

The Pursuit of Non-Trade Policy Objectives in EU Trade Policy*

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Abstract

The European Union (EU) often conditions preferential access to its market upon compliance by its trading partners with Non-Trade Policy Objectives (NTPOs), including human rights and labor and environmental standards. We systematically document the coverage of NTPOs in EU trade agreements and in its Generalized System of Preferences (GSP). We then examine the extent to which trade agreements and GSP programs can be used to promote NTPOs. Preferential trade agreements are negotiated under multilateral rules, which require members to eliminate all tariffs reciprocally. As a result, once a trade agreement enters into force, the EU cannot easily restrict or extend access to its market so as to “punish bad behavior” or “reward good behavior” on NTPOs by its trading partners. By contrast, GSP preferences are granted on a unilateral basis, so they can be limited or extended, depending on compliance with NTPOs. EU GSP programs can thus provide a carrot-and-stick mechanism to promote NTPOs in partner countries.

JEL Codes: F13, F50, J80, K32, K38.

Keywords: Trade Agreements, GSP, Conditionality, Non-Trade Policy Objectives.

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1 Introduction

The European Union (EU) is one of the biggest players in world trade and often exploits its commercial power as a diplomatic tool.¹ Preferential access to the EU market, sometimes combined with financial aid and economic cooperation, is used to foster the Union's geopolitical interests. Indeed, it has been argued that trade policy is "the principal instrument of foreign policy for the EU" (Sapir, 1998).

The EU conducts its external relations, including trade relations, with the stated purpose of promoting its values. This evolution has been made official in the Treaty of Lisbon, notably Article 21 (1), which states:

The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

Art. 21 (3) of the Treaty on European Union (TEU) explicitly encompasses trade as part of the action of the EU "on the international scene", and trade policy must consequently "be guided" by EU values. For this reason, the EU often conditions preferential trade access to its market to the achievement of Non-Trade Policy Objectives (NTPOs), such as sustainable development, human rights, and good governance.² In response to increasing calls from the European Parliament and civil society, the new von der Leyen Commission has promised to strengthen the use of trade tools in support of such NTPOs.³

¹The EU is the world's largest exporter of manufactured goods and services and is itself the biggest export market for around 80 countries. Together, its current 28 members account for 16% of world imports and exports. See <http://ec.europa.eu/trade/policy/eu-position-in-world-trade/>.

²In general, conditionality is defined as granting benefits to a country subject to the beneficiary meeting certain conditions (Kishore, 2017), or as a mechanism to bring about policy reforms or impose policies that the beneficiary country would not voluntarily choose (Morrissey, 2005).

³See Mission Letter of Commission President-elect Ursula von der Leyen to Phil Hogan, Commissioner-designate for Trade as of 10 Sept 2019: https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-phil-hogan-2019_en.pdf.

The purpose of the paper is twofold. First, we systematically document the coverage of NTPOs in the two main tools of EU trade policy: free trade agreements and the Generalized System of Preferences (GSP), respectively. Based on the Design of Trade Agreements (DESTA) project, NTPOs can be classified in four main categories: civil and political rights (CPRs), economic and social rights (ESRs), environmental protection (EP), and security issues. CPRs mainly refer to the protection of human rights, democratic institutions, rule of law, good governance, and corruption problems. ESRs very broadly relate to labor standards, social protection, and development. EP includes objectives such as the protection of wildlife, reduction of air pollution, waste management, and forest protection. More recently, a fourth category of NTPOs has been introduced related to security issues, dealing with national security, drug trafficking, and the fight against terror. As we document in the next section, EU trade agreements and GSP schemes exhibit a great deal of heterogeneity in terms of coverage of NTPOs.

Second, we examine the extent to which trade agreements and GSP programs can be used to promote NTPOs. We argue that trade agreements are not an effective tool through which the EU can incentivize trading partners to achieve NTPOs. The key reason for this ineffectiveness is that the EU must comply with Article XXIV of the GATT/WTO, which requires countries that negotiate preferential trading arrangements to eliminate “duties and other restrictive regulations of commerce” on “substantially all the trade between the constituent territories in products originating in such territories.” Given that tariffs must be eliminated reciprocally across the board, the EU cannot extend or restrict preferential access to its market, depending on the behavior of the trading partner.

As a result, once a trade agreement enters into force, there is no positive conditionality (a rewarding leverage mechanism), i.e. trade policy cannot be used as a “carrot” to reward good behavior on NTPOs by trading partners. In terms of negative conditionality (a punitive leverage mechanism), the EU can in principle trigger the “essential elements” clause in case of severe NTPOs violations by a trading partner, which could lead to the suspension or termination of the trade agreement. However, this clause

only applies to some NTPOs (human rights, democracy, the rule of law, and security), excluding provisions on labor and environmental standards. Moreover, in the few cases in which the EU has activated the “essential elements” clause, it has never suspended or terminated the agreement. This may partly be due to the fact that this “stick” is too drastic: given the reciprocal nature of a trade agreement, its suspension or termination can be extremely costly, not only for the trading partner but also for the EU.⁴

By contrast, the EU can use its GSP programs as a carrot-and-stick mechanism to promote NTPOs in developing countries. The key difference with trade agreements is that GSP preferences are offered on a unilateral basis, which affords more leeway in using conditionality by preference-granting countries.

The EU can reward countries that make progress on NTPOs, offering lower tariffs and a broader product coverage (positive conditionality). For example, since 2014 the Philippines is a beneficiary of the GSP+ program. This special incentive arrangement for Sustainable Development and Good Governance grants developing countries full removal of tariffs on two thirds of all product categories, conditional on their ratification of and compliance with core international conventions on human rights, labor and environmental protection.⁵ In case of violations of NTPOs, the EU can instead punish the trading partner by suspending part or all of its GSP preferences (negative conditionality). For example, in 2010 the EU withdrew Sri Lanka from its GSP+ program. This decision was based on the findings of an investigation by the Commission that identified shortcomings in the implementation by Sri Lanka of three UN human rights conventions (the International Covenant on Civil and Political Rights, the Convention Against Torture, and the Convention on the Rights of the Child, respectively).

It should be stressed that the goal of our paper is to examine whether the EU can potentially use trade policy to promote NTPOs in its trading partners. We do not study outcomes, i.e. whether trade agreements and GSP programs actually had any impact

⁴Another reason may be that, if the EU did suspend its tariff preferences vis-à-vis a trading partner, this action could be challenged at the WTO as being inconsistent with Article XXIV (Mavroidis, 2016).

⁵As a result of the upgrade, the number of products which the Philippines could export at zero tariff increased from 2,442 under standard GSP to 6,274 under GSP+.

on such objectives.

The paper is structured as follows. In Section 2 and 3, we briefly trace the evolution of NTPO provisions in EU trade agreements and GSP programs, respectively. In Section 4, we focus on conditionality clauses in EU trade agreements and GSP programs, comparing the extent to which these trade tools can be used to promote NTPOs. Section 5 concludes.

2 NTPOs in EU Trade Agreements

At present, the EU has in place the largest trade network in the world, with 41 trade agreements in force.⁶ All agreements take the form of FTAs, with the exception of the ones with Andorra, Turkey, and San Marino, respectively, which are customs unions. Other agreements (e.g. with Singapore or Vietnam) have been signed but are not yet fully in force, and several others are under negotiation.

During the last decades, trade agreements have not only increased in number but have also become “deeper.” They often include provisions that fall within the realm of WTO commitments but go beyond existing bindings at the multilateral level (WTO+ provisions) and others that exceed the current WTO mandate by making commitments e.g. in areas such as investment, movement of capital or competition policy (WTO-X provisions).

Below we describe the evolution of NTPOs in EU trade agreements. To this purpose, we use data compiled by Lechner (2016) in the context of the DESTA project on the degree of legalization of NTPOs in trade agreements.⁷

The concept of legalization, introduced by Abbott et al. (2000) and applied by Lechner (2016) to NTPOs in trade agreements, is based on three criteria: obligation, precision, and delegation. *Obligation* shows to what extent trading partners are legally

⁶The European Community (EC) Treaty is excluded. The European Economic Area agreement (EEA) and the EU agreements with Iceland, Norway and Switzerland-Liechtenstein are considered separately. EU trade agreements in force are listed in Table A1 in Appendix A.

