

EU-Asia Free Trade Agreements as tools for social norm/legislation transfer

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Abstract Article 21 of the Treaty of Lisbon mandates the European Union (EU) to foster its values (democracy, the rule of law, social rights, gender equality, etc.) in its external relations. The core concern of the EU's multi-faceted relations with Asia is economic relations with rising markets. EU relations with the region have focused on the facilitation of trade and investment through the negotiation of free trade agreements (FTAs) with a number of Asian partners. EU FTAs are accompanied by a Political Cooperation Agreement (PCA), which links core EU values to trade through the 'standard clause', whereby under certain circumstances, human rights' abuses can trigger a suspension of trade preferences. Using a qualitative case study methodology, and drawing on policy documents and interviews, this paper addresses the question of whether, and how, the EU can balance its internal legal obligations with its economic interests and its partners' demands. The article provides a legal background of the EU's obligations in terms of international value promotion. It then reviews EU trade policy strategies and reveals an absence of a concerted approach to the inclusion of values. The article investigates the sources of resistance to EU attempts at linking its trade policy with broader values including social rights with Asian partners. The analysis reveals that Asian resistance is centred on the legalistic approach of the EU rather than the values and suggests that a more effective norm export might be achieved through other means. The article concludes that the EU's failure to push forward social issues in FTAs ultimately casts serious doubts about the EU's international 'actorness' in the area of social rights.

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Introduction

This article builds on previous work (Garcia and Masselot 2015), which investigates the tension that exists between the European Union (EU) internal and international legal obligations to achieve gender equality in all its activities and the lack of actual implementation of this value in the context of trade negotiations with the Asian region. We have argued that the EU's willingness to foster good economic relations with key rising markets in Asia together with the Asian countries' systematic rejection of the inclusion of norms in Free Trade Agreement creates a double barrier for the diffusion of gender equality norms. We also concluded that the failure to insert gender equality norms within trade negotiations with Asian countries casts serious doubts about the credibility and the global reputation of the EU (Schimmelfennig 2001) as an international gender actor.

In this article, we consider the broader ambit of social norms diffusion in the context of trade negotiations between the EU and the Asian countries. We question the use of Free Trade Agreements as a tool for development and the exportation of social norms. As in the case of gender equality, the EU also has ambition as a global norm maker in the area of social norms. However, the EU's economic 'nature' means that the promotion of economic growth and the priority of trade over other fundamental values can impact on the EU's ability and ambition as a social norm exporter. In contrast to the existing literature in this area, which typically takes as a point of departure the debates around the trade aspects of social norms (*inter alia* Van Roozendaal 2002; Orbie et al. 2005; Bossuyt 2009), our starting point is the legal and moral requirement set by the EU in relation to social norms, and we then examine how this is transferred into trade policy actions. In other words, the social norms are what define the EU in the context of the free trade negotiations.

This article confirms that Asian states demonstrate strong agency in resisting EU's attempts at norm export. Previous empirical analysis of a broad range of cases of norm diffusion has shown that Asian states often actively and vociferously resist and reject EU norms (Garcia and Masselot 2015; Shen 2014; Chaban et al. 2015). Asian states are far from subdued norm-takers and stand their ground when dealing with the EU.

In order to explore these points, this article is organised into four parts. In the first part, the article traces the development of the EU social values. It also looks at the externalisation of these social values. In particular, it examines the EU relationship with the International Labour Organisation (ILO). The second part addresses the tension that exists between the EU's interests and its values. In the third part, the article considers the examples of positive outcomes in terms of social clauses resulting from the trade negotiations. It also addresses the differences in approach between the EU and its partners. Finally, this article outlines Asian states' resistance to adopting social clauses in the normative field.

