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## The EU as a Promoter of Human Rights in Bilateral Trade Agreements: The Case of the Negotiations with Vietnam

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## Abstract

This paper investigates the impact of the Lisbon Treaty on the harmonization of the actions concerning the foreign relations of the European Union (EU), with a focus on trade and human rights policies. It argues that an alliance of NGOs and economic interest groups promoting a human rights approach to external trade has found in the strengthened European Parliament an institutional channel for their demands. However, the creation of the European external action service as the EU's diplomatic body and the separation of the negotiation tables concerning trade and human right have ultimately reduced the influence on European trade policy of both the European Parliament and stakeholders interested in human rights promotion. On the basis of the case study of the negotiations with Vietnam, this paper contributes to the literature on the EU as promoter of human rights through bilateral trade by discussing the internal constraints on its normative power.

## Keywords

European Union; Lisbon Treaty; Human Rights; Trade; NGOs

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Since the early 2000s, the practice of including human rights clauses in preferential trade agreements (PTAs) has been a distinctive feature of European Union (EU) trade policy. The Lisbon Treaty, which entered into force in 2009, formally compelled the EU to take the human rights dimension into account within trade agreements. The Strategic Framework on Human Rights and Democracy, adopted on 25 June 2012, further emphasized the goal of 'Integrating human rights into all areas of the EU's external relations' (Council of the EU 2012). However, scholars disagree on the EU's actual commitment to using trade policy as an instrument of human rights promotion, and on the motivations behind its positions.

The literature on the EU as a norm promoter through trade has adopted three main perspectives respectively stressing the ideational, institutional, and interest group dynamics behind European foreign policy. While these views make valuable contributions to the understanding of the pressures for norm promotion and constraints on it, they leave a number of questions unanswered. What are the decision-making mechanisms that translate those pressures and constraints into the negotiating positions of the EU? What are the conditions that either empower or weaken human rights promoters in EU trade policy-making? An in-depth analysis of the impact of institutions and interest politics on the EU's decisions, supported by the process tracing method, helps address these questions. To this end, I assess the effectiveness of the mechanisms established by the Lisbon Treaty to foster foreign policy coherence and the actual opportunities that human right promoters have to affect EU trade policy.

I focus on the case study of the EU-Vietnam PTA negotiations, launched on 26 June 2012. These are the first trade negotiations started by the EU since publication of the Strategic Framework on Human Rights and Democracy. They have raised concerns among European civil-society organizations, member states and in the European Parliament about the responsibility of the Vietnam government for human rights violations, especially in regard to freedom of expression and core labour rights such as freedom of association. The EU has the potential to be a distinctive promoter of human and social rights in Vietnam for two main reasons. First, it is the first trade partner to include commitment to international labour and human rights law on the agenda of PTA negotiations with the country.

Second, it can rely on considerable bargaining power. In fact, the Vietnamese economy is heavily dependent on trade with the EU, which is the most important export market for Vietnamese products, and the second largest two-way trade partner after China (Delegation of the EU to Vietnam 2015). Despite these conditions, the EU has to date adopted an ambiguous approach to the human rights implications of bilateral trade with Vietnam. It has pushed for the inclusion of a suspension clause in the PTA in the case of human rights violations, but the clause does not explicitly mention the possibility of suspending trade obligations. It promotes the ratification and implementation of labour standards established by the International Labour Organization (ILO), but only under the condition that those standards are compatible with domestic circumstances. Finally, the chapter on sustainable development proposed by the EU covers labour provisions, but the European Commission Services' (2013) sustainability impact assessment concerning the trade negotiations with Vietnam does not tackle the human rights implications of the agreement. I investigate the decision-making mechanisms that have produced these contradictory positions.

This analysis argues that, despite the reform introduced by the Lisbon Treaty, the institutional conditions for improvement of foreign policy coherence are still lacking, since trade and human rights commitments are negotiated at separate tables. The European Commission dominates trade negotiations, while human rights dialogue with third countries is mainly delegated to the European External Action Service (EEAS). This separation strengthens the role of the Commission and of export and import interest groups within trade policy-making. At the same time, it reduces the influence of the Parliament, which is a major institutional channel for demands by NGOs and industry groups interested in promoting human rights in the trade negotiations. For these reasons, the absence of a unitary negotiation arena ultimately undermines the efforts to integrate a human rights component into European trade policy.

The article is structured as follows. The first part discusses the scholarly debate on the EU as a norm promoter through trade. It proposes a reading of EU trade policy-making that accounts for the relationship between institutions and stakeholders in the shaping of the EU's negotiating position on trade and human rights. Moreover, it compares the content of recent PTAs in order to identify the policy alternatives available to European negotiators for an agreement with Vietnam and to assess the scope of the human rights provisions proposed by the Commission in this case. Finally, it traces the history of EU-Vietnam political relations, which forms the basis for the ongoing negotiations on human rights and labour rights. The second part of the paper is devoted to the EU's role in the trade negotiations with Vietnam. It outlines the process leading to a European negotiating position from the agenda-setting stage to the negotiation rounds. It captures the decision-making mechanisms that operated within the EU both before and after the Lisbon Treaty entered into force.

