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Non-Trade Goals in Trade Policy of the European Union: A case study of the EU-Colombia/Peru/Ecuador FTA

Wessel Berend Mol

Master in International Studies

Supervisor:
PhD. Ana Isabel Xavier, Associate Professor
ISCTE-Instituto Universitário de Lisboa

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Firstly, I want to thank my parents for supporting me throughout all the years that I studied for my bachelor's and master's degrees. I want to thank Mario Kindler and Natálie Jandáková for making my time in Lisbon the great experience that it was. I want to thank ISCTE-IUL and its professors for the guidance during my master's and my internship as a research assistant. I want to thank the Portuguese Foundation for Science and Technology for the scholarship I received for this research project. I want to thank the subject matter experts that made the time for me to interview them. Lastly, I want to thank Assistant Professor Dr. Ana Mónica Rola da Fonseca and Dr. Pedro Seabra for the guidance during the early stages of my research, and Associate Professor Dr. Ana Isabel Xavier for the final supervision of my thesis.

Abstract

Since the entry into force of the Treaty of Lisbon, the European Union has started including Trade & Sustainable Development chapters in the Free Trade Agreements it signs. These chapters include provisions on labor rights and environmental protection. Next to these chapters, the EU also includes provisions on human rights and non-proliferation of weapons of mass destruction. In this thesis, the effectiveness of including these non-trade provisions in FTAs is examined. This is done by way of a case study of the EU-Colombia/Peru/Ecuador agreement, with a specific view to the case of Colombia. Using desk research and a series of interviews, it is found that there is a form of gradual progress in the target country. It is also found that there are widely differing views on whether this is due to the FTA, or if the FTA actually exacerbates problems.

Keywords: international trade, human rights, labor rights, environment, sustainability, development

Resumo

Desde a entrada em vigor do Tratado de Lisboa, a União Europeia começou a incluir capítulos sobre Comércio e Desenvolvimento Sustentável nos Acordos de Comércio Livre por si assinados. Estes capítulos incluem disposições sobre direitos laborais e protecção ambiental. Ao lado destes capítulos, a UE também inclui disposições sobre direitos humanos e não-proliferação de armas de destruição maciça. Nesta tese, é analisada a eficácia da inclusão destas disposições não comerciais nos ACL. Isto é feito através de um estudo de caso do acordo UE-Colômbia/Peru/Equador, com uma visão específica para o caso da Colômbia. Utilizando investigação documental e uma série de entrevistas, constata-se que existe uma forma de progresso gradual no país alvo. Verifica-se também que existem opiniões muito diferentes sobre se isto se deve ao ACL, ou se o ACL agrava realmente os problemas.

Palavras-chave: comércio internacional, direitos humanos, direitos laborais, ambiente, sustentabilidade, desenvolvimento