Social values of the EU—the internal story

Despite a spasmodic development, the social dimension is today a fundamental aspect of the EU. At the outset of the European integration project, it was expected that the creation of a functioning common market would generate a more harmonious social system. Therefore, the ultimate aim for social policy was to facilitate economic

integration. There was no specific requirement for general harmonisation in the field of social policy. It was believed that the market would ensure harmonisation of social policies (but without social dumping). Both the Spaak (1956) and Ohlin (1956) reports concluded that there was no need for an interventionist social dimension except for certain measures against ‘unfair competition’—this was the case for equal pay between men and women (Bain and Masselot 2013)—or measures directly linked to the building of the common market such as free movement of workers, the improvement of employment opportunities for workers as well as the improvement of working conditions and improving living standards. It was generally believed that labour law was a domestic issue, and in fact, this policy area remained a Member State competence. For this reason, the European Commission could only propose Directives on social matters if these were directly linked to the elimination of barriers to the internal market, hence the European Commission’s involvement in areas related to people as labour, as opposed to a broader understanding of social policy as affecting citizens.

However, increasingly, the European Commission took on a more entrepreneurial role in social policy matters. This shift occurred due to the late 1960’s social unrests; successive enlargements of the Community to include states with diverse sets of social systems (the United Kingdom, Ireland, Denmark and Norway) and the increasing view that the Community had to be seen as more than a device for business. It had become a necessity for the Community to develop a ‘human face’ for its citizens.

As a result, the Social Action Programme, adopted in 1974, led to increased legislative activity and harmonisation in the area of social policy. This included the adoption of the Equal Pay Directive; the Equal Treatment Directive; Directive on Social Security; a series of health and safety directives; a Directive on Mass Redundancies and the Directive on Transfer of Undertakings and Insolvent Employers as well as the setting up of the European Regional Development Fund created to address the problem of socio-economic convergence in the Community.

The Single European Act 1986, OJ L 169 of 29.6.1987 extended qualified majority voting to Health and Safety matters. This facilitated the adoption of the Working Time Directive. It also allowed for an improvement of the developing dialogue between management and labour at European level (the so-called social dialogue), which would become quite important later in relation to the ‘collective strategy’ and the adoption of the Parental Leave Directive.

Despite these amendments of the Treaty of Rome, the idea that the Community could not function properly without the agreement of its citizens prevailed. In addition, European citizens needed a social approach to the Community. At the same time, unemployment was rising. With the relocation of large firms, there was fear of open competition at European level. As a result, Jacques Delors lodged his plan for *L’Espace Social Européen* which eventually took the form of the Community Charter of Fundamental Social Rights signed in 1989 by all member states except the United Kingdom (UK). These rights were to be implemented through the Social Charter Action Programme, and any measures adopted were to be based on the European Community (EC) Treaty. The Action programme was ambitious and led to the enactment of some important pieces of social legislation such as the Directive on Proof of Contract of Employment; the Pregnant Workers Directive; the Directive on Posted Workers; and the Young Workers Directive.

From the Treaty of Maastricht to Amsterdam to Nice, the social policy programme went from strength to strength. During the Maastricht negotiations, there was pressure on member states to expand the social competence of the EC. However, they still met with resistance from the UK. The Social Charter was therefore adopted in a protocol attached to the 1992 Treaty on the European Union (TEU) with an opt-out of the UK.

The Social Policy Agreement broadened the range of measures that could be decided on qualified majority vote (information and consultation of workers, equality between men and women and integration of those excluded from the labour market), but it expressly excluded issues of remuneration; right of association; right to strike and the right to impose lockouts from EC competence. One of the important moves made by the Social Policy Agreement was to increase the role of the Social Partners. In effect, they receive power to agree the substance of Directives such as the Parental Leave Directive. In addition, the TEU introduced the term of ‘Citizenship’, which under the Treaty of Maastricht had little substance. Nevertheless, Citizenship would include not only civil (basic freedom from state interference) and political (electoral) rights but, importantly, social rights (rights to health care, unemployment insurance, old pension and welfare).

In 1997, Tony Blair’s Labour government in Britain opted back into the Social Chapter. This led to the incorporation of a Chapter on Social Policy in the Treaty and the Agreement on Social Policy which incorporated in the treaty a new section on the ‘Union and Citizen’. The Treaty of Amsterdam introduced a new Chapter on Employment reflecting the concern of growing unemployment in the Union. However, the member states remained the main actors in the employment field. Nevertheless, this represented a further shift in view: social policy was to be an integrated part of EU Law. Additionally, a general non-discriminatory provision (Article 13) was included in the Treaty of Amsterdam.