## EU TRADE POLICY AND HUMAN RIGHTS PROMOTION

### *Existing explanations*

Three main interpretations of the EU's attempt to promote norms through trade have emerged in the literature. Their assumptions are grounded on the ideational, institutionalist and domestic politics schools. These interpretations provide insights into the EU's positions on human rights provisions within trade agreements, and, at the same time, leave room for further research. Scholars belonging to the first group consider trade policy to be an arena for exporting the constitutive values of the EU (Bretherton and Vogler 1999; Van de Hoven 2006; Khorana and Garcia 2013). According to this view, the EU considers trade negotiations as venues to exert its normative power, that is, the power to shape what is normal in international relations (Manners 2002). Within trade negotiations, the EU engages in promoting the core values inspiring the EU constitutive treaties, namely economic

liberalism, multilateralism (understood as support to international law), universality of human rights, solidarity, and sustainable development (Manners 2006; Manners 2009; Rosamond 2013).

The second perspective analyses the impact of the institutional constraints and opportunities on the EU's trade policy. Meunier and Nicolaïdis (2006) depict European trade policy as the result of the interests of its member states and of the guiding principles of European institutions, which often contradict each other. This internal obstacle to decision-making may paradoxically be a negotiating strength and bind the EU's trade partners to endorsement of its constitutive norms as a precondition for access to its market. However, da Conceição-Heldt's (2011) analysis of the EU negotiations for Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) countries shows that the coexistence of heterogeneous preferences in the shaping of a European negotiating position ends up by strengthening the autonomy of the Commission, and especially of Directorate General (DG) Trade, in the negotiations. Given the liberal orientation of the staff of this DG, the European negotiators tend to prioritize market opening over binding norms that risk restricting free trade. Moreover, a study carried out by Orbie *et al.* (2009) emphasizes the resistances of EU member states to the inclusion of binding labour standards in trade agreements. The study shows that governments led by conservative parties and interested in preserving national sovereignty on labour issues have resisted pressures to include ambitious commitments on labour rights within European trade policy. Furthermore, Young and Peterson (2014) represent EU trade policy as articulated in multiple policy sub-systems, each characterised by a specific constellation of decision-making procedures, preferences of policy-makers and societal preferences. Referring to the policy sub-system concerning bilateral trade agreements, they argue that, due to the high number of veto players, the combined effects of the preferences of the Commission and of protectionist member states and the pressures of industry groups and NGOs account for the lukewarm positions of the EU concerning development and human rights promotion.

The third interpretation stresses the impact of domestic interest groups and NGOs on EU trade policy-making. According to DeSombre (2000), a condition that facilitates the integration of social norms into trade agreements is the emergence of Baptist-bootlegger alliances between NGOs and industry groups. In this regard, De Bièvre and Eckart (2011) demonstrate that import-competing groups in the EU tend to mobilize more strongly than importer and exporter interests in order to affect decisions that might cause economic losses to their industries, and therefore exert greater influence on the European Commission. By contrast, Elsig and Dupont's (2013) analysis of the EU-Korea PTA (2007-2011) claims that the wide discretion held by the Commission as a negotiator strengthens the demands of exporter interest groups in the negotiations as opposed to the protectionist instances expressed by import-competing groups.

These perspectives lack full explanatory power when they are applied to the stance taken by the EU with respect to human rights and labour standards in trade negotiations. The representation of the EU as a normative power only partially fits the negotiating positions adopted by the EU in the PTAs. Indeed, all the new generation PTAs concluded by the EU require its partners' support for economic and social norms constituting the *aquis communautaire* (Bossuyt 2009). Nevertheless, the content of those PTAs shows the limits to the EU's normative commitment. Bailey and Bossuyt (2013) demonstrate that the increasing prioritization of commercial imperatives since the publication of the "Global Europe. Competing in the World" communication of the Commission (2006) accounts for the tendency of the EU negotiators to endorse non-binding provisions in the sustainable development chapter of PTAs. Woolcock's (2014) comparative research on the trade agreements signed by the EU in the 2000s further shows that its level of commitment to norm promotion varies according to the commercial interests that it has with the single trade partners.

In turn, the findings obtained by institutionalist and domestic interest scholars fail to address a key question: under what conditions EU decision-making rules either facilitate the inclusion of binding

human rights norms and ambitious sustainable development standards in the European trade agenda, or, on the contrary, end up by empowering the Commission and strengthening the market imperatives informing the preferences of DG trade. As a review by Poletti and De Bièvre (2013) of EU trade policy puts it, there is still room in the literature for research on whether the coexistence of multiple veto players in the EU either empowers civil society groups involved in norm promotion or strengthens the Commission's role as an advocate of exporters' and importers' interests.

