

Non-Trade Policy Objectives and EU Policy

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Motivation

- The European Union (EU) is one of the biggest players in world trade and often exploits its **commercial power as a diplomatic tool** to achieve **non-trade policy objectives** (NTPOs)
- The EU conducts its external relations, including trade relations, with the stated purpose of promoting its **values**:

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. (Article 21 (1) of Treaty of Lisbon)

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Two RESPECT projects on NTPOs in EU trade policy

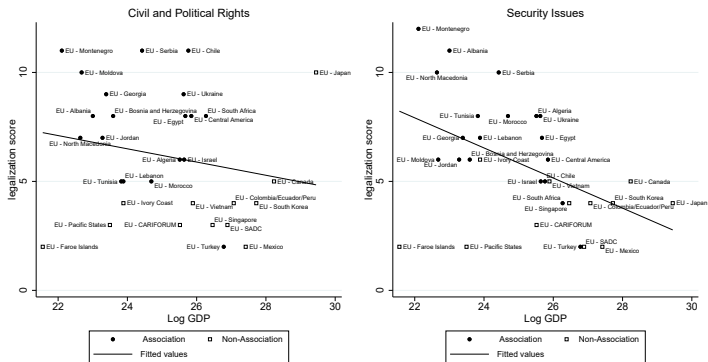
“The Pursuit of Non-Trade Policy Objectives in EU Trade Policy” (with Ingo Borchert, Mattia Di Ubaldo, and Cristina Herghelegiu), *World Trade Review*

“EU Trade Agreements: To Mix or not to Mix, That is the Question,” (with Cristina Herghelegiu and Laura Puccio), *Journal of World Trade*

“The Pursuit of Non-Trade policy Objectives in EU Trade Policy”

- We document the **coverage of NTPOs** in EU trade policy tools:
 - **Trade agreements** (association and non-association)
 - **Generalized System of Preferences (GSP)**
- We examine the extent to which the EU can use these tools as a “**carrot-and-stick**” **mechanism** to promote NTPOs in partner countries

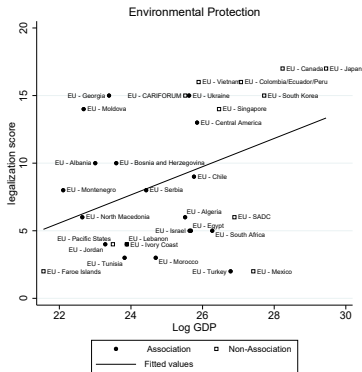
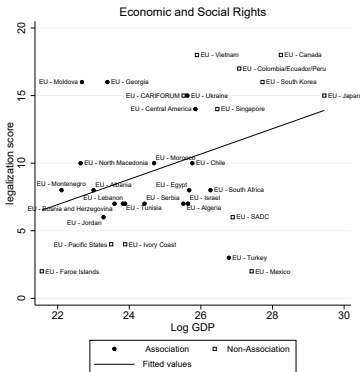
Coverage of political NTPOs in EU trade agreements



Source: Authors' elaboration based on the legalization scores from Lechner (2016)

- Political NTPOs are more prevalent in association than **non-association agreements** and their coverage **decreases with the size of the trading partner**
- When negotiating association agreements, the EU is mostly driven by **political motives**: it offers preferential access to its market in exchange for close political co-operation

Coverage of economic NTPOs in EU trade agreements



Source: Authors' elaboration based on the legalization scores from Lechner (2016)

- **Non-association agreements** are more focused on economic NTPOs and the coverage of these provisions **increases with the size of the trading partner**
- The inclusion of economic NTPOs in trade agreements is mostly driven by **commercial motives** and a desire by the EU to ensure a “level playing field” between domestic producers and foreign competitors

Evolution of NTPOs in EU GSP programs

	1991	1998	2006
Arrangements with conditionality provisions in GSP regulations	Drugs arrangement	Drugs arrangement Special Incentive Arrangements concerning Labor Rights and Environmental Protection	Special Incentive Arrangement for Sustainable Development and Good Governance
NTPO areas concerned	Security	Security Economic and social rights Environmental protection	Security Economic and social rights Environmental protection Civil and political rights

- Over the years, the EU has introduced in its GSP regulations several provisions aimed at pursuing NTPOs, making **preferential access to its market conditional on compliance** with these objectives.

Can trade preferences in EU trade agreements be used to promote NTPOs?

