standards can travel from the global North to the global South, becoming part

⁸⁴ Some accounts suggest that similar logic has been in place in Peru where the government had to establish the Ministry of Environment ahead of signing a PTA with the United States (author's interview May 3, 2013).

of the realities of South-South trade relations and potentially contributing to domestic social reform in the developing world. Importantly, PTAs can also serve as the vehicles of diffusion of social regulation, in addition to economic regulation, as has been already demonstrated by other studies (e.g. Baccini and Urpelainen 2014a; Rudra 2011).

Overall, the preliminary findings in this chapter corroborate the second hypothesis of this dissertation. U.S. PTAs have positive *ex ante* effects as a result of coercive mechanisms and fear they generate, while EU PTAs have positive *ex post* effect as a result of learning by domestic actors they induce. The design of PTAs' social standards in the form of different implementation mechanisms matters for agreement outcomes, as postulated in the theory developed in Chapter 2.

However, this chapter also makes clear that in order to parse out the causal effects of social provisions in various PTAs further we need a better understanding of various domestic level factors intervening in the process of their *ex post* implementation.⁸⁵ It has identified two important variables mediating the effect of PTAs' social standards in trading partners, i.e. the organizational capacity of civil society and the administrative capacity of government. These variables become particularly important during the *ex post* process of implementing EU PTAs' social provisions. As these provisions provide a forum for both governments and civil society actors from the EU and its trading partners to address the implementation of labor and environmental provisions collectively, they can serve as potential channels for policy learning. Civil society actors can pressure state authorities to listen to their demands, while governments can also become more knowledgeable about social regulation and various practices that could be adopted to improve it, especially the EU's templates.

⁸⁵ It would be also expedient to examine this effect in countries that signed a PTA with either the EU or the United States to better isolate a possible interaction effect between various provisions which is beyond the scope of this chapter.

As the cases of Chile and South Korea demonstrate, the effectiveness of this dialogue mechanism hinges on how united civil society is and, thus, how seriously it views social provisions. A well-organized civil society can use this dialogue mechanism most constructively when dealing with government. A fragmented civil society will not be able to achieve this and will not reap the benefits provided by EU PTAs' implementation mechanisms. At the same time, framing of social standards by civil society actors is also crucial for their effectiveness, as the South Korean experience suggests. On the other hand, governments that lack effective administrative structures will also lag behind in implementing social provisions and will not be able to work constructively with the EU and their own civil society. This dynamic has been particularly acute in the case of Chile and, to a lesser extent, in South Korea.

Thus, this chapter has highlighted the importance of the agreement design, as well as its interaction with domestic level factors, further refining our understanding of variegated effects of international agreements and the role of domestic politics (Simmons 2009).

CHAPTER 6: CONCLUSION

Today's trade policy happens increasingly behind the border and social standards are a crucial part of it. They have become omnipresent in EU and U.S. PTAs. Furthermore, as the preference for "fair trade" grows stronger among both policy-makers and their constituents in the developed world, social standards will feature even more prominently on the trade policy agenda. Yet, significant differences exist between the EU and U.S. approaches toward the content and enforcement of these standards. This dissertation demonstrated that the nature of these differences originates in the distinct patterns of trade policy-making on new trade issues in the EU and the United States. It further examined the implementation of social provisions in PTAs which has not been addressed by the extant literature. This chapter summarizes the main findings of this dissertation assessing their theoretical relevance, juxtaposes the arguments made here with some alternative explanations, outlines the directions for future studies, and explores policy implications of this study in the light of wider academic and policy debates.

6.1. Summary of the Findings

This dissertation asked two related questions: first, what explains the design of social standards in EU and U.S. PTAs and, second, how does the difference in their design matter? I argued that the sources of different EU and U.S. approaches are located within the structure of their trade

policy-making processes with regard to the new trade issues and the variation in the design of PTAs' social standards is a function of institutional insulation of trade policy executives from legislators and interest groups. I used the principal-agent theory to show that this insulation is thicker in the EU than in the United States due to weak control mechanisms that the principals, i.e. legislators in the Council of Ministers, devised over the agent, i.e. the European Commission, to whom trade policy making authority is delegated. These weak control mechanisms are the result of the EU's multi-level system where interest groups have a weaker connection to principals representing them. Societal actors operate under the conditions of top-down lobbying and profusion of lobbying venues which makes their lobbying efforts less effective. Thus, trade policy executives who act agents receive a vague mandate from principals who do not exercise strong control. As a result, these executives can shape the agreement agenda and influence the design of social standards in the way they deem appropriate, based on their own normative preferences, i.e. ideas about the role of the EU in the global system.