Moreover, only few works test the impact of the Lisbon Treaty on trade policy-making, and they reach contrasting findings. Ripoll Servent (2014) notes that, by providing the European Parliament with consent power, the treaty has increased the EU's potential as a norm promoter and strengthened the political ambition of European trade policy. This study argues that the Parliament's decision to vote against the Anti-Counterfeiting Trade Agreement in 2012 shows that it is willing and able to reject a trade agreement if it infringes upon fundamental rights of European citizens. However, Vanhoonacker and Pomorska (2013) stress the limits of the High Representative of the Union for Foreign Affairs and Security Policy (FASP) and of its staff as instruments of policy coordination due to the lack of control of this institution over trade policy, which is still dominated by the Commission. Edwards (2013) claims that the EEAS has so far replicated the tensions between the Commission and the Council concerning foreign policy objectives and strategies. Finally, Orbie and Versluys 2009 and Smith 2013 claim that, by giving the EEAS responsibility for policy formation in the field of development cooperation, the treaty has subordinated development to security goals, thereby harming foreign policy coordination and coherence as guiding principles of European foreign policy.

### *Trade and human rights policy arenas*

Building upon the institutionalist and domestic politics contributions, this study shows that the Lisbon Treaty has provided limited opportunities for NGOs and industry groups interested in human rights promotion to push for integrated trade and foreign policies. By providing the Parliament with the right to approve or reject international agreements and by establishing the High Representative of the Union the FASP and the EEAS, the treaty has formally increased the access of human rights promoters into trade policy-making. Nevertheless, it further fragmented decision-making powers in the EU while, at the same time, fostering the compartmentalization of trade and human rights policy processes into two separate arenas. Besides confirming the pre-existing structure of trade policy in multiple sub-systems (Peterson and Young 2014), the treaty has *de facto* amplified the separation between decision-making processes concerning trade and foreign and security. The Council has the power to set the mandate for the Commission to carry out the negotiations. The Commission has retained its role as chief negotiator on trade matters, while the Parliament has acquired veto power, and the member states join the EU as contracting parties if the final agreement is considered "mixed".<sup>1</sup> In this context, in order to avoid decision-making stalemate, the Council and the Commission have agreed to keep negotiations on trade and human rights separate. While the Commission negotiates a trade agreement, negotiation of the PCA is delegated to the EEAS. The lack of a unified policy process has ultimately strengthened the role of the Commission, which gives voice to exporter and importer interests and member states in shaping the EU's position on a trade agreement, and it has reduced the Parliament's control over trade negotiations. This separation of decision-making arenas has reduced the chances for NGOs and industry groups promoting a human rights approach to trade to exert influence.

### ***Human rights and labour standards in the EU PTAs***

All the PTAs that the EU has concluded since the 1990s include human rights clauses and provisions concerning labour standards. A comparison of all the human rights provisions in recent agreements shows that the EU tends to require differentiated commitments from its trade partners. In the words of the Trade Commissioner, DG Trade has deliberately adopted an approach to trade agreements that rejects a “one size fits all” logic (De Gucht 2011). All PTAs negotiated by the EU since 2006 have been framed within broader political agreements covering cooperation in the human rights field. The EPAs with the ACP countries build upon the Cotonou agreement; the PTA with Korea (2010) is included in the EU-South Korea Framework Agreement; the PTA with Colombia and Peru (2012) is linked to a PCA with the Andean Community, while the Association agreements with Central America (2012) and with Georgia and Moldova (2013) cover both trade and political matters. In the ASEAN region, the EU-Singapore PTA initialled in 2013 is framed in a PCA. The legal relationship between the trade and the framework and cooperation agreements varies from case to case. The Korea trade agreement adopts a vague linkage clause stating that ‘The present Agreement shall be an integral part of the (...) overall bilateral relations as governed by the Framework Agreement. It constitutes a specific Agreement giving effect to the trade provisions within the meaning of the Framework Agreement’. By contrast, the Singapore agreement contains a clearer clause, which specifies that the PCA and the PTA ‘shall form part of a common institutional framework’ (European Parliament 2014).

Finally, both of these agreements contain a clause stating that respect for human rights and democratic principles is an essential element of the agreement, and they supplement it with a non-execution clause permitting the adoption of appropriate measures if one of the two parties violates the clause. Yet the way in which the suspension clause is formulated in different agreements varies substantially. The EPA with Caribbean countries (CARIFORUM), signed in 2008, and the Association agreements with Georgia and Moldova, signed in 2014, stand out for the broad range of measures that they foresee in cases of human rights violation. They specify that such measures may imply the suspension of any obligations between the parties, therefore including financial and trade obligations. In terms of enforcement procedures, if a party adopts appropriate measures, it must notify the joint council and carry out consultations, if requested. In this regard, the Cotonou Agreement includes the most elaborate consultation procedure, which requires a mandatory political dialogue in non-urgent cases as a preliminary step, and the suspension of the agreement as a last resort measure (articles 96 and 97).