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List of abbreviations

ASEAN – Association of Southeast Asian Nations

BIT – Bilateral Investment Treaty

COVID-19 – Corona Virus Disease 2019

CETA – Comprehensive Economic and Trade Agreement

CGT – General Confederation of Labour

CPR – Civil & Political Rights

CSM – Civil Society Mechanism

DAG – Domestic Advisory Groups

DCFTA – Deep and Comprehensive Free Trade Agreement

DESTA – Design of Trade Agreements

DDA – Doha Development Round

DSU – Dispute Settlement Understanding

EBA – Everything But Arms

EC – European Commission

EEC – European Economic Community

ELN – National Liberation Army

EP – Environmental Protection

EPA – Economic Partnership Agreement

ENS – National Trade Union School

ESR – Economic and Social Rights

EU – European Union

FARC – Revolutionary Armed Forces of Colombia

FTA – Free Trade Agreement

GATT – General Agreement on Tariffs and Trade

GDP – Gross Domestic Product

GMO – Genetically Modified Organism

GSP – Generalized System of Preferences

HRA – Human Rights Agreements

IBA – International Bar Organization

IBRD – International Bank for Reconstruction and Development

IACHR – Inter-American Commission on Human Rights

ILO – International Labor Organization

IMF – International Monetary Fund

ISDS – Investor-State Dispute Settlement

ITO – International Trade Organization

ITUC – International Trade Union Confederation

LDC – Least Developed Country

MAS – Death To Kidnappers

MENA – Middle East and North Africa

MEP – Member of European Parliament

MFN – Most Favored Nation

NAFTA – North American Free Trade Agreement

NAMA – Non-Agriculture Market Access

NTI – Non-Trade Issue

NTPO – Non-Trade Policy Objective

OAS – Organization of American States

OECD – Organization for Economic Co-operation and Development

OHCHR – Office of the High Commissioner for Human Rights

PR – Public Relations

PTA – Preferential Trade Agreement

R&D – Research and Development

RTA – Regional Trade Agreement

S&DT – Special & Differential Treatment

TBT – Technical Barriers to Trade

TGWA – Trade, Growth and World Affairs

TNI – Transnational Institute

TPP – Trans-Pacific Partnership

TRIP – Trade Related Intellectual Property

TSD – Trade & Sustainable Development

TTIP – Transatlantic Trade and Investment Partnership

USA – United States of America

USD – United States Dollar

UTRADEC – National Union of State and Public Service Workers of Colombia

WHO – World Health Organization

WTO – World Trade Organization

1. Introduction

1.1 Background

'The European Union, an economic giant, a political dwarf, a military worm.' These words were spoken in a New York Times interview in 1991 by the Foreign Minister of Belgium at the time, Mark Eyskens (Whitney, 1991). Mr. Eyskens made these remarks in a reaction to the EU's failure to adequately deal with the Gulf War. Later, disagreements over the handling of the Yugoslavian ethnic conflicts and Iraqi civil war confirmed this view to Mr. Eyskens (Bossuyt, 2007). Other instances where European countries deployed troops, such as in Lybia in 2013, have not led to much better results. Political solutions to increase influence in the region were drawn up in the EU Neighbourhood Policy. Even though this policy still continues and has been rejuvenated by the Commission, it can be said that the Neighbourhood Policy has not worked as originally intended and seems to never have been taken seriously by either the member states of the EU or the neighborhood itself. So while it is up for debate whether the EU is still a military worm and/or a political dwarf, it is clear that the EU's military and political efforts to exert influence outside of its borders have not been extraordinarily successful. But what about its economic efforts?

While it can be discussed whether Mr. Eyskens' statement still stands (e.g. Rolea, 2014), it is certain that the 'economic giant' part of it holds true to this day. With an estimated GDP of $18.8 trillion in 2018, about 22% of the world economy (International Monetary Fund, 2018), the EU is the second biggest economy in the world, with only the United States of America outsizing it. Theoretically, the EU must be able to wield power through its economic prowess. And it does. The first example that comes to mind are economic sanctions, such as those imposed on Russia in response to its actions in Ukraine. However, such sanctions are not what I wish to examine in this thesis. Rather, I am interested in how the EU wields its power through the trade agreements that it signs. Being the second largest economy in the world, many countries would like to sign Free Trade Agreements (FTAs) with the European Union. Preferential access to a large, high purchasing-power market is attractive for many developing and developed countries. This gives the EU the power to include certain provisions in the negotiations that allow it to achieve foreign policy goals outside of trade itself. It uses this power to include provisions on things such as human rights, labor standards and environmental protection. In this thesis, I wish to examine what the motivation is for the European Union to do this, whether it is working, and if not, what could be improved.

1.2 Research Questions and Research Objectives

The main research question of this project is the following:

RQ: How and why does the EU use FTAs and trade policy to achieve its non-trade goals, and are these goals being achieved?

To know how the EU uses its power to achieve its goals, we have to know what those goals are. If we have a look at EU discourse and the various official strategies presented over the years we can see that the goals include self-interested geopolitical considerations as well as normative values such as multilateralism, human rights and labour standards (Tocci, 2017). Most recently, environmental considerations and security concerns have also been added to this list. The goal of this research project is to find out if and how the EU is reaching those goals through provisions included in bilateral or regional trade agreements. Unilateral policy such as the Generalized System of Preferences is also included. To do this, I have broken up the main research question in five sub-questions:

RQ1: What non-trade goals are promoted through the EUs trade policy?

This question will be answered by looking at what non-trade goals have been included in trade agreements signed by the EU.

RQ2: How does the EU use FTAs to reach its non-trade goals?

This question will partly be answered by looking at the historical development of non-trade goals in EU trade agreements. After, a case study into the FTA signed between the EU and Colombia, Peru and Ecuador will provide more clarity on the exact provisions that the EU uses in its FTAs.