- **EU trade agreements** are negotiated under **multilateral rules**, implying 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” → once an agreement is in force, **positive conditionality** is **very limited**: the EU cannot use trade preferences as a “carrot” to incentivize trading partners’ respect of NTPOs
- **Negative conditionality** through “essential elements” clause provides a mechanism through which the EU could sanction its trading partners
- However, the **EU has never actually used trade preferences to punish violations of NTPOs**. Several limitations:
 - The “essential elements” clause only covers political NTPOs
 - Large commercial costs of triggering the “essential elements” clause
 - Difficulty to monitor trading partners (formally equals)
 - Increases in tariffs may be challenged at the WTO

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Can trade preferences in EU GSP schemes be used to promote NTPOs?

- EU GSP programs can more easily condition trade preferences to compliance with NTPOs, since they are offered on a **unilateral basis**
- **Positive conditionality**: the EU can **reward** GSP members that make progress towards NTPOs by offering **lower tariffs and/or a broader product coverage** (e.g. Philippines GSP+ status since 2014)
- **Negative conditionality**: in case of violations of NTPOs, the EU can **punish** the trading partner by **suspending part or all of its GSP preferences** (e.g. withdrawal of Sri Lanka GSP+ in 2010)
- However, the EU has only punished NTPO violations in case of **severe violations** of human rights in **small developing countries** (similar violations in larger developing countries have not been punished)
- Monitoring and implementation of **GSP programs need to be more consistent and rules-based** if the EU truly wants to promote NTPOs

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“EU Trade Agreements: To Mix or not to Mix, That is the Question”

- The EU is not a sovereign state, it can only act on competences that have been transferred to it by the Member States (MS)
- The EU can negotiate international agreements under
 - Exclusive competences
 - Competences to “support, coordinate or supplement” the actions of MS
 - Shared competences
- Agreements negotiated by the EU that include provisions outside its exclusive competences should be concluded as “mixed”
- Mixed agreements must be ratified following not only the procedures set out in EU treaties, but also the national ratification procedures of MS

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Procedures for the ratification of mixed agreements

Country	National/Federal Level		Regional Level	Possible
	Approval	Chambers	Approval	Referendum
Austria	Yes	2/2	No	Yes
Belgium	Yes	2/2	Yes	No
Bulgaria	Yes	1/1	No	Yes
Croatia	Yes	1/1	No	Yes
Cyprus	Yes	1/1	No	No
Czech Republic	Yes	2/2	No	Yes
Denmark	Yes	1/1	No	Yes
Estonia	Yes	1/1	No	No
Finland	Yes	1/1	No	Yes
France	Yes	2/2	No	Yes
Germany	Yes	2/2	No	No
Greece	Yes	1/1	No	Yes
Hungary	Yes	1/1	No	No
Ireland	Yes	1/2	No	Yes
Italy	Yes	2/2	No	No
Latvia	Yes	1/1	No	No
Lithuania	Yes	1/1	No	Yes
Luxembourg	Yes	1/1	No	No
Malta	No	0/1	No	Yes
The Netherlands	Yes	2/2	No	Yes
Poland	Yes	2/2	No	Yes
Portugal	Yes	1/1	No	Yes
Romania	Yes	2/2	No	Yes
Slovakia	Yes	1/1	No	No
Slovenia	Yes	1/2	No	No
Spain	Yes	2/2	No	No
Sweden	Yes	1/1	No	No
Total	26/27 Member States 36/39 Federal Chambers		1 Member State	16/27 Member States

Source: Authors' elaboration based on a Background Briefing for National Parliaments by Directorate-General for the Presidency, Relations with National Parliaments, Legislative Dialogue Unit (http://www.epgencms.europarl.europa.eu/cmsdata/upload/7ce7f104-1295-48f1-962e-51eba78d5acc/Mixed_Agreements_FINAL.pdf).

- Mixed trade agreements require the approval of 26 MS in their national parliaments, involving 36 chambers

To mix or not to mix?

- **Almost all EU trade agreements** have been negotiated as **mixed** ▶
- Few recent exceptions (FTAs with Singapore, Japan, and Vietnam UK) signed after **opinion of the European Court of Justice** on the scope of the CCP ▶
- **Mixity** implies that, after years of negotiations with trading partners, **EU trade agreements can be “hijacked” by minorities** (e.g. Wallonia blocking CETA)
- **Should the EU avoid mixed trade agreements**, restricting the negotiating with its trading partners to policy areas under its exclusive competence?
- The answer to this question depends on what are the key objectives of the EU:
 - With large trading partners, the main motivation for negotiating a trade agreement is to obtain **market access gains** → the EU should avoid the legal and political risks of mixity, leaving out of the trade deal policy areas that would require national ratification procedures.
 - With smaller trading partners, the EU enters trade agreements to obtain concessions on **non-trade policy issues**, such as security, human rights, or trade and environmental standards → mixity is a “necessary evil”

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Thank you!