This represents a striking contrast to the case of making social standards in U.S. PTA. Using the principal-agent theory, I have demonstrated how thin institutional insulation of trade policy executives in the USTR makes societal actors be in charge of the agreement agenda when it comes to the design of social standards. Labor and environmental constituencies were able to successfully lobby their legislators in the U.S. Congress, i.e. principals, and insert social provisions they wanted – fully enforceable, legally binding, and covering a range of domestic and, eventually, international rules. Furthermore, unlike in the EU, American labor and environmentalists were able to lobby policy-makers jointly due to the nature of Congressional politics, which further increased their effectiveness. Principals, accountable to societal interests through the direct electoral connection, devised strong control mechanisms over the agent when

delegating trade policy-making authority to ensure that societal interests are secured in U.S. trade deals. The agents were given a stick mandate which did not allow executive ideas to come into play and influence social standards in any possible way.

Table 5 below shows the principal-agent dynamic in the EU and the United States, comparing the authority delegation and control mechanisms. Both *ex ante* and *ex post* mechanisms are rather weak in the EU, which enables agency slack and provides the window of opportunity for trade policy executives in the European Commission to shape the agreement agenda by acting as policy entrepreneurs. They are stronger in the United States, allowing the principals to prevent possible agency losses when setting the agreement agenda. This arrangement is endogenous to the interests of societal actors and legislators acting upon their behalf and is responsible for producing the distinct policy-making dynamic with regard to the making of social standards in PTAs.

Ironically, as a result of such an institutional arrangement labor unions and environmental NGOs became much more empowered in the trade policy-making arena in the United States, which flies in the face of the conventional wisdom about the strength of labor and environmental movements in the EU. This study has shown that this strength varies by an issue area with its distinct political dynamic and institutional configuration. Hence, the United States does appear to pursue social trade agenda more assertively as the result of its domestic politics of trade policy-making on social issues. The social dimensions of “Market Power Europe” and “Market Power America” (Damro 2012), indeed, have domestic political causes and social standards are valued exports, as different actors attach different ideas to their role in the global economy.

Table 5: The Principal-Agent Dynamic in the EU and the United States

	EU	U.S.
Principals	Council of Ministers (CoM)	Congress
Agents	European Commission (DG Trade)	President, USTR
Delegation	Commission is the sole negotiator	Trade Promotion Authority
<i>Ex ante</i> control	Article 133 Committee approves negotiating mandate	Congress sets negotiating objectives
<i>Ex post</i> control	Ratification by the CoM, veto over trade-related issues	Ratification by Congress, TPA renewal

Do social provisions in U.S. and EU PTAs serve the purposes they proclaim to serve? Are they effective in terms of improving labor and environmental conditions in partner states? I further argued that in order to understand these effects and the mechanisms through which they are produced we need to pay attention to the design of social standards. This design determines the distinct causal mechanisms at play throughout the PTA implementation process and the timing of domestic policy adjustment in trade agreement partners.⁸⁶ I showed how U.S. social provisions have *ex ante* positive effects because their coercive enforcement generates fear of

⁸⁶ Please note that I remained agnostic about the magnitude of the effect which would be a function of idiosyncratic domestic situation of a country signing a PTA with the EU or the United States, i.e. the misfit between PTA requirements and expectations and the conditions on the ground.

being sanctioned when the agreement enters into force, which induces governments to implement domestic reforms needed to avoid sanctions before they sign a PTA with the United States. Remarkably, Chile has instituted sweeping labor and environmental reforms in anticipation of joining NAFTA and later on, after the membership perspective failed, before signing a bilateral PTA with the United States.