On 7 December 2000, in a prelude to the Nice Inter-Governmental Conference, the European Parliament, the Council of the EU and the European Commission, acting jointly, issued the Charter of Fundamental Rights of the European Union in the form of a non-binding ‘solemn proclamation’. The recognition of the legal value of the Charter of Fundamental Rights in the Lisbon Treaty constitutes an incontestable advance in social matters. The Charter guarantees a number of fundamental social values including workers’ right to information/consultation within the undertaking (Article 27); right of bargaining and right to strike (Article 28); right of access to placement services (Article 29); right of protection for unjustified dismissal (Article 30); right to fair and just working conditions (Article 31); prohibition of child labour and protection of young people at work (Article 32); reconciling family and professional life (Article 33); social security (Article 34); health care (Article 35).

The Treaty of Lisbon also strengthens the social dimension of the European Union (EU) by recognising the social values of the Union in the founding treaties and providing new objectives for social matters. These include full employment, social progress, the fight against social exclusion and social protection (Article 3 TEU), and high level of employment, adequate social protection and the fight against social exclusion must be taken into account in the development and implementation of Union policies (Article 9 TFEU). The later objectives are of application in the EU external policy.

The EU and international obligations

The EU is not only dedicated to social norms internally; it is also concerned with social issues on a global level as demonstrated by the close relationship between the EU and the International Labour Organisation (ILO). Although the EU, as an entity, is not a member of the ILO,¹ the two institutions have a special relationship based on strong cooperation. In July 2004, the ILO signed a Strategic Partnership Framework with the European Commission. The process leading to the signing of the partnership generated several opportunities for closer dialogue between the two institutions and has resulted in a substantial volume of funds approved by the Commission for ILO implementation through a variety of channels. The EU also actively participates in discussions and negotiations at the institutional meetings of the ILO in Geneva. For example, the EU has played a key role in cooperating closely with emerging economies, developing countries and social partners during the adoption of the June 2008 ILO Declaration on Social Justice for a Fair Globalization.

For the purpose of this article, the EU and the ILO collaborate on external EU issues such as the cooperation between the EU and the Asian region, for instance, through the Asia-Europe Meeting (ASEM). In the context of trade negotiations, the EU has urged Asian states to sign up to the ILO core conventions as part of the negotiations.

The relationship between the EU interest and its social clauses

Social norms under EU law have acquired a prominent position within EU policies. In the case *C-270/97 Deutsche Post/Sievers* (2000), the Court of Justice of the EU held that the ‘economic aims are now only secondary to the social aims’. Nevertheless, the market and trade policy have always been in conflict with the social aims of the EU. This is linked to the historical irregular and patchy development of the EU social norms as well as its direct relationship with the market-making process. The uneasy relationship continues to create tensions, which also impact on the external policy of the EU.

Indeed, the EU sees itself as a world leader in social values and aims to diffuse these values to third countries as stated by the European Commission: ‘as we pursue social justice and cohesion at home, we should also seek to promote our values, including social and environmental standards and cultural diversity, around the world.’ (European Commission 2006: 5).

Jan Orbie et al. (2005) trace the incorporation of social clauses, in particular, the demand that states ratify and implement the core ILO conventions, into EU external commercial policy. Initially, these matters appeared on the agenda in the context of discussions regarding the EU’s General System of Preferences (GSP) regime for granting trade concessions to developing states. As the World Trade Organisation (WTO) engaged the issue of labour standards in the failed Millennium Round, and in the Doha Round negotiations, these too featured more prominently in the EU’s trade policy. The authors suggest that increased international concern with this issue, as encapsulated in the ‘free trade versus fair trade debates’ (van Roozendaal 2002: 67) coincided with the election of a series of social-democratic governments in Europe in

¹ The member states of the European Union are members of the ILO and signatory parties to most of the ILO conventions.

the 1990s more sympathetic to these issues, and who were also faced with increased civil activism in favour of fair trade and concerns over rising European unemployment and the social dumping effects of trade. As Cyvers and Kerremans (1998: 118) point out: ‘Suddenly the issue became problematic, which gives the impression that the real reason of the complaints is not ethical, but rather economic, i.e. a perceived need of protection of some of the interests inside the industrialised world.’