⁷Data on the content of trade agreements are also collected by the World Bank, based on the methodology of Horn et al. (2010). The choice to rely on the dataset build by Lechner (2016) is due to the wider coverage of the recent EU agreements.

bound by rules or commitments. *Precision* refers to the degree to which the rules that define the conduct required, authorized or proscribed for trading partners are unambiguous. *Delegation* analyzes to what degree third parties have been granted authority to implement, interpret, and apply the rules, to resolve disputes, and possibly make further rules. A legalization score is computed aggregating these three dimensions for each category of NTPOs. The score ranges from “ideal” legalization, where the three dimensions are maximized, to the complete absence of legalization.⁸

To analyze the evolution of NTPOs in EU trade agreements, we proceed as follows. First, we compute an overall legalization score for each agreement, by summing the legalization scores across all types of NTPOs. Second, we take the average of this overall score across EU trade agreements concluded over a time span of five years. Looking at these five-year brackets, the degree of legalization of NTPOs in EU trade agreements has steadily increased since 1990 (Figure 1), except for the most recent period. The legalization score for the 2015-2019 period is lower compared to the 2010-2014 period, which is mainly due to the agreements concluded by the EU with different groups of African countries.

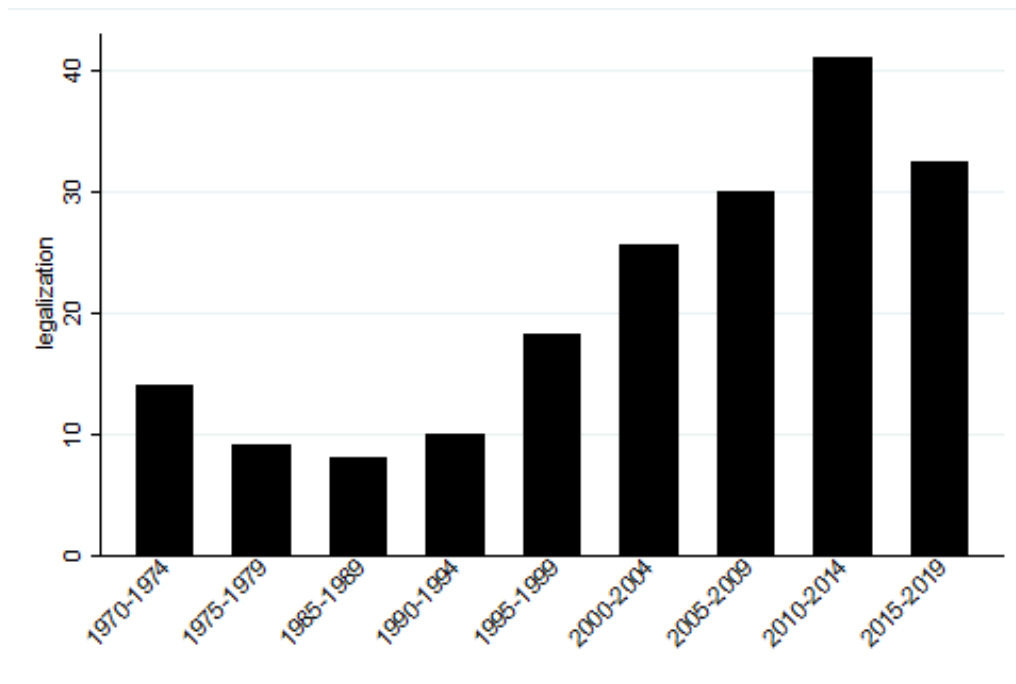
Overall, Figure 1 shows that over the last three decades NTPOs have gained prominence within EU trade agreements. This trend was mostly driven by labor and environmental provisions. This can be seen from Table A2 in the Appendix, in which we use data from Lechner (2016) to describe the coverage of different types of NTPOs in 40 EU trade agreements.⁹ The legalization indices of the ESRs and EP provisions contained in EU trade agreements more than doubled during the last two decades.¹⁰

⁸The method used to compute the degree of legalization for each category of NTPOs in trade agreements is detailed in Lechner (2016). The maximum possible legalization score varies across the four categories of NTPOs, depending on the issues specific to each category included in the analysis: 31 for CPRs, 37 for ESRs, 33 for EP and 25 for security. Therefore, the maximum possible overall legalization score per agreement is 126.

⁹Some EU agreements currently in force are not included in the dataset: EU-Iceland, EU-Palestinian Authority, EU-Cameroon, EU-Eastern and Southern African States, and EU-Ghana. However, the dataset includes four other agreements that have been signed, but are not in force yet, namely the ones with West Africa, the Eastern African Community, Singapore and Vietnam.

¹⁰For agreements negotiated before 2000, the legalization indices for ESRs and EP were respectively 4.9 and 3.1. For agreements negotiated after 2000, the corresponding indices were 10.5 and 10.0. The increase was less important for the other NTPOs: in the case of CPRs, the legalization index went from 3.4 to 6.4; in the case of security, it went from 3.4 to 5.9.

Figure 1: Evolution of Legalization of NTPOs in EU Trade Agreements



Source: Authors' elaboration based on [Lechner \(2016\)](#).

Civil and Political Rights

EU trade agreements include provisions on civil and political rights (CPRs), which encompass human rights, democracy, and the rule of law, respectively.

Human rights were first mentioned in Article 5 of the 1989 Lomé IV Convention with African Caribbean Pacific (ACP) countries ([Bartels, 2013](#)). However, the agreement did not include any sanctions in case of violation.

Starting in the early 1990s, provisions related to democratic principles and human rights have been included in EU trade agreements on a more systematic basis ([Velluti, 2015](#)). The clauses have been formulated in such a way as to gain a more prominent place within the arrangements and references were made to international instruments (e.g. the 1948 Universal Declaration of Human Rights, the 1975 Helsinki Final Act, etc). While a sanction-based mechanism for violations was absent, the wording for provisions on democratic principles and human rights was stronger than in previous agreements ([Miller, 2004](#)).

In 1991, the Council of Ministers adopted a positive approach towards the inclusion of democratic principles and human rights in EU agreements, based on political

dialogue. At that point, provisions for sanctions against violating states were also included as a last resort (Miller, 2004). In 1992, the Council officially stated that respect for democratic principles and human rights forms an essential part of EU trade agreements. Thus, the agreements concluded with the Baltic States, Albania and other third countries during that period referred to CPRs as “essential elements.” As a result, a mechanism allowing to impose sanctions or to terminate the agreement in case of violations could be triggered under Article 60 of the Vienna Convention.¹¹

Starting in 1995, democratic principles, human rights and the rule of law became “essential elements” of EU trade agreements and “non-execution” clauses have been incorporated. These clauses specify the consequences in case of “material breach” of the agreement resulting from serious and persistent human rights violations and serious interruptions of the democratic process (Donno and Neureiter, 2018).¹²

Following the entry into force of the Treaty of Lisbon in 2009, CPRs have become a prominent value promoted by the EU through its trade policy (Beke et al., 2014). All FTAs negotiated by the EU since the Treaty of Lisbon, namely the “new generation” FTAs, are part of broader political agreements, featuring cooperation on CPRs.¹³

The “essential elements” clause is usually included in these linked political agreements and divided in two provisions. The first one presents the scope of the clause, describing the principles that the parties engage to abide by, such as human rights, democracy, and the rule of law. The second one enables one party to take “appropriate measures” in case the other party violates the “essential elements” clause. The mea-

¹¹Specifically, the clause included in these agreements stipulated that: “The parties reserve the right to suspend the Agreement in whole or in part with immediate effect if a serious violation occurs of the essential provisions.”