Conversely, the effect of social standards in EU PTAs should be *ex post*, i.e. much more gradual, due to the absence of sanctions and presence of dialogical implementation mechanisms that would result in any domestic policy change occurring over time due to the learning process by various domestic actors. Thus, EU social provisions should not be considered completely toothless, as argued by some critics. They have a great potential to become the vehicles of domestic regulatory reform due to the learning dynamic they produce in the *ex post* implementation stage when civil society is well-organized and governments have adequate administrative capacity. Unfortunately, this has not been the case in Chile where fragmented civil society and incapable government moderated the push for reform stemming from the positive learning dynamic the PTA initiated. Likewise, the implementation of EU social provisions in South Korea is beginning to show the signs of the same malaise, despite some positive effects. Thus, it would be paramount for civil society in the EU and its trading partners to work in tandem and for the EU to increase capacity-building as part of its PTAs' implementation efforts.

Overall, both the EU and the United States exert different kinds of “power through trade” (Meunier and Nicolaïdis 2006) when it comes to social standards in their PTAs: benign, working through talk, and coercive, working through threat. These divergent approaches are likely to shape the landscape of the North-South trade relations in profound ways for years to come. They

are also likely to be at the heart of cooperation and conflict between the two major players in the global economy.⁸⁷

This dissertation highlighted the importance of both domestic institutional factors and the need to understand the nuances of policy process when it comes to examining the outcomes of trade policy-making with regard to the inclusion of social standards in PTAs signed by the two leading economies, the EU and the United States. The institutional factors highlighted here are important for social trade issues, alongside traditional trade policy (Young 2007), but they deserve further examination by IPE scholars who begin to turn their attention to other behind-the-border provisions which have become the fulcrum of modern trade policy-making.

Furthermore, ideas do matter for trade policy outputs, as has been long argued by various scholars (Goldstein 1993; Siles-Brügge 2014), and this dissertation has outlined the scope conditions under which ideas can become causally relevant. Thick institutional insulation of trade policy executives from societal actors creates a sufficient condition for executive ideas to shape policy. The principal-agent approach helps to understand the effects of this insulation, further contributing to the existing IR studies on the role of ideas on policies, especially with regard to their role in new trade issues (Parsons 2003; Siles-Brügge 2014; Yee 1996).⁸⁸

This study provides another case in point for the long-standing arguments that international agreement design should matter for agreement outcomes (Rosendorff and Milner 2001). It has shown how exactly it matters by focusing on the process of implementation, the causal mechanisms, and the timing of agreement effects. Thus, it also adds to the nascent

⁸⁷ It is likely that these approaches will collide as the EU and the United States begin negotiating the TTIP.

⁸⁸ The argument made in this dissertation echoes Parsons' (2003) study about how "a certain idea of Europe" held by the French elites and its subsequent institutionalization became instrumental for a particular shape of European integration. It also elaborates Siles-Brügge's (2014) argument about the role of ideas in EU trade policy by contrasting it with trade policies of other powers and further refining the scope conditions for a particular issue area, as the scholars of policy ideas have long called for (Yee 1996).

scholarship on the timing of PTA effects (Baccini and Urpelainen 2014b; Kim 2012) by elucidating various incentives and processes behind it.

Finally, this dissertation has taken up the issue with a *sui generis* approach that plagues the literature on the EU trade policy (Poletti and De Bièvre 2014) and has shown how the principal-agent theory can be productively employed as a heuristic device to overcome this issue through the use of explicitly comparative perspective.⁸⁹ Thus, it contributes to the EU studies literature by generating empirical insights about the nature of EU trade policy-making that could be generalized across various institutional contexts.

6.2. Evaluation of Alternative Explanations

The findings of this dissertation challenge the established view that a greater number of veto players always restricts executives' options in pursuing their agenda (Tsebelis 2002; Hafner-Burton 2009). The principal-agent theory used here shows how thick institutional insulation of agents from principals due to weak control mechanisms can attenuate the effect of multiple veto players and allow executives to exploit institutional complexities to their own benefit, reducing their accountability to both legislators and societal interests, as the case of social standards in EU PTAs has shown. Thus, while providing an accurate picture of political constraints on decision-makers, the veto players' theory remains somewhat ill-equipped to grasp the nuances of the policy making *process*, especially as it unveils over time, which in itself can be crucial for understanding trade policy outcomes.