Another difference among recent PTAs concerns the content of the impact assessments carried out by the Commission services in preparation of the agreement. Whilst in 2012 the European Commission implemented a human rights impact assessment in the initial stages of the PTA negotiations with Georgia, Moldova, Armenia, Tunisia and Morocco, as requested by the European Parliament’s Resolution of 25 November 2010, it did not carry out a similar assessment in the negotiations with Singapore, initialled in 2013. Every trade agreement since the conclusion of the EU-Korea negotiations has a specific chapter on trade and sustainable development, which covers labour rights. This chapter requires that the parties comply with the core labour standards established by the ILO, including the freedom of association, the effective recognition of collective bargaining, and the elimination of forced labour and discrimination in respect of employment. Moreover, it asks that the parties take steps towards adoption of all the ILO Conventions that they still have to ratify. In this regard, PTAs concluded by the EU use different formulations. The PTA with Korea states that ‘the Parties will make continued and sustained efforts towards ratifying the fundamental ILO Conventions’, while the PTA with Singapore uses more conditional language, adding that ‘[T]he Parties will also consider the ratification and effective implementation of other ILO conventions, taking into account domestic circumstances’.

### *Political dialogue between the EU and Vietnam*

The current negotiations between the EU and Vietnam build upon two decades of political dialogue, which, despite divergences on the standards and methods to pursue, have led to remarkable joint initiatives. These achievements make the EU one of Vietnam's main international interlocutors in the field of human rights, and they have laid the bases for further cooperation on this topic in the context of trade negotiations. Vietnam has a long history of relations with European states, and especially with France, due to its colonial presence from 1887 to 1954, and with former Communist Eastern European countries, which established close contacts with Vietnam in the 1970s and 1980s. Moreover, Northern European countries provided political support to Vietnam during the war with the United States. The origins of the contemporary trade and political relations between the European Community and Vietnam can instead be traced to 1986, when the Congress of the Communist Party of Vietnam, in order to reduce the country's dependence on the Soviet Union, adopted the so-called *Doi Moi* (renovation) reform program laying the bases for Vietnam's integration into the global economy. The *Doi Moi* also introduced political and constitutional reforms intended to support that process on the government's agenda.

After the end of the Cold War, the Vietnamese government openly embraced a multilateralizing strategy in order to normalize its relationship with countries formerly belonging to the Western bloc. In 1995 the country joined ASEAN, established diplomatic relations with the United States, and signed a comprehensive Framework Agreement with the EU. In order to conclude the agreement, the government had to accept that the agreement would include legally binding human rights provisions (Maas 2012). Even though the agreement did not include any suspension clause, it was a significant step in the direction of strengthening political cooperation with the EU. Since the mid-1990s, the multilateralizing strategy of Vietnamese foreign policy has also led to the country's ratification of five out of the eight fundamental conventions of the ILO. Yet Vietnam still has to ratify the Freedom of Association and Protection of the Right to Organize Convention (1948), the Right to Organize and Collective Bargaining Convention (1949) and the Abolition of Forced Labour Convention (1957).

Building on the EU-Vietnam Framework Agreement, the two parties launched regular dialogue on human rights in 2003. This dialogue laid the bases for the political dimension of the PCA, which was signed by the two parties on 27 June 2012. While Singapore and Malaysia refused to negotiate PCAs before launching PTA negotiations, the Vietnamese government demonstrated willingness to sign the PCA before starting trade negotiations, as required by the EU. This decision can be considered a further confirmation of the government's intent to broaden its political ties with international partners and to diversify its economic and diplomatic relations in order to reduce dependence on China. Like the other PCAs and association agreements concluded by the EU, the PCA with Vietnam makes reference to human rights principles as 'essential elements of the agreement' (art. 1). It states that the Parties confirm their commitment 'to the respect for democratic principles and human rights, as laid down in the UN General Assembly Universal Declaration of Human Rights and other relevant international human rights instruments to which the Parties are Contracting Parties'. Art. 57 of the agreement includes provisions concerning fulfilment of the obligations of the PCA. It specifies that, if one of the two parties claims that the other has failed to fulfil any of its obligations under the agreement, 'it may take appropriate measures', in accordance with international law. Despite the legal constraints imposed by the Vietnamese Constitution and the resistance of the government to accepting binding commitments on human rights issues, the recent progress achieved in the political dialogue between Vietnam and the EU provides a platform favourable for the inclusion of human rights clauses in the bilateral trade agreement.