¹²“Non-execution” clauses take two forms. The “Baltic clause” authorizes the suspension of the application of the agreement in whole or in part “with immediate effect” in cases of serious breach of essential provisions. The more common “Bulgarian clause” asserts that immediate suspension should be envisaged only in cases of special urgency and does not specify which “appropriate measures” should be taken in case of breach.

¹³The economic partnership agreements (EPAs) with the ACP countries are framed within the Cotonou agreement. The FTA with Korea (2010) is included in the EU-South Korea Framework Agreement, the FTA with Colombia and Peru (2012) is linked to a partnership and cooperation agreement with the Andean Community, while the Association Agreements with Central America (2012) and with Georgia, Moldova and Ukraine (2014) cover both trade and political matters. Among the recently signed FTAs, the EU-Canada FTA is framed into a Strategic Partnership Agreement, the EU-Japan FTA is framed into an economic and partnership agreement, and EU-Singapore FTA is framed in a partnership and cooperation agreement.

sures introduced should be proportional to the violation and priority should be given to the ones that least disturb the normal operation of the agreement. However, in the case of a material breach – which consists of either the repudiation of the agreement not sanctioned by the general rules of international law or a particularly serious and substantial violation of an essential element – the agreement can be terminated or suspended in whole or in part, based on the Article 60 of the Vienna Convention. In certain agreements, the Parties can also rely on the dispute settlement mechanism of the agreement to solve the issues that arise from the violation of the “essential elements” clause.

In Section 4.1, we will come back to the “essential elements” clause and discuss whether it can actually be used to promote CPRs in EU trading partners.

Economic and Social Rights and Environmental Protection

The NTPOs related to economic and social rights (ESRs) and environmental protection (EP) are usually bundled together, under the umbrella of “trade and sustainable development” (TSD).

Sustainable development has been referred to in EU trade agreements since the mid-1990s. The first agreement to mention the principle of sustainable development was the one with Hungary in 1993. However, it was not until the Treaty of Lisbon in 2009 that sustainable development became one of the key principles of the EU’s trade policy (Velluti, 2016). The promotion of sustainable development through the EU’s external action is clearly stipulated in Article 3(3) and (5) and Article 21 (2)(d) and (f) TEU and Article 11 TFEU (Treaty on the Functioning of the European Union) (Beke et al., 2014).

Sustainable development has become a more prominent NTPO objective in the new generation of EU trade agreements with the negotiation of dedicated TSD chapters, which include provisions on labor and environmental standards. The first agreement to include a TSD chapter was the 2008 EU-Cariforum Economic Partnership Agreement. All EU FTAs concluded after 2008 and which are currently in force in-

clude TSD chapters. This is the case for EU's FTAs with Central America, Georgia, Moldova, Ukraine, Peru and Colombia, and South Korea. Similarly, TSD chapters have also been included in recently signed agreements such as the EU-Singapore FTA, the EU-Vietnam FTA, the Comprehensive Economic and Trade Agreement (CETA) with Canada, and the EU-Japan FTA.

The underlying mechanisms of TSD chapters are common to all EU trade agreements, although there might be variations across agreements specific to the context. First, TSD chapters include "substantive standards," meaning that there are minimum requirements for both parties to implement certain multilateral obligations (Harrison et al., 2018). In the case of labor provisions, these minimum obligations refer to the ILO core labor standards, which are already binding on the parties due to their membership of the ILO.¹⁴ When it comes to environmental standards, the obligation to implement multilateral environmental agreements is essentially a reaffirmation of obligations already binding on the parties under those agreements. Overall, it appears that these provisions are not new to any party (Bartels, 2013).

Second, TSD chapters include "procedural commitments," through which the parties engage in dialogue and co-operation. Moreover, they commit to transparency when introducing new standards and agree to monitor and review the impact of the agreement. The parties also agree not to undermine their existing labor and environmental standards and to seek to enhance the existing regulations (Harrison et al., 2018).

Third, the implementation of TSD chapters is managed through "institutional mechanisms." As described by Harrison et al. (2018), "Committees of state/EU officials from the two parties are established to oversee the implementation of the TSD chapter. These are advised by a civil society mechanism (CSM) that takes the form of a Domestic Advisory Group (DAG) including representatives of business, trade unions, non-governmental organizations (NGOs) and occasionally academia, with the DAGs of the two parties meeting together on an annual basis."

¹⁴These minimum standards are also partly covered by the human rights clause, as acknowledged by the European Commission (Bartels, 2013).

Security

The EU also uses its trade policy to pursue geo-strategic objectives related to peace and security. The proliferation of weapons of mass destruction (WMD) is considered as the most serious threat to European security. In November 2003, the Council of the EU adopted the WMD clause as a means to encourage non-proliferation through its external action, under the EU Common Foreign and Security Policy (CFSP). More precisely, the November 2003 Council policy note states that, based on the model of human rights, a “WMD clause” should be included as an “essential element” in all future mixed agreements – which encompass both economic and political elements – between the EU and non-EU states (Grip, 2009).

However, the WMD clause was not systematically included in agreements negotiated or re-negotiated after 2003. For instance, the EU agreements with Jordan, Egypt, Lebanon, Morocco, Tunisia, Algeria and Macedonia do not incorporate the WMD clause (Caponetti, 2017). Instead, the WMD clause was first introduced as an “essential element” in the revised version of the EU-South Africa mixed agreement in September 2009 (Renard, 2013). This was also the case for the renegotiated EU agreements with Albania, Bosnia and Herzegovina, Montenegro and Serbia, in which the WMD clause was also included as an “essential element.”

The new generation FTAs, negotiated since the Treaty of Lisbon, include the WMD clause through a link to broader political agreements. The clause is divided in two parts. The first part is a commitment by the Parties to cooperate in countering the proliferation of WMD and their means of delivery through compliance with existing treaty obligations. Since this commitment constitutes an “essential element” of the agreement, it carries the implicit “non-execution” clause, in the same vein as CPRs. This first part of the clause does not create additional obligations for the parties (Martinesi, 2016).

The second part of the clause carries additional and stronger commitments for the Parties, such as the ratification of, or accession to, other relevant international instruments and the implementation of effective national export controls. However, the pro-

visions in the second part “might be considered as essential elements on a case by case basis”, which gives the EU some leverage in the negotiations with different trading partners (Grip, 2009, 2014).

Besides the WMD clause, the EU trade agreements include other provisions related to peace and security, which may refer to small arms and light weapons, serious crimes of concern to the international community, terrorism, citizen security, combating illicit drugs, organized crime and corruption, money laundering and terrorism financing, or cybercrime. These provisions are introduced systematically in all mixed agreements negotiated after the Treaty of Lisbon, but they do not constitute “essential elements” of the agreements and therefore do not trigger the “non-execution” clause.

3 NTPOs in the EU’s Generalized Systems of Preferences

The Generalized System of Preferences (GSP) is an alternative policy tool through which the EU can grant preferential access to its market, conditional on compliance with NTPOs. In this section, we first describe the evolution of EU GSP schemes and then discuss their coverage of NTPOs.

3.1 EU GSP schemes

The legal basis for GSP schemes in the GATT/WTO system is the Enabling Clause of 1979.¹⁵ This clause legalizes a positive, pro-development form of trade discrimination, as it allows donor countries to offer better than most-favoured-nation (MFN) tariffs to developing countries without extending the same treatment to developed trade partners. The vague formulation of the Enabling Clause, in terms of countries and goods that should be eligible for preferences, allowed for a great deal of discretion on the side of preference-granting countries (Ornelas, 2016), which often use GSP programs

¹⁵Formally, this is a decision adopted by GATT contracting parties on 28 November 1979 for the Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries. The idea of granting non-reciprocal and non-discriminatory preferential market access to developing countries through GSP programs was first introduced in the late 1960’s. The broad objectives were to increase participation of developing countries in international trade, foster their export earnings, promote their industrialization, and accelerate their economic growth (UNCTAD, 1968).

for their own political objectives (Grossman and Sykes, 2005).