⁸⁹ Poletti and De Bièvre (2014: 3) argue that “analyses of features and causal mechanisms typical of the EU institutional structure would benefit from explicit controlled comparisons with other political systems. This requires using abstract conceptual tools to make comparisons of different institutional contexts possible.”

This study has also shown that normative preferences of trade executives in the European Commission and not the interests of organized businesses are the driving forces behind the design of social standards in EU PTAs. Therefore, simply claiming that Commission officials act upon the lobby of big businesses in the EU does not capture the realities of the EU trade policy-making process with regard to social issues. Thus, the EU is not a mere conduit for the preferences of producers, as has been long argued by liberal intergovernmentalists (Moravcsik 1998). Its supranational executives hold normative ideas that can play a big role in the policy-making process, even in the area of external economic relations strongly infused with material interests, when conditions are ripe.

Furthermore, the findings of this dissertation also refine our understanding of PTA effects. They make clear that enforcement strategies and implementation mechanisms are also important for the effectiveness of social provisions, in addition to their degree of legal binding, as the case of Chile's PTAs with the EU and the United States has demonstrated. Thus, scholars need to pay more attention to these precise mechanisms, besides differentiating among "hard" and "soft" PTAs, when it comes to examining their effects (Hafner-Burton 2009). These mechanisms also need to be taken into account in the studies exploring the implementation of trade agreements (Gray 2014).

6.3. Avenues for Future Research

This dissertation provides the first, preliminary test of the hypothesis about the effects of social standards in PTAs and the causal mechanisms through which this effect is produced. The universe of EU and U.S. trade agreements has become rather large and testing the logic of the

second hypothesis in other cases of PTAs could make the findings of this study more generalizable. In addition, a carefully executed large- N analysis of the effects of social standards could further increase the generalizability of present findings.⁹⁰ Another fruitful venue for future research should be the study of interplay between various PTA design features and different domestic level variables, as it should matter a great deal for the agreement effectiveness, according to this dissertation.

Future studies could also examine the making of social provisions in the cases of other economic powers, such as Canada and European Free Trade Association (EFTA). Both sign PTAs with social standards and their design is somewhat of a hybrid of EU and U.S. approaches. Applying the principal-agent approach to different institutional settings, i.e. to the case of trade policy-making regarding social standards in Canada and EFTA, could yield potentially interesting results, shedding light on the domestic political dynamic in new trade issues, further augmenting the current analysis.

Furthermore, the timeframe of this study did not include some of the newest PTAs signed by the EU after the entry of the Lisbon Treaty into force in 2009. With the Lisbon Treaty, the EU trade policy has undergone major institutional change as the EP has become a co-ratifier of all trade deals signed by the EU. What impact will this change have on the design of EU PTAs? Will they become more U.S.-style, as the EP can potentially be a functional equivalent of U.S. Congress? Preliminary assessment shows that while becoming more comprehensive in their scope the design of EU social standards remains intact as far as the enforcement is concerned. Future studies could explore this puzzling fact by examining the path-dependence of the EU trade policy-making process.

⁹⁰ Postnikov and Bastiaens (2014) in their first large- N study of the effectiveness of EU PTAs' labor standards find support for the second hypothesis of this study.

As this study has shown, social standards also diffuse across trade agreements, becoming part of South-South PTAs. The fact that regulatory provisions diffuse across international agreements adds another interesting aspect to our knowledge of domestic policy diffusion. Future research could examine the process of this diffusion more closely, looking into other PTAs and different regulatory provisions where different mechanisms might be at play. This research could build on insights from the vast literature on policy diffusion in IR and further refine our understanding of various diffusion mechanisms (Simmons et al. 2006), as well as add to our knowledge of various styles of PTAs more generally.