Partners’ negative perceptions of social clauses

The request that partners sign up to the ILO core conventions as part of the trade negotiation has not been taken lightly by Asian states. The EU-Asia relationship was from the outset directly linked to the growing economic and political power of the region. The EU, therefore, is not acting from a strong stance in that regard.

Asian states have argued that developed states’ insistence on labour clauses in trade agreements reflect protectionist impulses. As Kevin Kolben (2006) demonstrates, developing states have opposed this linkage at the WTO, invoking claims of Western protectionism, with the West attempting to export high labour standards and costs to developing states thus limiting the outsourcing of jobs, and limiting job growth in developing states. It is this position that has been reflected even in trade union and civil society opposition to these linkages in India. Ole Elgström’s (2007: 959) interviews with developing states’ officials regarding their views of the EU as a trade negotiator in the WTO revealed their suspicions regarding the EU’s linkage of trade with social issues: ‘Many delegates seem to have difficulties in believing that this is not done without any ulterior motives and see behind these efforts a desire to introduce protectionism, ‘a new bias’, through the back door’. Whilst another delegate from a developing country expressed his doubts by saying, ‘these initiatives on human rights and the environment could be positive—but they could also be skewed to give advantages to the West’ (In Elgström 2007: 959). The later statement reveals a difference, not so much on the values, but on the form and implementation of the values, which is consistent with concerns raised by non-trade union civil society groups, who likewise oppose the systematic linkage of trade preferences and social standards. Naila Kaber (2004), for instance, points out that the enforcement of labour standards through trade sanctions could increase labour market inequalities through a shift of jobs towards the informal sector where those labour standards would not be applied.²

The increased powers granted to the European Parliament in trade matters under the Treaty of Lisbon, have served to heighten Asian states’ concerns about the EU’s approach to linking trade and social values through the ‘*pasarelle clause*’ or ‘essential clause’ in the EU’s Political Cooperation Agreements (PCAs) or Framework Agreements (FAs) that the EU negotiates with third parties alongside the negotiations of free trade agreements (FTAs). This clause conditions the application of all other agreements in the relationship (including the FTA) to respect for the essential values

² These differences in approach have stymied various attempts to include labour standards at the WTO level. Instead, at the 1996 WTO Singapore Ministerial meeting, it was agreed that the ILO, and not the WTO, was the appropriate forum for discussions of labour standards. Unlike the WTO, the ILO lacks an enforceable dispute settlement mechanism.

(human rights, rule of law) encapsulated in the clause. Since the 1990s, this ‘essential clause’ has been a key element of EU agreements with third parties.

However, some EU partners fear that the European Parliament may take a negative view of some of their policies, or even future policies they may wish to enact, and initiate procedures to enact the suspension of trade preferences under the FTA (interview, Brussels, 24 October 2013) through the use of this clause. In the case of negotiations with India, the European Parliament has repeatedly expressed the view that any FTA with India should include social clauses. The European Parliament adopted a resolution on 26 March 2009 stressing respect for core International Labour Organisation (ILO) standards and norms on social and environmental governance. This has been reiterated by the resolution of 11 May 2011 that proposes the inclusion of ‘legally binding clauses on human rights, social and environmental standards and their enforcement, with measures in the event of infringement’ (European Parliament 2011), a view reiterated by the ECOSOC (2011).³ In particular, some issues that the European Parliament would like to see include two of the most problematic ones: (i) compliance with eight core conventions of the ILO and four priority conventions and (ii) adherence to internationally agreed environmental standards. These could be potential deal breakers as far as India is concerned; India maintains that these are issues to be dealt with at appropriate non-trade international fora (Khorana and Garcia 2013).