Most developed countries have set up their own GSP regimes.¹⁶ Due to the unilateral nature of these programs, the EU and other granting countries can limit the set of beneficiary countries and/or the product coverage of their GSP schemes, respectively. For example, products such as clothing and footwear, which are considered sensitive on the part of donor countries and raise concerns among import-competing firms, are either excluded from the list of beneficiary sectors or receive lower trade preferences.

The EU's approach to its GSP scheme has evolved considerably over time, through three main reforms in 1995, 2006 and 2014.¹⁷ These reforms were aimed at rendering the scheme more predictable, stable, and targeted towards those countries most in need. As of today, the EU is operating three GSP programs, which each grant different levels of access to the EU market: GSP, GSP+ and EBA.

The first is the standard GSP program, which is currently offered to 15 beneficiary countries, falling into the categories of low and lower-middle income countries as defined by the World Bank.¹⁸ Countries in the standard EU GSP program benefit from lower than MFN tariff treatment or zero import duties on about 66% of the tariff lines applied by the EU.

The second program is denoted as GSP+ and allows duty free imports of all the products covered by the standard GSP.¹⁹ The GSP+ program was introduced in 2006 and has currently eight members that have been considered eligible on the basis of their economic vulnerability (European Union, 2012).²⁰ As discussed below, beneficiaries

¹⁶Before the adoption of the Enabling Clause in 1971, in order to temporarily legalize GSP programs, GATT contracting parties agreed to grant a 10-year waiver of Article I – the (MFN) non-discrimination obligation, for the GSP programs.

¹⁷These reforms were respectively introduced by regulations published in 1994 (European Union, 1994), 2005 (European Union, 2005) and 2012 (European Union, 2012).

¹⁸Membership to the standard GSP program of the EU has changed considerably over time and is now at its lowest since the launch of the program. Tables with members of the standard GSP, GSP+ and EBA initiative can be found in Appendix B.

¹⁹The share of tariff lines eligible for the duty-free GSP+ treatment is virtually the same as that for standard GSP (66%), with the difference that about 50% of standard GSP tariffs, although lower than MFN, do not go to zero (Ornelas, 2016).

²⁰Vulnerability of the beneficiary country is defined in terms of its size (the country's EU import share of total GSP imports must be less than 1%) and diversification of export portfolio (the share of the five largest sectors in total GSP exports must be larger than 75%). The vulnerability definition was eased in the 2014 reform: the size threshold was increased from 1% to 2% (it has further been increased to 6.5% in 2015) and diversification is now computed based on the seven largest sectors in total GSP exports.

under the GSP+ are granted additional preferences in exchange for complying with a number of international conventions protecting human rights, the environment and good governance, respectively.

Finally, the Everything-but-Arms (EBA) initiative introduced in 2001 grants the most far-reaching preferential treatment as it allows for duty-free imports of all products exported by the 48 Least Developed Countries (LDCs)²¹ with the exception of arms and ammunitions.²²

3.2 NTPOs in EU GSP Schemes

Over the years, the EU has introduced in its GSP regulations several provisions aimed at pursuing NTPOs. Table 1 summarizes the main reforms of the EU’s GSP schemes and the gradual gradual expansion of NTPOs in these schemes.

Table 1: Evolution of NTPOs related provisions in the GSP Programs of the EU

	1991	1998	2006
Arrangements with conditionality provisions in GSP regulations	Drugs arrangement	Drugs arrangement Special Incentive Arrangements concerning Labour Rights and Environmental Protection	Special Incentive Arrangement for Sustainable Development and Good Governance
NTPO areas concerned	Security	Security ESRs EP	Security ESRs EP CPRs

One of the earliest examples in 1991 concerned security issues ([European Union, 1990](#)). To discourage the production of narcotic drugs and to stimulate planting of substitute crops, the EU granted additional trade preferences, in form of duty-free market access, to Bolivia, Colombia, Ecuador, and Peru. In the following years, the EU expanded what was called the “drugs arrangement” to Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and Venezuela, respectively, justifying the

²¹The identification of LDCs follows the long-standing UN definition, which is based on the three main criteria of income, human assets and economic vulnerability. The group of LDCs has been very stable over time, with the last country to leave the group being Samoa in 2019.

²²Only imports of fresh bananas, rice and sugar were not fully liberalized immediately. Tariff restrictions were removed in 2006 for bananas and in 2009 for sugar and rice.

extended preferential treatment granted to these additional countries with the intention of combatting not only the production but also the trafficking of drugs ([European Union, 1991](#)).

The EU used the 1995 GSP reform to add further NTPOs to its GSP regulation, through two Special Incentive Arrangements addressing ESRs and EP issues.²³ The first Arrangement was comprised of a set of provisions granting an additional preferential margin to beneficiaries that could prove to have adopted and applied domestically the International Labor Organization (ILO) conventions concerning the freedom of association, the protection of the right to organize and bargain collectively, and the convention concerning the minimum age for employment, respectively.²⁴

The second arrangement made available additional trade preferences to countries adhering to environmental standards laid down by the International Tropic Timber Organization (ITTO) relating to the sustainable management of forests ([European Union, 1994](#)). To obtain these additional trade preferences, written applications needed to be made to the European Commission (EC), with details about the domestic legislation incorporating the conventions and the measures taken to monitor their application. The EC could then decide whether to grant the trade preferences included in the Special Incentive Arrangement to the applicant country as a whole, or only to some sectors, if it considered that the conventions were effectively applied. Applications for the labor standards arrangement were filed by Georgia, Mongolia, Russia, Ukraine, Uzbekistan, Sri Lanka and Moldova, but only the latter two countries were granted preferences.

In 2001, the addition of Pakistan to the drugs arrangement triggered the first reaction at the WTO about the discriminatory nature (amongst developing countries) of NTPO-related provisions in the EU GSP programs. India filed a complaint, which resulted in certain aspects of the “drugs arrangement” being ruled to be WTO-inconsistent in the Appellate Body *EC-Tariff Preferences* report ([Appellate Body, 2004](#)).²⁵ The re-

²³Although the intention of introducing the Special Incentive Arrangement concerning labor rights and environmental protection appeared for the first time in the 1995 GSP reform ([European Union, 1994](#)), these arrangement were fully developed and applied only by the 1998 GSP Regulation ([European Union, 1998](#)).

²⁴ILO conventions 87, 98 and 138.

²⁵Appellate Body Report, European Communities–Conditions for the Granting of Tariff Preferences

sponse of the EU was to rearrange all the NTPO provisions related to drugs, labor and environmental provisions into the Special Arrangement for Sustainable Development and Good Governance, also known as GSP+, a single arrangement treating jointly all the NTPOs in the GSP, which was introduced with the 2006 GSP reform.²⁶

Under GSP+, the EU offers duty-free market access on all GSP eligible products to eligible countries that have ratified and applied a list of 27 international conventions on sustainable development and good governance. These 27 conventions broaden and deepen the range of NTPOs addressed in earlier GSP programs of the EU. Human rights (CPR) and corruption (security) were added to the areas covered by the previous scheme, and a great deal of additional provisions were included concerning labor rights, EP and security issues.²⁷

In its initial (2006) formulation, the list of 27 conventions was divided in two sub-lists of core and non-core conventions. GSP+ applicants needed to have ratified all of the 15 core conventions, relating to human and labor rights, and at least seven other conventions relating to EP, drug production and trafficking. In addition, countries needed to commit to having ratified all remaining conventions by 2008. This ratification requirement was amended in the 2009 version of the GSP+, which imposed the ratification of the entire set of 27 international conventions in order for a country to be eligible for GSP+ preferences. Importantly, similarly to the Special Incentive Arrangements in force pre-2006, GSP+ applicants need to maintain implementation of the conventions and accept regular monitoring and review of the status of such implementation (European Union, 2005, 2013a). The gradual expansion of NTPOs across the different EU's GSP schemes is shown in Table 1.

In 2006 the GSP+ scheme was offered for three years, and it was renewed in 2009 and 2014, respectively, with the latter reform setting the rules which currently apply until 2023.

to Developing Countries, WT/DS246/AB/R, adopted 20 April 2004, DSR 2004: III, 925.