6.4. Policy Implications

The results of this dissertation have important policy implications, especially when it comes to making PTAs' labor and environmental provisions more effective. First of all, sanctions might be the most effective instrument for enforcing social standards in PTAs. As the case of U.S. agreements has shown, while crucial for producing *ex ante* effects, the fear of sanctions dissipates in the *ex post* implementation stage. Thus, monitoring mechanisms during the implementation stage becomes really crucial and the United States needs to invest in it if it wants its social standards to be effective throughout the agreement life. The establishment of Labor Affairs and Environmental Affairs Councils, as well as public participation mechanisms, as part of the cooperation mechanism is an important step in the right direction which has a potential to build on the EU's experience of implementation. However, these mechanisms are likely to be ineffective during the *ex post* implementation stage without the proper monitoring, as the case of Chile has revealed.

Furthermore, engaging civil society from both the United States and its trading partners in these mechanisms is also essential. Investing in such transnational linkages would allow civil society actors in PTA partner states learn how to overcome their collective action dilemma and name and shame unwilling state authorities putting greater pressure on them. Overall, both the EU and the United States could learn from each other's experiences, with the former being more demanding during the negotiation stage and the latter being more pro-active during implementation.

Importantly, in order to be effective social provisions should take into account social and political realities in trade agreement partners. Both the EU and the United States have adopted a one-size-fits-all approach toward social standards, using one template for all countries. This dissertation has shown the significance of domestic factors, such as the organizational capacity or civil society and administrative capacity of government, with regard to implementing social standards. Both the EU and the United States would be wise to encourage participation of civil society and wider representation of various actors and organizations in this process. In particular, the EU's implementation strategy emphasizing the dialogue mechanism can induce learning among domestic actors and can be potentially effective. The EU needs not wait for its trading partners to initiate the dialogue but should itself be more pro-active and make sure the civil society dialogue convenes every year, as specified in the agreement.

Capacity-building needs to become part and parcel of the agreement implementation for both the EU and the United States. This could help improve the knowledge of social standards and existing mechanisms of their implementation among civil society actors in trading partners and ameliorate the negative image some civil society actors attach to FTAs, as the case of the South Korean NGO sector has shown. The EU and the United States should invest in information

campaign during the negotiation process, disseminating knowledge of social standards among the public. Only in this way could labor and environmental chapters be taken seriously and the implementation mechanisms used constructively by civil society actors in trading partners.

Finally, because PTAs' social standards increasingly contain international labor and environmental rules, their implementation should also establish cooperation mechanism with multilateral organizations, particularly the ILO. These organizations are already well equipped to oversee the implementation of international standards and can potentially provide resources and expertise not available to individual Departments in the United States and DGs in the European Union.

This study also has wider implications for societies trying to grapple with the exigencies of accelerating economic integration. Free trade does not benefit all equally, creating winners and losers across and within societies. Yet it has become the reality of global economic order. The depth and speed of economic liberalization has shaken or even eroded the embedded liberalism compromise that was once so critical for maintaining international economic openness and domestic stability and upon which the consensus over the benefits of free trade rested (Hays et al. 2005; Ruggie 1982). The social dislocations brought by entrenched economic liberalization can be potentially devastating for the political and social order of our societies, as has been long argued by social scientists (Polanyi 2001; Rodrik 1997). However, some of the most advanced regional economic integration arrangements, like the EU, have proven to be resilient to the exigencies of markets, compensating the losers through the expansion of inclusive institutional mechanisms and strict regulatory policies which even led some scholars to believe that the Polanyian "double movement" has become tamed and institutionalized with the EU (Caporaso and Tarrow 2009).

PTAs have recently become the main vehicles for propelling free trade and expanding international markets and, therefore, can be named the culprits of “disembedded” liberalism by some observers as they can potentially intensify the devastating race to the bottom (Drezner 2000). Yet, as argued in this dissertation, through PTAs societies have gained the real chance to tame the negative effects of economic liberalization. PTAs’ social standards, when properly implemented, can induce a variety of outcomes positive for the societal welfare. Thus, social standards in PTAs need to be taken seriously due to their real potential to prevent a hurtful race to the bottom occurring in the developing world (Rudra 2008) and become the institutionalized channels for the double movement, akin to the example of the EU cited above (Caporaso and Tarrow 2009). The diffusion of social standards among South-South PTAs that was described here should also be seen as a way to socialize the benefits of growing South-South trade (Chan and Ross 2003).