Asian countries’ concerns are not completely unfounded. Historical precedents explain, in part at least, the reluctance of Asian States to incorporate social clauses linkages into the FTA. As Hafner-Burton (2005: 610) shows, these linkages create the space for European actions, such as the threat of sanctions, which in itself can be sufficient to garner behavioural changes in partners. She uses the example of Pakistan, which had entered the EU’s Generalised System of Preference (GSP), a scheme granting non-reciprocal preferential access to the EU market to imports from developing nations, to highlight the risk of threat:

The EC’s generalized system of preferences (GSP) establishes protective labor conditions with Pakistan on the importation of certain industrial and agricultural products. Respect for worker’s rights was established as a condition for tariff preferences. In 1995 the Trades Union Confederation mobilized against the government’s use of forced child labor, and the European Parliament requested an immediate investigation of the misconduct. Although the European Commission deliberated a ban on imports to coerce new policies on child labor, it ultimately did not implement a ban. Rather, the Commission chose to pursue influence through the threat of a ban coupled with positive incentives for Pakistan’s active participation in the International Labor Organization’s (ILOs) program for the eradication of child labor (IPEC). During the proceedings, which continued into 1997, Pakistan introduced national legislation outlawing child labor as a direct response to the investigation, and subsequently supplied the

³ The European Parliament has also stressed that in the interest of consistency and coherence the EU-Canada Framework Agreement and Comprehensive Economic and Trade Agreement (CETA) must also include the linkage, despite Canada’s aggressive opposition to this. At the time of writing, CETA’s conclusion has been announced but the documents have yet to be made public.

Commission with regular information of the government's efforts to implement the new human rights policies, which remain problematic but are under reform.

However, the strong conditionality that is featured in the GSP system is absent in the case of the FTAs and PCAs that the EU is negotiating with Asian states. The Agreements with South Korea (2011) and with Singapore (2013) incorporate the 'linkage' for matters relating to core EU values of human rights and rule of law.⁴ Issues relating to labour and environmental policies, as encapsulated in the sustainability chapter of the FTA, are operationalised in a less coercive and more collaborative fashion.⁵ The chapter is subject to a dispute settlement procedure whereby evidence of breaches in one party can be brought forward by the other party, but also by business and civil society from either of the two parties. Asian states have reacted variously to the incorporation of civil society in these mechanisms. However, as the EU is willing to accept its partners' definitions for proposed civil society groups, the issue has not hampered ongoing negotiations (interviews, Brussels, October 2013). Once a complaint is brought forward, the Joint Council of the Agreement appoints a panel made up of three experts who will deliberate on the basis of the evidence presented and propose a non-binding plan of action based on best practices. In other words, in their present form, it would be impossible to use this mechanism to unilaterally suspend trade privileges granted under the FTA. This notwithstanding, the European Parliament has made a call for 'binding' social clauses to be incorporated in the EU-India FTA. It seems unlikely that the European Commission's negotiators will deviate from the procedures they have agreed with South Korea and Singapore; however, the European Parliament has to ratify any external agreement the European Union negotiates, so the Parliament will be a key player in future negotiations.

Positive outcomes and difference in approach

The inclusion of social clauses in FTAs and in the negotiations can, however, help to effect change in partners by normalising discussions on a particular issue area. In the course of negotiations for an EU-Malaysia FTA and PCA, the EU's insistence on the need for the parties to join the ILO core conventions led to an internal review of labour legislation in Malaysia. Malaysian authorities and lawmakers were forced to consider why their country had not signed the core conventions. Some policymakers initially thought it was their positive discrimination policy for civil service recruitment that had precluded them from signing the equality convention. However, further investigation revealed it to be laws from the 1950s preventing women from working in certain sectors that made signing the conventions incompatible with domestic legislation. Most civil servants and authorities were unaware of the law: in practical terms, it is out-dated and no longer implemented. Legislative procedures have now been put in place to repeal the law and enable Malaysia to sign up to the ILO's core conventions (interview, Brussels, October 30, 2013). As this demonstrates, it is not always a case of partners'

⁴ It is broadly interpreted that the clause will only be invoked in a case of a strong deterioration of the status quo at the time of the agreement. Singapore, for instance, still has the death penalty in the statute books, even though no execution has taken place since 2009.