²⁶The WTO legality of the GSP+ program is a widely debated topic in the international law literature. For an overview of the legal issues concerning the GSP+ see Bartels (2003, 2007), Jayasinghe (2015), Kishore (2017).

²⁷The security issues in GSP+ relate to corruption and illicit drugs.

Table 2 provides an overview of the accession and exit process from GSP+, together with information on the reasons for leaving the program.

Table 2: GSP+ membership over time

GSP+ Member	Entry	Exit	Reason of exit
Bolivia	2006	Current member	
Colombia	2006	2014	GSP standard
Ecuador	2006	2015	Income
Costa Rica	2006	2016	PTA with EU
El Salvador	2006	2016	PTA with EU
Georgia	2006	2017	PTA with EU
Guatemala	2006	2016	PTA with EU
Honduras	2006	2014	GSP standard
Moldova	2006	2008	PTA with EU
Mongolia	2006	Current member	
Nicaragua	2006	2014	GSP standard
Panama	2006	2016	PTA with EU
Peru	2006	2016	PTA with EU
Sri Lanka	2006	Current member	
Venezuela	2006	2010	Sanctioned
Armenia	2009	Current member	
Azerbaijan	2009	2011	GSP standard
Paraguay	2009	2019	Income
Pakistan	2014	Current member	
Cape Verde	2014	Current member	
Philippines	2015	Current member	
Kyrgyzstan	2016	Current member	

Source: Authors' elaboration based on EU regulations.

From the outset, fifteen countries joined the GSP+: the eleven original members of the drugs arrangement excluding Pakistan²⁸ plus Moldova, Mongolia, Sri Lanka and Georgia. In 2009, all GSP+ members re-applied for the scheme, except Panama, which failed to apply in time,²⁹ and Moldova, which had left the GSP program entirely because of signing a trade agreement with the EU. In addition, Armenia, Azerbaijan and Paraguay joined the list of beneficiaries (European Union, 2008).

The 2014 reform re-shuffled the criteria for eligibility in the GSP+ scheme more significantly (European Union, 2014b). As a result, Colombia, Honduras and Nicaragua fell back in the standard GSP scheme. The reform also established that countries that have become part of alternative preferential trade agreements with the EU would lose their GSP benefits: for this reason, Costa Rica, Panama, Peru and El Salvador were excluded from the GSP+ program in 2016 (European Union, 2014a) and Georgia in

²⁸Pakistan did initially not classify as a vulnerable country, given that its import share was larger than the 1% threshold established in 2005. Pakistan became eligible for GSP+ in 2014, when the threshold was raised to 2%.

²⁹Panama re-joined the GSP+ scheme at the next available date, in 2014.

2017 (European Union, 2015). Other countries instead joined the GSP+ scheme: Cape Verde and Pakistan in 2014, the Philippines in 2015, and Kyrgyzstan in 2016 (European Union, 2014c, 2016).

4 Can Trade Conditionality Promote NTPOs?

Over the past two decades, the EU has tried to use its trade policy instruments to pursue various NTPOs, with the view that “economic benefits are privileges to be granted to (developing) countries that comply with democratic principles and human rights, and to be withdrawn from those that do not” (Bartels, 2008). In a context of rapid globalization, the EU has systematically included new conditions in its relationships with third countries such as the fulfillment of social norms and the respect of environmental standards (Koch, 2015).

In this section, we discuss whether the EU can promote NTPOs in its trading partners through positive and negative conditionality in its trade agreements and GSP schemes. According to Koch (2015), conditionality can be classified based on the leverage mechanism, which can be both punitive and restrictive (negative) or rewarding and incentivizing (positive). Negative conditionality is related to the reduction, suspension or termination of benefits when the conditions are not met within a relationship. Positive conditionality involves meeting requirements as a precondition for entering into a new relationship or granting additional benefits based upon performance or reform within an established relationship.

4.1 Conditionality in EU Trade Agreements

Positive Conditionality

As mentioned before, preferential trade agreements are regulated by multilateral trade rules under GATT Article XXIV. All EU trade agreements are negotiated under these rules, which imply that trading partners have to “eliminate duties and other restrictive regulations of commerce with respect to substantially all trade in products originating

in the constituents of the agreement.”

The fact that the conclusion of trade agreements lead to the elimination of “substantially all” tariffs entails that the EU cannot use further tariff reductions as a “carrot” to incentivize its trading partners with respect to NTPOs. As discussed below, some trade agreements do exhibit elements of positive conditionality; however, in these cases the reward offered to the “well-behaving” countries does not involve trade policy.

The EU uses positive conditionality mainly in its association agreements (AAs) with European countries. These agreements can be considered as pre-accession instruments (e.g. Western Balkan countries) or alternative forms to membership in the case of e.g. Ukraine, Moldova, Georgia (Van Elsuwege and Chamon, 2019). Besides including a wide range of EU activities such as energy, foreign and security policy, and cooperation in justice and home affairs, one of the main goals of the AAs with Eastern partners is to create Deep and Comprehensive Free Trade Areas (DCFTAs), in order to ensure a gradual integration of these countries into the EU internal market.

The commitments included in these AAs are based on a strict conditionality approach that takes two forms. First, several provisions refer to the associated countries’ commitment to respect the CPRs. However, the positive conditionality with respect to CPRs is not directly related to trade preferences but mainly to financial assistance packages. For instance, in the case of Moldova, in 2019, after a period of almost two years during which financial support had been reduced because of a deterioration of the rule of law in the country, the EU has resumed budget support assistance due to sustained efforts on Moldova’s part to rectify the situation.³⁰

The DCFTAs aim at liberalizing trade in goods and services but also at reaching a regulatory convergence in terms of product standards, protection of intellectual property rights, competition law, rules of origin, or labor standards and environmental pro-

³⁰Johannes Hahn, Commissioner for European Neighbourhood Policy and Enlargement Negotiations declared: “Today’s package is a clear sign of the EU support to the Republic of Moldova and its citizens. It is also an appreciation of the steps already taken and an encouragement to the authorities to continue on this path in particular when it comes to the strengthening of the rule of law and democracy, and fight against corruption. The EU is strongly committed to supporting and accompanying the Republic of Moldova in this reform path” (see https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4510).

tection. According to [Van Elsuwege and Chamon \(2019\)](#), “the part of the DCFTA is based on an explicit ‘market access conditionality’ implying that additional access to a section of the EU internal market will only be granted if the association council decides, after a strict monitoring procedure, that the legislative approximation commitments are adequately implemented.” One may argue that additional access to a given section of the EU internal market may be conditional upon the approximation of labor and environmental standards.³¹

Overall, positive conditionality with respect to trade preferences is very limited and applies to very specific types of agreements, which go beyond trade policy. However, one may argue that the EU would not pursue negotiations to conclude trade agreements with countries that blatantly violate human rights and do not fulfill minimum requirements in terms of labor and environmental standards. In that sense, there might be indirect positive incentives for third countries to improve their domestic policies in order to be considered as potential FTA partners by the EU.

Negative Conditionality

Negative conditionality appears to be a more prominent feature of EU trade agreements. As set out in [Section 2](#), the “essential elements” clause included in EU trade agreements provides a hard mechanism to sanction trading partners in case of violation of NTPOs. Yet trade agreements do not appear to be an effective policy tool for punishing countries that ‘misbehave’ with respect to NTPOs. There are several reasons for that.