As addressing social issues in trade in the WTO has increasingly become hostage to the growing disagreements between the global North and the global South, it will take a concerted effort by governments and civil society to design PTAs in such a way as to unleash their both market-making and market-correcting qualities in the age of economic globalization and the persistent failure of trade multilateralism. They are genuinely valuable commodities exchanged through free trade that have a potential to make it more civil. It is my modest hope that by shedding light on the processes of their formation and implementation this dissertation contributes to this goal.

APPENDIX 1: EU PTAS IN FORCE⁹¹

Country	Year in Force
Albania	2009
Algeria	2005
Andorra	1991
Bosnia and Herzegovina	2008
Chile	2003
Columbia	2013
Costa Rica	2013
Croatia	2005
European Economic Area	1994
Egypt	2004
Faroe Islands	1997
Honduras	2013
Israel	2000
Jordan	2002
Lebanon	2003
Macedonia	2004

⁹¹ Please note that the latest dates are included for re-negotiated agreements.

Mexico	2000
Montenegro	2010
Morocco	2000
Nicaragua	2013
Palestine	1997
Panama	2013
Peru	2013
San Marino	1992
Serbia	2010
South Africa	2000
South Korea	2011
Switzerland	1973
Tunisia	1998
Turkey	1995

APPENDIX 2: U.S. PTAS IN FORCE

Country	Year in Force
Australia	2004
Bahrain	2006
Chile	2004
Columbia	2011
Dominican Republic-Central America	2005
Jordan	2001
Israel	1985
Morocco	2006
NAFTA	1994
Oman	2006
Panama	2011
Peru	2007
Singapore	2004
South Korea	2011

APPENDIX 3: LIST OF INTERVIEWEES

Respondents Interviewed in Brussels

Position	Date
Official in DG Trade	May 25, 2012
Official in DG Trade	May 29, 2012
ETUC Representative	May 31, 2012
Official in DG Employment, Social Affairs & Inclusion	June 5, 2012a
EESC Representative	June 5, 2012b
Official in DG Environment	June 7, 2012
Official in DG Employment, Social Affairs & Inclusion	June 13, 2012
Official in DG Trade	June 18, 2012a
Official in the Council of the EU	June 18, 2012b
Scholar of EU social policy	June 18, 2012c
Official in the Office of EU Commissioner for Trade	June 19, 2012
Official in the EEAS	June 20, 2012
Scholar of non-trade issues in trade	June 21, 2012
Representative of WWF	June 25, 2012a
Scholar of social issues in EU trade policy	June 25, 2012b

Representative of WWF	June 27, 2012
MEP from International Trade Committee	June 29, 2012a
Scholar of EU economic affairs	June 29, 2012b

Respondents Interviewed in Washington, D.C.

Position	Date
USTR official	April 30, 2013
LAC representative	May 2, 2013a
Scholars of U.S. trade policy	May 2, 2013b
USTR official	May 3, 2013a
TEPAC representative	May 3, 2013b
Scholar of U.S. trade policy	May 6, 2013
Representative of a fair trade NGO	May 7, 2013
AFL-CIO representative	May 8, 2013a
AFL-CIO representative	May 8, 2013b

Respondents Interviewed in Santiago

Position	Date
Ministry of Foreign Affairs official	May 30, 2013
EU diplomat	May 31, 2013
Chilean diplomat	June 5, 2013

Ministry of Labor official	June 7, 2013
Scholar of trade policy	June 10, 2013a
Ministry of Foreign Affairs officials	June 10, 2013b
Scholar of trade policy	June 17, 2013

Respondents Interviewed in Seoul

Position	Date
Scholar of trade policy	July 2, 2013
EU diplomat	July 5, 2013a
Korean National Assembly member	July 5, 2013b
Representative of a fair trade NGO	July 6, 2013
U.S. diplomat	July 8, 2013a
South Korean negotiator	July 8, 2013b
South Korean negotiator	July 10, 2013a
Ministry of Environment	July 10, 2013b
Ministry of Employment and Labor	July 11, 2013