⁵ As no cases have been brought forward yet, we cannot assess the level of commitment of the parties and how significant the issue of expert advice and peer pressure will be in enacting behavioural and policy change.

rejecting EU values or norms, but merely a difference of approach to the same issues. Malaysia's absence from the ILO core conventions was not determined by the prevalence of labour practices in breach of the conventions, but rather by anachronistic laws and inertia.

The request to insert social clauses into trade negotiations also reveals differences in approach between the EU and the Asian partners. The EU's current FTAs and Political Cooperation Agreements offer a 'light touch' approach to the matter, encouraging dialogue and cooperation on these issues and encouraging partners to sign the ILO's four core conventions. Emile Hafner-Burton's (2005: 595) work on preferential trade agreements and human rights suggests that, 'PTAs are more effective than softer human rights agreements (HRAs) in changing repressive behaviors', but only when they 'supply the instruments and resources to change actors' incentives to promote reforms that would not otherwise be implemented' in terms of coercive measures. In the case of EU FTAs and PCAs, the only real coercive measure is the 'essential clause' which links all agreements to respect for human rights, but not labour standards or the implementation of the core ILO conventions, for instance, which casts doubts on the eventual effectiveness of the social clauses in FTAs as mechanisms for the export of EU social values and legal obligations.

The Malay case described above highlights an important difference between the Asian and European approaches. The EU approach is based on the institutionalisation of rules, and the incorporation into domestic law of international principles and commitments (the ILO conventions being a case in point). Asians, however, prefer to discuss and cooperate on these matters. More crucially, they reject the bundling of these matters into negotiations on trade. Diplomats from Asian states expressed their governments' reluctance to negotiate trade alongside matters that are not, in their eyes, strictly trade issues. Lax environmental and labour regulations can have a downward effect on production costs, which may offer an incentive for firm relocation and establishment in a particular jurisdiction. To prevent competitive pressures from generating a downward spiral effect on labour rights and environmental rules across jurisdictions, developed states insist on the inclusion of labour and environmental clauses in their FTAs with all other partners, including developing states.

Conclusions

Based on previous experience with the EU, Asian states are wary and resist the introduction of social clause into trade negotiations. Precedents for this can be found in the EU's General System of Preferences with Pakistan: the EU did not even implement the trade penalties as the threat of implementation was sufficient to change the Pakistani's government position (Hafner-Burton 2005: 609).

However, a significant qualification exists in the case of the EU's reciprocal FTAs. Here, the mechanisms for the enactment of the social clause are not as coercive, automatic and EU dominated as in the case of the conditionality applied in the GSP system. In FTAs, the social and environmental clauses operate by mutual agreement with the other party. If one party provides evidence of breaches of the clause, the matter must be examined by a panel of experts (agreed by the parties to the FTA), and the panel should make not legally binding recommendations. The mechanism that has been

put in place is dialogue-based, with broad participation of policymakers, business and civil society. This represents a more realistic assessment of what can be deemed acceptable by partners, which cannot be viewed as passive recipients of EU norms and regulatory preferences, as well as a response to the functional necessity of finalising an agreement.

Throughout its history, the EU has leveraged its market attraction and its financial aid as bargaining chips to extract its preferred behaviour from others. In its relations with developing states (through the GSP and GSP Plus) and with its neighbours in the process of enlargement, the EU has linked these rewards (and penalties of economic sanctions) to the adoption of core European values (human rights, democracy, rule of law). Combined with various attempts to exert normative leadership internationally (see *inter alia* Aggestam 2008; Lightfoot and Burchell 2005; Vogler and Stephen 2007; Allwood et al. 2013; Bain and Masselot 2013), this has led to the oft-cited conceptualisation of the EU as a ‘normative power’ (Manners 2002). The concept has been widely debated and refined elsewhere (Manners 2006, 2008; Manners and Whitman 2003; Whitman 2011), but has captured imaginations to the extent that the EU has been critiqued for subjugating its normative values to strategic interests such as regional stability (Youngs 2004; Hyde-Price 2006) and its geopolitical and commercial gain (Langan 2012). However, strategic aims can be compatible with the ‘normative’ power argument, given that the norms diffused may very well be considered valid and legitimate even though the motives of the EU for diffusing such norms may be self-regarding (Eriksen 2006).