List of EU trade agreements notified to the WTO

Agreement	Year of signature	Current Status (date of application)	Mixed	Type
EU - Switzerland - Liechtenstein	1972	In force (1973)	Yes	FTA
EU - Iceland	1972	In force (1973)	Yes	FTA
EU - Norway	1973	In force (1973)	Yes	FTA
EU - Andorra	1991	In force (1991)	No	CU
EU - San Marino	1991	In force (2002)	No	CU
European Economic Area (EEA)	1992	In force (1994)	Yes	EIA
EU - Turkey	1995	In force (1996)	Yes	CU
EU - Tunisia	1995	In force (1998)	Yes	FTA
EU - Israel	1995	In force (2000)	Yes	FTA
EU - Morocco	1996	In force (2000)	Yes	FTA
EU - Faroe Islands	1996	In force (1997)	Yes	FTA
EU - Palestinian Authority	1997	In force (1997)	Yes	FTA
EU - Jordan	1997	In force (2002)	Yes	FTA
EU - Mexico	1997	In force (2000)	Yes	FTA & EIA
EU - South Africa	1999	In force (2000)	Yes	FTA
EU - North Macedonia	2001	In force (2004)	Yes	FTA & EIA
EU - Egypt	2001	In force (2004)	Yes	FTA
EU - Algeria	2002	In force (2005)	Yes	FTA
EU - Lebanon	2002	In force (2003)	Yes	FTA
EU - Chile	2002	In force (2003)	Yes	FTA & EIA
EU - Albania	2006	In force (2009)	Yes	FTA & EIA
EU - Montenegro	2007	In force (2010)	Yes	FTA & EIA
EU - Serbia	2008	In force (2013)	Yes	FTA & EIA
EU - Bosnia and Herzegovina	2008	In force (2015)	Yes	FTA & EIA
EU - CARIFORUM	2008	Provisionally applied (2008)	Yes	FTA & EIA
EU - Côte d'Ivoire	2008	Provisionally applied (2016)	Yes	FTA
EU - Cameroon	2009	Provisionally applied (2014)	Yes	FTA
EU - Pacific	2009	Provisionally applied (2009)	Yes	FTA
EU - Eastern And Southern Africa	2009	Provisionally applied (2012)	Yes	FTA
EU - South Korea	2010	In force (2015)	Yes	FTA & EIA
EU - Colombia/Ecuador/Peru	2012	Provisionally applied (2013)	Yes	FTA & EIA
EU - Central America	2012	Provisionally applied (2013)	Yes	FTA & EIA
EU - Georgia	2014	In force (2016)	Yes	FTA & EIA
EU - Moldova	2014	In force (2016)	Yes	FTA & EIA
EU - Ukraine	2014	In force (2017)	Yes	FTA & EIA
EU - Southern African Development Community	2016	Provisionally applied (2016)	Yes	FTA
EU - Ghana	2016	Provisionally applied (2016)	Yes	FTA
EU - Canada	2016	Provisionally applied (2017)	Yes	FTA & EIA
EU - Japan	2018	In force (2019)	No	FTA & EIA
EU - Singapore	2018	In force (2019)	No	FTA & EIA
EU - Vietnam	2019	In force (2020)	No	FTA & EIA
EU - UK	2020	In force (2021)	No	FTA & EIA

Policy areas and mixity in EU trade agreements based on CJEU Singapore opinion

Main Policy Area	Requirement of mixity
Market Access Goods	No mixity
TBT and SPS	No mixity
Services market access and national treatment (transport services excluded)	No mixity
FDI	No mixity
Trade related aspects of Energy	No mixity
Competition and state-owned enterprises	No mixity
Investor-state dispute settlement (as currently designed)	Mixity
Portfolio Investment	Mixity
Environment	Mixity
Energy (beyond trade related)	Mixity
Security	Mixity
Justice and Home Affairs	Depends on content
Sectoral regulatory cooperation	Depends on content
Transport services	Depends on content
IP rights	Depends on content
Trade and Sustainable development	Depends on content
Culture (including audiovisual provisions)	Depends on content

Source: Authors' elaboration.

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