APPENDIX 4: INTERVIEW PROTOCOLS

For Respondents in Brussels and Washington, D.C.⁹²

1. What is your current position?
2. Did you take part in FTA negotiations?
3. Could you, please, describe your role in it?
4. Did you work specifically on social standards?
5. What was the position of your institution with regard to social provisions?
6. Could you, please, speak about possible reasons behind it?
7. Which actors, in your view, were among the most adamant supporters of stronger provisions?
8. What, in your view, were their reasons?
9. Which actors opposed the inclusion of strict social provisions?
10. Why do you think they were against it?
11. Who advocated for stricter enforcement of social provisions?
12. What was their reason, in your opinion?
13. What was your own position?
14. Who was in favor of less strict enforcement?

⁹² Please note that this protocol is a generic version. The questions were modified based on the interviewee's role and expertise.

15. Why do you think they insisted on that?
16. Were any tensions between your institution and other EU/U.S. actors/institutions involved?
17. How were they resolved?
18. Could you, please, speak about some possible reasons behind those tensions?
19. Were there particular EU Member States advocating for different coverage of social issues?
20. Why do you think their position was different?
21. Were there any contradictions among the Member States themselves when it came to the inclusion of these provisions?
22. In your view, what were some reasons behind those?
23. How were they resolved?
24. Overall, do you consider your institution successful in pursuing its agenda with regards to social provisions in FTAs?
25. How did it/did it not achieve this success?
26. Whose position do you think is reflected best in the agreement terms?
27. Is there anything else you would like to add?
28. Do you know anyone else I could talk to about these issues?

For Respondents in Chile and South Korea⁹³

1. What is your current position?

⁹³ Please note that this protocol is a generic version. The questions were modified based on the interviewee's role and expertise.

2. Did you take part in negotiating the agreement?
3. What was your role in the negotiation of this agreement?
4. Did you deal specifically with labor/environmental issues in this agreement?
5. What has been the position of your institution with regard to the inclusion of labor/environmental standards in the agreement?
6. What were the reasons behind such a position?
7. Which actors, in your view, were among the most adamant supporters of stricter labor/environmental provisions?
8. What, in your view, were their reasons?
9. Which actors opposed the inclusion of very specific provisions?
10. Why, do you think, did they oppose it?
11. Who advocated for the stricter enforcement of labor/environmental issues in the agreement?
12. In your opinion, what were their reasons to insist on that?
13. Who was in favor of less legal enforcement?
14. Why do you think they insisted on that?
15. Did the overall position of your institution coincide with positions of other actors and institutions participating in this negotiation?
16. Were there any tensions between your institution and other actors/institutions?
17. If yes, how were those tensions resolved?
18. Could you please speak about some possible reasons behind these tensions?
19. To your knowledge, what role did the European Commission/USTR play in the negotiation of this agreement?

20. To what extent was Chile/South Korea able exercise its bargaining leverage in the negotiation of labor and environmental provisions?
21. What strategies did the Chilean/South Korean negotiating team use with regard to the EU or the United States?
22. Overall, do you think your institution was successful in pursuing its agenda with regard to labor/environmental issues in the agreement?
23. How did it achieve the success? OR What, in your opinion, led to the failure?
24. Whose position, do you think, is reflected most in the agreement?
25. Is there anything else you would like to add?
26. Do you know anyone else I could talk to about these issues?

Implementation (only for the actors involved)

27. What role does your organization play in implementing social standards in the FTA?
28. Do EU and U.S. social standards differ? How?
29. To what extent has your organization been effective in implementing these standards, in your opinion? Why?
30. What factors impede or enable the implementation, in your view?
31. What is the major obstacle you are facing when working on the implementation?
32. Has the Chilean/South Korean civil society been effective in this process?
33. Could you, please, speak about the reasons behind your assessment?
34. In your assessment, are EU or U.S. social standards most effective? Why?

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