First, the “essential elements” clause only covers human rights and security issues and excludes labor and environmental standards, respectively. With respect to these other NTPOs, the TSD chapters “are not primarily designed as a form of conditional-

³¹For instance, the Article 290 of the EU-Ukraine AA states the following (emphasis added):

1. Recognizing the right of the Parties to establish and regulate their own levels of domestic environmental and labor protection and sustainable development policies and priorities, in line with relevant internationally recognized principles and agreements, and to adopt or modify their legislation accordingly, the Parties shall ensure that their legislation provides for *high levels of environmental and labor protection* and shall strive to continue to improve that legislation.
2. As a way to achieve the objectives referred to in this Article, Ukraine shall *approximate its laws, regulations and administrative practice to the EU acquis*.

ity but rather as a safeguard to ensure that trade liberalization does not lead to deregulation or to the erosion of labor rights or environmental standards” (Portela, 2018). Since the TSD provisions are not defined as “essential elements,” a violation of labor and/or environmental standards could not justify the suspension or termination of the agreement in the event of a breach.³² The resolution of issues related to sustainable development is based on non-sanction procedures. Hence, the main value added of TSD chapters is to enhance dialogue and cooperation in order to attain sustainable trade objectives. This promotional approach to sustainable development in EU trade agreements and the dialogue- and cooperation-based solutions in case of violations have been considered “as lacking the necessary vigor” (Marx et al., 2016). As explained by Bronckers and Gruni (2019), the European Commission first launched discussions with a trading partner that had failed to respect labor standards in December 2018 in the context of the EU-Korea FTA. A panel has been requested seven years after South Korea had failed to ratify and implement four of the eight fundamental ILO Conventions. However, since labor standards are excluded from the dispute settlement procedures of the agreement, no sanctions have been applied for failure to implement them. Thus, the ability of the EU to promote sustainable development through its agreements is jeopardized. After all, the enforcement of TSD chapters is currently put under scrutiny and different solutions are discussed in order to lead to a more efficient promotion of labor and environmental standards through the EU’s FTAs.

Second, the “essential elements” clause has been used very rarely, even though there have been many instances in which the EU’s trading partners have blatantly violated human rights (Beke et al., 2014). The EU has activated negative conditionality only in the context of the Cotonou Partnership Agreement, with ACP countries, following coups, flawed elections, grave human rights violations (Hachez, 2015). Even in these cases, the EU did not lift tariff preferences to punish the trading partners, but instead suspended technical co-operation programs. If the EU did suspend its tariff

³²To the extent that core labor standards are recognized as human rights, the “non-execution” clause could potentially be triggered in case of a violation of core labor standards, by activating the human rights conditionality. However, important obstacles stand in the way of such activation. For a detailed exposition, see Portela (2018).

preferences vis-à-vis an FTA partner, this policy could be challenged at the WTO.³³

Third, the reciprocal nature of trade agreements limits the scope of negative conditionality. Since trading partners are on an equal footing, at least in principle, it is difficult to imagine that one of them could accept monitoring of its NTPOs from a peer. For instance, monitoring the respect of human rights does not involve habilitated organs to oversee the implementation of the various clauses (Bartels, 2013). Issues related to human rights provisions are to be discussed within the general committee in charge of overseeing and managing the agreement, or by parliamentary committees, which are established by a number of agreements. Yet there is no body in charge of monitoring the respect of human rights *per se*. When it comes to the TSD chapters, monitoring involves several specialized bodies and tools that require input from the civil society groups, and there are concerns regarding their engagement and power to address non-compliance with the labor and environmental objectives within EU trade agreements (Marx et al., 2016).

Finally, the reciprocal nature of trade agreements also implies that invoking the “essential elements” can be very costly for the EU, because suspending or terminating a trade agreement would increase the cost of exporting to (and importing from) the trading partner. The EU-Singapore agreement illustrates how the commercial interests of the EU can go against NTPOs in trade agreements. Singapore did not accept to sign an agreement that would imply a change in its position on the death penalty, human rights, or governance. The EU thus had to take a weaker stance on these issues, instead recognizing Singapore’s human rights practices through a side letter to the agreement. Meissner and McKenzie (2018) argue that in the case of the EU-Singapore agreement the pure commercial interests of the EU prevailed over the promotion of its NTPOs, presumably in no small measure due to the fact that this was the first agreement that the EU signed with an ASEAN country, thereby allowing the EU to get a foothold in

³³GATT Article XXIV establishes that trading partners have to “eliminate duties and other restrictive regulations of commerce with respect to substantially all trade in products originating in the constituents of the agreement.” WTO jurisprudence on this article, and in particular the AB ruling *Turkey – Restrictions on Imports of Textile and Clothing Products*, suggests that, if the EU raised tariffs vis-à-vis an FTA partner on the ground that this did not respect democratic principles and human rights, this policy would not be considered “necessary” for the functioning of the FTA (Mavroidis, 2016).

the Asia-Pacific region.

As previously mentioned, Association Agreements provide the EU with more leverage to trigger conditionality since they go beyond pure trade policy and also encompass financial and technical assistance. Within these agreements, the EU can more easily sanction trading partners that do not comply with NTPOs. For instance, in the context of the AA with Moldova, the EU has cut budget support programs for justice reforms and reduced financial support due to a deterioration of rule of law and democracy in 2017, in line with the principle of strict conditionality. Furthermore, among the Euro-Med AAs, the EU-Egypt agreement states that “in order to achieve the objectives of this agreement, a financial co-operation package shall be made available to Egypt in accordance with the appropriate procedures and the financial resources required” (Bartels, 2014). This implies that in the case of human rights violations, the provision of financial cooperation can be terminated under this clause. Notice, however, that in all these cases the EU does not actually use trade policy to exert its influence over trading partners.

4.2 Conditionality in the EU GSP schemes

In this section we examine whether EU GSP schemes can provide a “carrot-and-stick” mechanism to reward, as it were, ‘good behavior’ and to punish ‘bad behavior’ in regard to NTPOs in developing countries. Our goal is thus to assess whether the EU’s GSP system *could* be an effective tool to promote NTPOs in developing countries. This is different from assessing the effectiveness of its application so far, which is the focus of several earlier studies (Beke and Hachez, 2015; Orbie and Tortell, 2009; Velluti, 2016).

Positive Conditionality

Positive conditionality provisions abound in the EU’s GSP schemes. Since the introduction of the first NTPO elements in its GSP regulations, the EU has always offered an incentive for countries to comply with non-trade objectives, by way of more preferential tariff treatment.

In the “drugs arrangement” of 1991 the EU offered duty-free market access to compliant countries, deepening the preferences they already had obtained as GSP members. These extra trade preferences, however, were perceived as discriminatory among developing countries and as running counter to the principles established in the Enabling Clause. The WTO Appellate Body held that the “drugs arrangement” was offered to a hand-picked list of beneficiaries, and did not establish any objective criteria that, if met, would have allowed other developing countries to be included as beneficiaries of the arrangement ([Appellate Body, 2004](#)).

The two “Special Incentive Arrangements” introduced into the GSP regulation in 1995 also offered deeper-than-GSP trade preferences, in exchange for applying three ILO conventions on labor rights and adhering to certain environmental standards. In order to benefit from this form of conditionality, however, developing countries needed apply for it, which was unlike the “drugs arrangement” whose members were selected by the EU.

The current and most complete instrument through which the EU applies positive conditionality is its GSP+ scheme. The GSP+ covers all the NTPOs jointly under the general concept of *sustainable development and good governance* and offers developing countries lower tariffs in exchange for compliance with NTPOs.³⁴ To join the GSP+ scheme, developing countries must apply to the European Commission, which evaluates whether the applicant has ratified and applied the 27 international conventions.³⁵

The EU GSP schemes thus provide ample leeway to reward developing countries that make efforts on NTPOs so as to can gain better access to the EU market.

³⁴The GSP+ scheme has been considered problematic in light of the Enabling Clause ([Jayasinghe, 2015](#)), since it seems to go against the idea that, when offering GSP preferences, “developed countries do not expect reciprocity, [they] do not expect developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs.” However, the legality of the GSP+ program has not yet been challenged.

³⁵Most of the early GSP+ members had ratified all of the core conventions before 2006 (Azerbaijan, Ecuador, Panama, Paraguay and Peru had ratified all of the 27 conventions by 2005), with only a few ratifications around the accession date. Countries that joined the GSP+ at a later stage had ratified all the necessary conventions long before becoming GSP+ members.