## THE EU-VIETNAM TRADE NEGOTIATIONS

In this section, the analysis reconstructs the decision-making process undertaken within the EU in order to draft a negotiating position on the PTA with Vietnam. It shows that from the agenda-setting stage onwards, two fronts formed in the debate on trade and human rights concerns. The first included export- and import-oriented pressure groups and member states and DG Trade, while the second front grouped NGOs and income competing interests, which found in the European Parliament and the High Representative the institutional channels through which to promote the integration of human rights concerns into the PTA. During the negotiation stage, the increasing number of veto players introduced by the newly enforced Lisbon Treaty further intensified inter-institutional conflict on the objectives of the trade agreement. These internal divisions contributed to crystallizing the separation of the institutional contexts trade and human rights policy-making. In this context, the mechanisms established by the Treaty in order to integrate different dimensions of European external relations proved inadequate to foster coherence in the negotiating position of the EU.

### *The agenda-setting stage*

The idea of a trade agreement with ASEAN member states originated in the EU before the Lisbon Treaty came into force. At that stage, both the European Parliament and the High Representative for Common Foreign and Security Policy (CFSP) pushed for the inclusion of human rights arenas in EU-Vietnam relations. Societal pressures to include binding human rights and labour standards in the PTA with Vietnam further intensified in the preparation of the EU's negotiating position. Despite these pressures, the Commission and the Council opted for separating the institutional venues of debate on trade and human rights with Vietnam.

The "Global Europe" strategy (European Commission 2006) called for intensified efforts to improve the competitiveness of European industries and growth in the negotiations with Asian countries. This approach suggests that PTAs negotiated by the EU should subordinate milieu goals, which indirectly respond to its foreign policy interests, such as development cooperation and human rights promotion, to primary economic objectives. One year later, the Council of the EU (2007) wrote its recommendations to open inter-regional negotiations with ASEAN. The Council's recommendations called for a PTA which would cover primarily economic affairs, and a PCA complementing the PTAs, which would cover political affairs. Negotiations between the two regional organizations started in 2007. While ASEAN members wanted to negotiate as a block, in August 2007 the former High Representative for CFSP, Javier Solana, insisted that Myanmar, due to its human rights record, should not be included in the inter-regional trade deal (Doan 2012). The European Parliament Resolution of 8 May 2008 on trade and economic relations with ASEAN emphasized that agreements containing enforceable human rights clauses should be considered a prerequisite for the Union to conclude any trade agreement with the South East Asian regional organization. In 2009, Solana reiterated his requests for the inclusion of human rights within PTA negotiations with ASEAN (Lim 2012). The main reason why negotiations stalled in the same year, however, was the inability of South-East Asian countries to speak with one voice on trade matters (Meredith 2012). As a reaction, in 2009 the EU announced its intention to engage in bilateral negotiations for a PCA and a PTA with single ASEAN countries. In this context, the European Parliament emerged as an advocate of the integration of human rights and trade policies. In November 2009, it issued a Resolution on the situation in Laos and Vietnam (P7\_TA(2009)0104) expressing concern for the human rights records of the two countries especially in the fields of freedom of expression, religious freedom, torture, human rights defenders, and violence against women (European Parliament 2009). The resolution called for inclusion of a binding clause on human rights and democracy and an enforcement mechanism in the PCA with Vietnam.



Despite these concerns expressed by the High Representative and the Parliament, the intentions of the Commission to keep negotiations on trade relations and on human rights separate were evident. The Commission's proposal for a PTA with Vietnam included a reference to the Universal Declaration of Human Rights (UN General Assembly, 1948) in the preamble of the agreement. Moreover, it required that labour rights provisions be introduced in the trade and sustainable development chapter of the PTA. Nevertheless, on 2 March 2010, in a leaked declaration the Trade Commissioner Karel De Gucht made his position on the human rights/trade nexus in the PTA negotiations explicit. He said that negotiations with Vietnam would not take the government's observance of human rights into consideration. Given the new powers attributed by the Lisbon Treaty to the Parliament, however, he recognized that the latter might well take issue with Vietnam's human rights performance (Radio Netherlands Worldwide 2010). Thus, human rights would be mainly discussed in the context of the PCA negotiations, while trade and investment matters would lead the negotiations for a PTA (Interview with the team leader of the EU Multilateral Trade Assistance Project to Vietnam, 2014). The definition of the relationship between the PTA and the PCA would be subject to discussion in the very last rounds of the trade negotiations. Debate on the human rights clauses of the PTA was also postponed to the final stages of the negotiations, when the European Parliament could possibly bring the issue to the attention of negotiators.

In 2010 the EU began negotiations for trade agreements with Malaysia and Singapore. In reaction, European NGOs and import-competing groups within the EU expressed demands for stronger links between trade and human rights provisions within the PTA with ASEAN members. The European Trade Union Confederation (ETUC 2010) and other national trade unions (European Commission 2011) were especially vocal in this regard. Industry associations wanting to protect their production based on high standards of labour rights shared those concerns. The European Confederation of the Footwear Industry (2010), referring to the fact that China and Vietnam together account for more than 60 per cent of imports of footwear into the EU, complained that for Europe 'the challenges arising from liberalisation take the form of heightened competition from countries with low labour costs'. The footwear sector in Southern Europe is especially concerned about the pressures for liberalization applied by the Commission in order to provide full market access to Vietnamese goods without asking for reciprocity. According to representatives of this sector, the Commission should ask the abolition of protectionist duties against the importing of European goods, which are subject to high labour costs and protections (Interview with Assocalzaturifici 2014). As the European group of textile producers, Euratex (2010) further elaborated, '[T]he high quality and sustainability standards existing in the EU represent a competitive advantage for our companies. Moreover they reflect the needs and demands of EU Consumers. Thus it is vital that the EU ensures that these prominent standards are properly respected and promoted in trade negotiations at multilateral and bilateral level'.