The EU’s FTA policy in Asia, and elsewhere, reflects this complex reality and the co-existence of interest and normative values and ideas (Garcia 2013), as the normative aims of the externalisation of social norms and regulation follow a logic of appropriateness of these values, which has as a consequence the extension of a preferred regulatory system and type of market. In their contribution to this volume, Jan Orbie and Sangeeta Khorana (2015) point to the need to transcend the norms versus interest debate which seems to have permeated some of the literature on the EU as an external actor. In a similar vein, this article has offered a more nuanced narrative of how certain social values have been incorporated into the EU’s internal and external legal-regulatory agenda through a dual logic of market-creation (with certain regulations) on the one hand, and appropriateness of norms, on the other.

The EU’s novel approach to the incorporation of social and environmental values into new generation FTAs in Asia reveals a continued commitment to social values, interlinked with a particular regulatory and market model, even at the cost of having to relinquish other economic interests in the negotiations.⁶ Eschewing coercive elements in the incorporation of social and environmental sustainability chapters (unlike in the case of GSP) shows a need to take into account the other in negotiations, and reflects the more symmetric nature of FTA negotiations, as opposed to the unilateral nature of the GSP system. Finally, the challenges encountered in negotiating with Asian states with fundamentally different conceptions of economic governance and views on how

⁶ EU negotiators admit that they, and their counterparts, know from the outset of negotiations that the EU will have to ‘pay’ for the inclusion of social clauses and for the values ‘*pasarelle* clause’ by granting partners greater access to the EU’s agricultural market or accepting reduced EU market access to the partner and making concessions in other areas (various Interviews, Brussels, October 2013).

social values are related to trade structures, at a time when the market leverage of the EU may be waning due to rising multipolarity, increasing non-Western activism in economic norm-setting (or resistance to new norms) (McGuire and Lindeque 2010), have led the EU to innovate mutually acceptable solutions for instance, in the form of a ‘soft’ approach to social norms in FTAs. It remains in question whether the EU will continue to balance its legal obligations on core values and their internationalisation and market-driven logics or whether through the mediation of other partners in FTA and other international negotiations the EU will be forced to reconsider its objective ends and means for the attainment of core values in the international arena.

References

- Aggestam L (2008) Introduction: ethical power Europe? *Int Aff* 84(1):1–11
- Allwood G, Guerrina R, MacRae H (2013) Unintended consequences of EU policies: reintegrating gender in European studies. *Women's Stud Int Forum* 39:1–2
- Bain J, Masselot A (2013) Gender equality law and identity building for Europe. *Canterbury Law Rev* 18:99–120
- Bossuyt F (2009) The social dimension of the new generation of EU free trade agreements with Asia and Latin America: ambitious continuation for the sake of policy coherence. *Eur Foreign Aff Rev* 14(5):703–742
- Chaban N, Kelly S, Holland M (2015) Perceptions of ‘Normative Power Europe’ in the shadow of the Eurozone debt crisis: public perspectives on European integration from the Asia Pacific. The value of gender equality in the EU-Asian Trade Policy: an assessment of the EU’s ability to implement its own legal obligations. In: Björkdahl A, Chaban N, Leslie J, Masselot A (eds) *Importing EU Norms? Conceptual framework and empirical findings*. Springer International Publishing Switzerland, Cham Heidelberg, New York, Dordrecht, London p 57–77
- Cuyvers L, Kerremans B (eds) (1998) *The international social issue. Social dumping and social competition in the global economy*. Intersentia ECONOMISCHE Wetenschappen, Antwerpen
- Elgström O (2007) Outsiders’ perceptions of the European Union in International Trade Negotiations. *J Common Mark Stud* 45(4):949–967
- Eriksen EO (2006) The EU—a cosmopolitan polity? *J Eur Public Policy* 1(2):252–269
- European Commission (2006) Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 4 October 2006 “Global Europe: Competing in the world”. COM(2016) 567
- European Economic and Social Committee (ECOSOC) (2011) Opinion of the European Economic and Social Committee on the Role of civil society in the free trade agreement between the EU and India. REX/316 EESC-2011-1612, Brussels, 27.10.2011
- European Parliament (2011) European Parliament Resolution of 11 May 2011 on the State of Play in the EU-India Free Trade Agreement Negotiations, Strasbourg, N. P7_TA_PROV (2011) 0224
- García M (2013) From idealism to realism: EU preferential trade agreement policy. *J Contemp Eur Res* 9(4): 521–541
- García M, Masselot A (2015) The value of gender equality in the EU-Asian trade policy: an assessment of the EU’s ability to implement its own legal obligations. In: Björkdahl A, Chaban N, Leslie J, Masselot A (eds) *Importing EU norms? Conceptual framework and empirical findings*. Springer International Publishing Switzerland, Cham Heidelberg, New York, Dordrecht, London, p 191–209
- Hafner-Burton E (2005) Trading human rights: how preferential trade agreements influence government repression. *Int Organ* 59(3):593–629
- Hyde-Price A (2006) Normative power Europe: a realist critique. *J Eur Public Policy* 13(2):217–234
- Kaber N (2004) Globalisation, labour standards and women’s rights: dilemmas of collective (in) action in an interdependent world. *Fem Econ* 10(1):3–35
- Khorana S, García M (2013) European Union-India negotiations: one step forward, one step back. *J Common Mark Stud* 51(4):684–700
- Kolben K (2006) The new politics of linkage: India’s opposition to the workers’ rights clause. *Indiana J Glob Leg Stud* 13:225–258