Negative Conditionality

NTPO-related negative conditionality affects all three GSP programs (the standard GSP, EBA as well as GSP+ preferences), which can potentially be withdrawn from a beneficiary for a variety of reasons.³⁶ A country might temporarily lose its GSP preferences for all or certain products:

- In case of serious and systemic violation of principles laid down in the conventions used as a basis for the GSP+;
- In case a country exports products made by prison labor;
- In case of serious shortcomings in custom controls on the export and transit of (illicit) drugs, or failures in compliance with international conventions on anti-terrorism and money-laundering.³⁷

These are NTPOs that are sanctioned with the potential loss of trade preferences in case of non-compliance. In case a violation is reported, the EU commission carries out an investigation, consults the beneficiary concerned and can eventually decide to suspend GSP preferences. Preference withdrawal is therefore a gradual process and is meant to allow the country to possibly remedy the alleged violation. If a decision about a suspension of preferences is finally made, it is initially for six months, after which the EU decides to either terminate or extend the suspension ([European Union, 2012](#)).

The GSP+ program also has specific negative conditionality provisions. Within this program, EU regularly monitors the status of implementation of the conventions by examining the conclusions and recommendations of the relevant monitoring bodies

³⁶There are also negative conditionality provisions that are unrelated to NTPOs, e.g. stating that GSP preferences can be lost: (a) in case of fraud, serious and systematic unfair trading practices (this provision will not apply for those products which are already subject to anti-dumping or countervailing measures) irregularities or failure to comply with the rules of origin, failure to provide administrative cooperation for the implementation and control of the GSP arrangements; (b) in case of serious and systematic infringements of the objectives adopted by Regional Fishery Organizations, or any arrangements concerning the conservations and management of fishery resources.

³⁷The antiterrorism provision was introduced in the 2014 reform ([European Union, 2012](#)).

established under those conventions (European Union, 2012).³⁸ GSP+ preferences can be revoked if a country fails to ratify the necessary conventions, or to effectively implement them.

There are only a few cases in which negative conditionality has been applied in practice. The first two occurred in 2010 and concerned Venezuela and Sri Lanka, respectively. Both countries were “downgraded” from GSP+ to standard GSP membership. Venezuela had failed to ratify the UN convention against corruption and therefore lost its GSP+ status permanently. Sri Lanka’s violation was less severe, as it had failed to implement effectively some of the conventions,³⁹ so its preferences were only suspended, from 2010 to 2017 (European Union, 2009, 2010, 2017). On two other occasions, the EU Commission launched an investigation but did not withdraw the GSP+ status from the countries concerned: in 2008 El Salvador was investigated over its compliance with the ILO Convention on freedom of association, and in 2012 Bolivia was investigated over the alleged failure to implement the UN Convention on Narcotic Drugs (Zamfir, 2018).

There have also been cases of temporary withdrawal from the GSP and EBA schemes because of violations of labor standards. These cases concern Myanmar (an EBA member) and Belarus (a standard GSP member). The EU sanctioned Myanmar in 1997, because of its use of forced labor, and then re-admitted the country into the GSP program in 2013 (European Union, 2013b). The sanction for Belarus occurred in 2007, as a consequence of the country’s non-compliance with the Convention on freedom of assembly and collective bargaining (European Union, 2006).⁴⁰ The most recent case when negative conditionality provisions were triggered concerns Cambodia (an EBA member). In February 2020 the EU decided to withdraw Cambodia’s tariff preferences, due to serious and systematic violations of principles laid down in the International Covenant

³⁸This monitoring activity leads to a report, presented every two years by the European Commission to the EU Parliament and the EU Council.

³⁹The International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

⁴⁰Belarus’ sanction implied a fall back on standard non-preferential tariffs, as the country is not a WTO member and therefore not even entitled to WTO MFN treatment. Currently Belarus is not longer eligible for EU GSP preferences.

on Civil and Political Rights. However, to mitigate the socio-economic impacts of the preference withdrawal, and in consideration of the development needs of the country, the EU decided to remove tariff preferences only on certain products originating from Cambodia (EU Commission, 2020).⁴¹

The sanctions imposed on Myanmar and Belarus seem to have had limited economic impact (Gnutzmann and Gnutzmann-Mkrtchyan, 2017; Zhou and Cuyvers, 2011). Sri Lanka, by contrast, was more severely affected, since its exports to the EU were concentrated in sectors like the garment industry, which were more dependent on GSP preferences (Bandara and Naranpanawa, 2015). From a human and labor rights perspective, the three countries subject to EU sanctions did initially little to remedy the violations reported (Zamfir, 2018). Over time, however, Myanmar and Sri Lanka underwent a regime change which led to the re-establishment of GSP and GSP+ preferences. The assessment of whether the reforms undertaken by these countries are sufficient to bring about meaningful improvements in human and labor rights conditions remains difficult, and is not the focus of our analysis.

It can be argued that the EU should have applied negative conditionality to more GSP recipients. Indeed, European Commission (2017) reports many instances of “non-compliance on the ground,” including violations of human and labor rights reported in Pakistan, Bangladesh, Bolivia, China and Ethiopia, which failed to trigger the negative conditionality provisions.⁴² The EU usually justifies its limited use of negative conditionality with its policy of refraining from measures that can be harmful to a target population (Bartels, 2008; EU Council, 2012). A less altruistic explanation is linked to commercial reasons: the EU only punishes violations of NTPOs when they occur in small developing countries like Sri Lanka, Myanmar, or Cambodia; when the violations occur in larger developing countries like India, Pakistan, or China, it may refrain from using negative conditionality for fear of retaliation, or to avoid an increase in the cost of sourcing key inputs from these countries.

⁴¹At the time of writing, this delegated act has not yet entered into force, but is subject to the right of the European Parliament and of the Council to express objections.

⁴²Bangladesh and Ethiopia are EBA beneficiaries, China was a standard GSP beneficiary until 2015.

5 Conclusion

EU Treaties stipulate that the external action of the EU should be conducted in a way to promote the European principles and values, such as high social and environmental standards, and the respect for human rights. For this reason, NTPOs are increasingly included by the EU in its free trade agreements and GSP programs.

In this paper, we have comprehensively described the coverage of NTPOs in EU trade policy and discussed the extent to which trade agreements and GSP can be used to promote NTPOs in trading partners.

Our analysis suggests that GSP preferences, unlike trade agreements, can potentially be used as a carrot-and-stick mechanism, which can reward good behavior or punish bad behavior of trading partners. GSP preferences are granted on a unilateral basis, thus benefits can be taken away—if needed in a gradual manner—when trading partners do not fulfill conditions related to NTPOs. The EU can also reward countries that fulfill these conditions, by granting them better GSP preferences.

The literature on issue linkage suggests that large countries such as the EU may seek to enter into trade agreements with smaller countries to exchange market access concessions with concessions on non-trade issues such as labor and environmental standards (Limão, 2007). Conconi and Perroni (2012) show that trade agreements can help small countries to achieve domestic policy objectives. Various studies have examined the enforceability of international agreements and whether linking trade and non-trade policy objectives can help to achieve more cooperation overall (Conconi and Perroni, 2002; Limão, 2005).

These studies rely on the idea that trade policy can be used as a carrot-and-stick mechanism to enforce commitments in other policy areas. In this paper, we point out the limits of this mechanism in EU trade agreements. Multilateral trade rules prevent the EU from using trade agreements as a way to punish trading partners (with higher tariffs) or rewarding them (with lower tariffs), depending on their behavior on NTPOs. This is because GATT Article XXIV requires members of preferential trade agreements to eliminate substantially all trade barriers vis-à-vis each other. And even if some form

of conditionality is possible, the reciprocal nature of trade agreements implies that it may be (too) costly for the EU to apply it. Indeed, despite the “essential elements” nature of CPR and security provisions in trade agreements, which would allow the EU to take “appropriate measures” up to terminating the agreement in case of violations, the conditionality system in trade agreements has never been applied.