On January 2012, the European Commission (2012) published a Communication on 'Trade, Growth and Development', intended to bring development concerns back on its trade agenda. The declared aim of the document was to push for differentiated levels and timings of liberalization required of trade and investment partners according to their level of development. The strategy, however, by considering trade preferences as a crucial instrument in the fight against poverty, seemed to reinforce the commercial imperatives that had inspired the "Global Europe" agenda (Siles Brügges 2014). Moreover, in July 2012 the EU adopted the Strategic Framework on Human Rights and Democracy, stating that the 'EU will promote human rights in all areas of its external action without exception' (Council of the EU 2012). Yet, in the preparation stage of the trade negotiations with Vietnam, a spokesperson for the Trade Commissioner, Karel De Gucht, reiterated the Commission preference for separate institutional venues in which to negotiate trade and human rights matters. He argued that such a separation was consistent with the allocation of competences among different European institutions, where the Commission is in charge of the trade component of negotiations, and the EEAS deal with the political aspects of EU-Vietnam relations (New Europe 2012). As became evident in the

negotiation stage, the separation of negotiations on trade and human rights into distinct tables ultimately constrained the endeavour to integrate human rights concerns into trade policy.

### *Shaping the position of the EU throughout the negotiations*

Throughout the negotiations, the European Parliament was even more active in promoting binding human right clauses and labour standards in the PTA, supporting the demands of NGOs, import-competing groups and a vocal group of member states. The Commission's opposition to inclusion of human rights on the agenda of the trade negotiations, however, harmed the definition of a clear-cut position by the EU on the human rights-trade nexus. On 31 May 2012 the Council gave a broad mandate to the Commission to negotiate a PTA with Vietnam (interview with ETUC, 2014). Moreover, it provided full support to the efforts of the Commission to increase market opportunities for European producers and traders in Vietnam. The majority of the member states, in fact, represent the interests of exporters to and importers from Vietnam. From their perspective, the latter is a door to the broader and growing ASEAN market. Faced with the effects of the global financial crisis, and the new role of attractive trade partners played by Asian emerging economies, even Southern Europe member states have increasingly shared the liberalization agenda of the Commission in the context of the PTA negotiations with ASEAN members. This group also includes Italy and Spain, where the most sensitive import-competing interests in the textiles and footwear sector are located (Interview with Chamber of Commerce Emilia Romagna, 2014). Notwithstanding this broad support for the Commission's agenda, the Council asked that the PTA with Vietnam should be considered a mixed competence, due to its comprehensive nature, and therefore that each member state should retain a veto power on the final deal (New Europe 2012)<sup>2</sup>. Moreover, since the early stages of the negotiations France, the Benelux and Scandinavian states actively pushed for the inclusion of detailed binding clauses concerning human rights and labour standards in the PTA (Interview with an official of DG Trade, June 2014).

In 2012, DG Trade opened an online industry consultation on the trade negotiations with Vietnam. The purpose of the questionnaire was to collect inputs on the economic interests of European industry associations. It covered a broad range of issues, including trade in goods, trade in services and investment and regulatory issues, but it did not include questions concerning sustainable development and human rights issues. That further confirmed that trade interests were the major driver of the European Commission's position in the negotiations. In preparation of the first round of negotiations, which took place in June 2013, a number of European civil society organizations submitted position papers to the Commission, the member states and the Parliament asking them to take the human rights and labour implications of the PTA into serious consideration. In September 2012, EUROTHON, the European association of enterprises involved in tuna transformation, reiterated the concerns previously expressed by EURATEX and the European Confederation of the Footwear Industry by stating that it 'would like to see sustainability provisions' including labour rights in the agreement. According to the association, before the negotiations, 'it needs to be ensured that Vietnam is fully committed to respect and implement' ILO Conventions (EUROTHON 2012). In October, ETUC expressed detailed requests concerning the sustainable development chapter of the EU-Vietnam agreement. Its General Secretary said that '[I]n regard to labour issues, we want to see binding commitments by all parties to ratify and fully implement ILO standards, notably the core Conventions covering freedom of association and collective bargaining, non-discrimination and child labour' (ETUC 2012).