- Langan M (2012) Normative power Europe and the moral economy of Africa–EU ties. *New Polit Econ* 7(3): 243–270
- Lightfoot S, Burchell J (2005) The European Union at the world summit on sustainable development: normative power Europe in action. *J Common Mark Stud* 43(1):75–95
- Manners I (2002) Normative power Europe: a contradiction in terms? *J Common Mark Stud* 40(2):235–258
- Manners I (2006) The European Union as a normative power: a response to Thomas Diez. *Millennium J Int Stud* 35(1):167–180
- Manners I (2008) The normative ethics of the European Union. *Int Aff* 84(1):45–60
- Manners I, Whitman R (2003) The ‘difference engine’: constructing and representing the international identity of the European Union. *J Eur Public Policy* 10(3):380–404
- McGuire S, Lindeque J (2010) The diminishing returns to trade policy in the European Union. *J Common Mark Stud* 48(5):1329–1349
- Ohlin B (1956) Social aspects of european economic co-operation: report by a group of expert. *Int Labour Rev* 102
- Orbie J et al (2005) EU trade policy and a social clause: a question of competences? *Polit Eur* 3(17):159–187
- Orbie J, Khorana S (2015) Normative versus market power Europe? The EU-India trade agreement. *Asia Europe Journal*. doi:10.1007/s10308-015-0427-9 z
- Schimmelfennig F (2001) The community trap: liberal norms, rhetorical actions, and the eastern enlargement of the European Union. *Int Organ* 55(1):47–80
- Shen W (2015) ‘The EU’s Promotion of Human Rights: the case of Tibet’. In: Björkdahl A, Chaban N, Leslie J, Masselot A (eds) *Importing EU norms? Conceptual framework and Empirical findings*. Springer International Publishing Switzerland, Cham Heidelberg, New York, Dordrecht, London, p 231–246
- Spaak P-H (1956) Intergovernmental Committee on European Integration. The Brussels Report on the General Common Market (abridged, English translation of document commonly called the Spaak Report) [June 1956]. Available online: <http://aei.pitt.edu/995/> Accessed 08 June 2014
- Van Roozendaal G (2002) Trade unions and global governance. The debate on a social clause. Continuum, London
- Vogler J, Stephen H (2007) The European Union in global environmental governance: leadership in the making? *Int Environ Agreements* 7:389–413
- Whitman R (ed) (2011) *Normative power Europe: empirical and theoretical perspectives*. Palgrave, Basingstoke
- Youngs R (2004) Normative dynamics and strategic interests in the EU’s external identity. *J Common Mark Stud* 42(2):415–435

Cases

C-270/97 Deutsche Post /Sievers & Schrage [2000] ECR I-929