As mentioned in the introduction, the new von der Leyen Commission has promised to strengthen the use of trade tools in support of NTPOs. Our analysis suggests that, if the EU wishes to rely more on trade policy to promote such objectives, it should focus on GSP programs, rather than trade agreements. The unilateral nature of these programs implies that they are a more flexible tool, which the EU can use to enforce NTPO commitments by its trading partners. However, conditionality in GSP schemes should be administered in a more consistent and rules-based way, with beneficiary countries being regularly monitored and their trade preferences being more systematically revoked or suspended in case of non-compliance with their NTPO commitments.

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Appendices

Appendix A. EU trade agreements

Table A1: List of EU trade agreements in force

Agreement	Year	Type
EU - Overseas Countries and Territories (OCT)	1971	FTA
EU - Iceland	1973	FTA
EU - Norway	1973	FTA
EU - Switzerland - Liechtenstein	1973	FTA
EU - Syria	1977	FTA
EU - Andorra	1991	CU
European Economic Area (EEA)	1994	EIA
EU - Turkey	1996	CU
EU - Faroe Islands	1997	FTA
EU - Palestinian Authority	1997	FTA
EU - Tunisia	1998	FTA
EU - Israel	2000	FTA
EU - Mexico	2000	FTA & EIA
EU - Morocco	2000	FTA
EU - South Africa	2000	FTA
EU - North Macedonia	2001	FTA & EIA
EU - Jordan	2002	FTA
EU - San Marino	2002	CU
EU - Chile	2003	FTA & EIA
EU - Lebanon	2003	FTA
EU - Egypt	2004	FTA
EU - Algeria	2005	FTA
EU - Albania	2006	FTA & EIA
EU - Bosnia and Herzegovina	2008	FTA & EIA
EU - CARIFORUM States EPA	2008	FTA & EIA
EU - Montenegro	2008	FTA & EIA
EU - Papua New Guinea / Fiji	2009	FTA
EU - Serbia	2010	FTA & EIA
EU - Korea, Republic of	2011	FTA & EIA
EU - Eastern and Southern Africa States Interim EPA	2012	FTA
EU - Central America	2013	FTA & EIA
EU - Colombia and Peru	2013	FTA & EIA
EU - Cameroon	2014	FTA
EU - Georgia	2014	FTA & EIA
EU - Moldova	2014	FTA & EIA
EU - Ukraine	2014	FTA & EIA
EU - Côte d'Ivoire	2016	FTA
EU - Ghana	2016	FTA
EU - SADC	2016	FTA
EU - Canada	2017	FTA & EIA
EU - Japan	2019	FTA & EIA

Note: FTA, CU and EIA stand for Free Trade Agreement, Customs Union and Economic Integration Agreement, respectively. Source: <http://rtais.wto.org/UI/PublicSearchByMemberResult.aspx?MemberCode=918&lang=1&redirect=1>.

Table A2: Degree of legalization of NTPOs in EU trade agreements

Agreement (year of signature)	CPRs	Security	ESRs	EP	Total
EU - Overseas Countries and Territories (1970)	4	4	9	7	24
EU - Switzerland Liechtenstein (1972)	2	2	3	2	9
EU - Norway (1973)	2	2	3	2	9
EU - Syria (1977)	2	2	3	2	9
EU - Andorra (1989)	2	2	2	2	8
EU - San Marino (1991)	0	0	3	3	6
European Economic Area (EEA) (1992)	2	2	6	4	14
EU - Israel (1995)	6	5	7	5	23
EU - Tunisia (1995)	5	8	7	3	23
EU - Turkey (1995)	0	0	0	0	0
EU - Faroe Islands (1996)	2	2	2	2	8
EU - Morocco (1996)	5	8	10	3	26
EU - Jordan (1997)	7	6	6	4	23
EU - South Africa (1999)	8	4	8	5	25
EU - Mexico (2000)	2	2	2	2	8
EU - Egypt (2001)	8	7	8	5	28
EU - Macedonia (2001)	7	10	10	6	33
EU - Algeria (2002)	6	8	7	6	27
EU - Chile (2002)	11	5	10	9	35
EU - Lebanon (2002)	5	7	7	4	23
EU - Albania (2006)	8	11	8	10	37
EU - Montenegro (2007)	11	12	8	8	39
EU - Bosnia and Herzegovina (2008)	8	6	7	10	31
EU - CARIFORUM (2008)	3	3	15	15	36
EU - Côte d'Ivoire (2008)	4	6	4	4	18
EU - Serbia (2008)	11	10	7	8	36
EU - Fiji Papua New Guinea (2009)	3	2	4	4	13
EU - Korea (2010)	4	4	16	15	39
EU - Central America (2012)	8	6	14	13	41
EU - Colombia Peru (2012)	4	4	17	16	41
EU - Canada (CETA) (2014)	5	5	18	17	45
EU - Georgia (2014)	9	7	16	15	47
EU - Moldova (2014)	10	6	16	14	46
EU - Ukraine (2014)	9	8	15	15	47
EU - West African states (2014)	5	5	7	5	22
EU - EAC (2016)	5	5	5	6	21
EU - SADC (2016)	3	2	6	6	17
EU - Singapore (2016)	3	4	14	14	35
EU - Vietnam (2016)	4	5	18	16	43
EU - Japan (2018)	10	4	15	17	46

Note: Authors' elaboration based on Lechner (2016).

Appendix B. GSP

Table B1: List of conventions to be ratified before becoming eligible for GSP+

Convention	NTPO area
Convention on the Prevention and Punishment of the Crime of Genocide	CPRs
International Convention on the Elimination of All Forms of Racial Discrimination	CPRs
International Covenant on CPRs	CPRs
International Covenant on Economic, Social and Cultural Rights	ESRs
Convention on the Elimination of All Forms of Discrimination against Women	ESRs
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	CPRs
Convention on the Rights of the Child	ESRs
Convention concerning Forced or Compulsory Labour, No. 29	ESRs
Convention concerning Freedom of Association and Protection of the Right to Organise, No. 87	ESRs
Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No. 98	ESRs
Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No. 100	ESRs
Convention concerning the Abolition of Forced Labour, No. 105	ESRs
Convention concerning Discrimination in Respect of Employment and Occupation, No. 111	ESRs
Convention concerning Minimum Age for Admission to Employment, No. 138	ESRs
Convention concerning Minimum Age for Admission to Employment, No. 182	ESRs
Convention on International Trade in Endangered Species of Wild Fauna and Flora	EP
Montreal Protocol on Substances that Deplete the Ozone Layer	EP
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal	EP
Convention on Biological Diversity	EP
UN Framework Convention on Climate Change	EP
Cartagena Protocol on Biosafety	EP
Stockholm Convention on Persistent Organic Pollutants	EP
Kyoto Protocol to the United Nations Framework Convention on Climate Change	EP
UN Single Convention on Narcotic Drugs	Security
UN Convention on Psychotropic Substances	Security
UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	Security
UN Convention against Corruption	Security

Note: Autors' elaboration on EU GSP regulations.

Table B2: List of GSP members

Standard GSP	GSP+	EBA	
Congo	Armenia	Afghanistan	Madagascar
Cook Islands	Bolivia	Angola	Malawi
India	Cabo Verde	Bangladesh	Mali
Indonesia	Kyrgyz Republic	Benin	Mauritania
Kenya	Mongolia	Bhutan	Mozambique
Micronesia	Pakistan	Burkina Faso	Myanmar
Nauru	Philippines	Burundi	Nepal
Nigeria	Sri Lanka	Cambodia	Niger
Niue		Central African Rep.	Rwanda
Samoa		Chad	Sao Tome and Principe
Syria		Comoros	Senegal
Tajikistan		Congo (Dem. Rep.)	Sierra Leone
Tonga		Djibouti	Solomon Islands
Uzbekistan		Equatorial Guinea	Somalia
Vietnam		Eritrea	South Sudan
		Ethiopia	Sudan
		Gambia	Tanzania
		Guinea	Timor-Leste
		Guinea Bissau	Togo
		Haiti	Tuvalu
		Kiribati	Uganda
		Laos	Vanuatu
		Lesotho	Yemen
		Liberia	Zambia

Note: Autors' elaboration on EU GSP regulations.