On 18 April 2013 the European Parliament adopted a Resolution on Vietnam, in particular with regard to freedom of expression (2013/2599(RSP), with the purpose of bringing the attention of European institutions to human rights violations in the country. The resolution provoked a harsh reaction by Vietnamese leaders which endangered the negotiations between the two partners (Sicurelli 2015) and

strengthened the opposition in the European Commission against the inclusion of binding human rights clauses in the PTA. As an official of DG Trade commented, commitments on human rights had already been included in the PCA with Vietnam, and therefore they were not a matter for discussion in the trade negotiations (interview, July 2014). Reactions of Vietnam leaders, however, did not stop the pressures of the NGOs on European institutions. On 30 April 2013 the International Federation for Human Rights (FIDH) issued an open letter to the European institutions on the trade negotiations with Vietnam, urging the EU to carry out the human rights impact assessment required by the European Parliament (FIDH 2013a). On May 2013 the European Commission Services (2013) released an Annex on Vietnam to the Trade sustainability impact agreement of an EU-ASEAN agreement which did not include a human rights assessment. The document stressed, that '[T]he Commission pays specific attention to core ILO labour standards'. Nevertheless, the report did not carry out an assessment of the implications for human rights of the trade agreement with Vietnam, and it did not explicitly discuss the agreement's implications concerning the principle of the freedom of association.

In turn, the Parliament intensified its efforts to push EU negotiators to adopt a human rights perspective in the trade negotiations. On January 2014 it adopted a Resolution on the future of EU-ASEAN relations (2013/2148(INI)) urging the Commission to actively promote respect of ILO labour standards in ASEAN. The resolution called for 'enhanced cooperation and mutual rapprochement on human rights issues' with ASEAN members, with a focus on 'freedom of assembly and association, including for trade unions'. Finally, on 17 April 2014 the Parliament issued a Resolution on the state of play of the EU-Vietnam PTA (2013/2989(RSP)) stating that the agreement should contain 'a binding and enforceable sustainable development chapter reflecting the EU's and Vietnam's common commitment to promote respect for, compliance with, and enforcement of international human rights agreements, the eight core ILO conventions'. In this regard, the resolution asked, 'that such a sustainable development chapter be covered by the institutional and legal link to be established between the PTA and the PCA, to include the possibility of suspension of the PTA in case of severe human rights abuses'. Furthermore, as already requested by the NGO FIDH, it asked the Commission to carry out a human rights impact assessment in Vietnam before concluding the trade agreement. According to an official of DG Trade (Interview, July 2014), this resolution resulted from pressures applied by NGOs and key import competing groups.

In sum, strengthened by its veto power acquired under the Lisbon Treaty and pressures from civil society and member states, during the negotiation rounds the European Parliament has played the role of a major advocate of stringent human rights clauses in the trade agreement. To be fair, though, its activism should not be overestimated. The entry into force of the Treaty is still too recent to enable the Parliament fully to develop an institutional structure supporting the drafting of a clear-cut position of the whole assembly on single trade negotiations (Interview with an official of the European Parliament, 2014). Furthermore, its composition before the elections of May 2014, with the major party, the European People's Parties, holding 275 seats, followed by the Socialists and Democrats with 185, did not facilitate the Parliament's support to more radical proposals integrating trade and human rights. For instance, with respect to negotiations with Vietnam, the proposal advanced by the Greens and the European United Left/Nordic Green Left European Parliamentary Group for a clause guaranteeing that investment protection did not take precedence over the human rights obligations of the contracting parties was not introduced in the Parliament's Resolution 2013/2989(RSP) of 17 April 2014 (FIDH, 2013b). Resistances within the European Commission against the proposal to include on the PTA agenda commitments that would trigger the opposition of the Vietnamese partners have further weakened the Parliament's potential as an advocate of human rights in the trade agreement.

### ***The position of the Commission on human rights and labour standards***

The Commission endorsed the request of the Parliament to include in the PTA a binding clause on human rights and an enforcement mechanism, by promoting an institutional mechanism tying the PTA with the PCA. As mentioned above, the PCA included a suspension clause in case of violations of the essential elements of the agreement. That clause was consistent with requests included in the Resolution on the situation in Laos and Vietnam adopted by the European Parliament in 2009. In contrast to agreements with Georgia, Moldova and CARIFORUM, however, the PCA with Vietnam does not make explicit reference to the possibility of suspending mutual trade commitments. Moreover, in contrast to the Cotonou agreement, the PCA with Vietnam does not specify that mandatory political dialogue should precede the consultation procedure in non-urgent cases. With respect to the second request included in the same resolution, namely that of introducing a mechanism to enforce provisions concerning sustainable development, the Commission proposed a soft power procedure based on government consultations and a panel of experts (interviews with DG Trade, June 2014 and July 2014).

Instead, the Commission decided not to endorse the Parliament's request that the sustainability impact assessment exercise be integrated with a specific human right assessment. In a formal reply to the Parliament, it justified its decision by arguing that the impact assessment of the EU-Vietnam PTA carried out by the Commission in 2013 was based on the Council's mandate to the Commission to negotiate a PTA with ASEAN back in 2007, namely before the Lisbon Treaty entered into force. For that reason human rights did not enter the agenda of the assessment exercise. Carrying out an *ad hoc* assessment devoted to the human rights implications would contravene the integrated approach adopted by the Commission for sustainability impact assessments, which requires a comprehensive assessment of the economic, environmental and social impact of the agreement (interviews with officials of DG Trade, June and July 2014).

Finally, the version of the chapter on trade and sustainable development of the PTA proposed by the Commission does not take the human rights dimension of labour standards into account. The Commission asked the Vietnamese government for the chapter to require Vietnam's commitment to making progress in ratifying all the ILO Conventions that the country still has to ratify, including the Convention concerning the principle of freedom of association. Nevertheless, given the resistance of the Vietnamese government to accepting a binding provision concerning freedom of association (Interview with the team leader of the EU Multilateral Trade Assistance Project to Vietnam 2014), it agreed to include a clause calling on the two parties to ratify the ILO conventions that they have not yet ratified provided that it is compatible with domestic law. That implies that ratification of the ILO Convention on the Freedom of Association and Right to Organize will be conditional upon the ongoing reform process of the Vietnamese constitution. In order to foster cooperation on labour standards, in the round that took place in June 2014, the Commission asked Vietnam to include labour unions in the dialogue with the EU on implementation of the PTA (interview with an official of DG Trade, 2014).

In this context, the High Representative Catherine Ashton was less committed to promoting the integration of human right principles within trade policy compared with her predecessor, Javier Solana (interview with an official of the European Parliament, 2014). While the EEAS held consultations with DG Trade on the interaction between the agreement's political and trade implications prior to the start of the negotiations, these consultation did not achieve tangible results (New Europe 2012). Considering the role, played by the EEAS in the negotiations with Vietnam, an official of the European Parliament (interview, 2014) noted that they are far from being an operative body. It is fair to argue that the prospect of a possible veto forced the Commission to take account of some of the requests included in the Parliament's resolutions. The Parliament, with the support of an active group of member states and a coalition of NGOs and industry groups, contributed to shaping the content of the Commission's negotiating position, which includes binding, even if partially contradictory, human

rights provisions. However, it is likely that the Parliament will consent to the PTA even though the Commission has refused to endorse major requests included in its resolutions. Given the comprehensive nature of the issues addressed in the negotiations, in fact, the Parliament's decision will be based upon evaluation of the overall content of the final deal.

## CONCLUSION

This case study contributes to research on the EU as a norm promoter through trade. By investigating the role of institutions and societal actors participating in the policy process, it sheds light on the mechanisms adopted by the EU in the shaping of trade policy and on the conditions that harm coherence in the EUs' external relations. This analysis challenges the explanatory potential of the ideational readings of European foreign policy, and it addresses the questions raised by institutionalist and domestic politics studies. It shows that the new veto power provided to the European Parliament on trade policy makes it a crucial target of pressures by NGOs and industry groups interested in including human rights and labour standards provisions within trade agreements. At the same time, however, by establishing the EEAS as the diplomatic body of the EU, the Treaty has ultimately constrained the Parliament's influence on the human rights dimension of trade agreements. The Commission, which mainly expresses the demands of importer and exporter groups, still dominates the trade negotiations, while negotiations on human rights are delegated to the EEAS. As a result, different bilateral agreements cover trade and human rights provisions, and negotiations on labour standards take place separately from negotiations on human rights. This compartmentalization of the policy process reduces the influence of societal groups promoting the integration of trade and human right policies and, ultimately, weakens the normative potential of the EU. The inability demonstrated so far by the newly established High Representative and the EEAS to push effectively for a coordinated foreign policy action of the EU has further constrained the efforts to include human rights concerns in trade agreements.

Comparative studies on ongoing and future preferential trade deals will be required to shed further light on how inter-institutional relations and societal mobilization affect its positions on trade and human rights. More precisely, PTAs whose agendas have been drafted since the Lisbon Treaty came into force will provide a clearer picture of the impact of institutional mechanisms intended to foster foreign policy coherence.

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<sup>1</sup> The Lisbon Treaty has extended the domains of EU competence within the PTAs to include services trade, trade related intellectual property rights, and foreign direct investment. Art. 207 of the Treaty on the Functioning of the EU, however, lists a number of exceptions to this rule. Exceptions refer to trade agreements including provisions for which unanimity is required for the adoption of internal rules, covering issues such as audiovisual services that affect cultural or linguistic diversity and services in the national health, social and education sectors, and to the negotiation and conclusion of international agreements in the field of transport. Agreements covering these issues still fall under the mixed competence of the Union and its member states.

<sup>2</sup> Only after the conclusion of the agreement, the decision on the nature of its definition as either an exclusive competence of the EU or a mixed competence will be finally taken on the basis of the content of the final deal.

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