RQ3: What is the role of the Generalized System of Preferences in the EU's pursuit of non-trade goals?

As the GSP is also a part of EU trade policy, it is important to look at how the EU uses it to reach the same goals it is trying to reach with other parts of its trade policy. In this thesis, I look at how the academic literature and official communications of the EU view the use of the GSP relating to non-trade goals.

Finally, a crucial objective of this thesis is to ask the question whether the European Union is reaching its goals efficiently. It has been argued that due to FTAs not containing a carrot-and-

stick mechanism, it is hard to enforce clauses that fall outside of the direct trade provisions. From here, the last sub-questions arise:

RQ4: Why does the EU use FTAs to reach its non-trade goals?

This question will be answered by looking at academic literature. For the case study on the EU – Colombia/Peru/Ecuador FTA I have interviewed a series of experts. They will also provide insight on this question.

RQ5: Is the EU reaching its non-trade goals through FTAs?

This effectivity question will be answered through the EU – Colombia/Peru/Ecuador FTA case study.

1.3 Composition of Thesis

This thesis is structured in two main chapters: first, a literature review will be conducted, consisting of three chapters: first, normative and ethical considerations in the discussion about international trade will be looked at. Then, the framework of international trade will be laid out for the reader, starting with the WTO and continuing with Free Trade Agreements. Lastly, there will be a chapter dedicated to the trade policy of the European Union, starting with the historical development of EU trade policy and continuing by taking a specific look at how and why the EU is including non-trade goals within its trade policy.

After the literature review, a case study will be conducted, in which the non-trade goals of the EU within the FTA with Colombia and Peru will the analyzed and evaluated.

1.4 Methodology

The literature review will be conducted by reviewing central works regarding the international trade system, European trade policy and non-trade policy objectives (NTPOs) in trade. This will be supported by academic research papers looking into key aspects of these subjects and by official communications and research projects commissioned by various bodies of the EU. The case study will be theoretically supported by academic research papers and official communications and reports, and practically researched by conducting semi-structured interviews with people involved with the specific FTA or otherwise knowledgeable about it. These various research methods will be used in a data triangulation method to come to a final conclusion on the research question.

2. Normative Considerations

Since the beginning of international trade, there has been a discussion between proponents and opponents of globalization. One side says international trade contributes to economic development while also increasing world peace, while the other argues that it fosters inequality and ecological destruction. In this sub-chapter, the arguments for and against international trade liberalization will be examined.

2.1 Arguments for trade liberalization

In the Eurobarometer of spring 2010, 56% of European Union citizens agreed to the statement that globalization is an opportunity for economic growth (European Commission, 2010, p. 12). This seems to be the main argument for trade liberalization, and is rooted in the theory of comparative advantage. One of the first to explain this idea was the economist Adam Smith, who explained that ‘’[w]hat is prudence in the conduct of every private family, can scarce be folly in that of a great kingdom. If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage. The general industry of the country … will not thereby be diminished, (...) but only left to find out the way in which it can be employed with the greatest advantage. It is certainly not employed to the greatest advantage, when it is thus directed towards an object which it can buy cheaper than it can make.’’ (Smith, 1776, pp. 478-9)

This idea was further developed by David Ricardo into the theory of comparative advantage, which poses that due to specialization in that in which a country has a lower opportunity cost than the trading partner, all participants in trade will be better off in the long run as people are employed in the most efficient way. This raises global and local productivity, leading to economic growth and lower prices for consumer goods. England was the first to liberalize in the 19th century, but not the last. Indeed, after the Second World War many Asian countries achieved very high growth rates through trade liberalization and export-led growth. Starting with Japan, followed by the Asian Tigers and most recently by China and India, hundreds of millions of people were lifted out of poverty, and entire countries industrialized at a never-before-seen speed. It has been said that trade has a far greater potential of reducing poverty than aid (Oxfam, 2002).

The other argument for trade liberalization is the theory of peace through economic interdependence, also sometimes called 'liberal peace'. The groundworks for this theory were laid by authors such as the German philosopher Immanuel Kant with his 1795 essay Perpetual Peace: A Philosophical Sketch and the French philosopher Montesquieu in his 1748 treatise The Spirit of the Laws. This was further developed by British economist Richard Cobden, who advocated for free trade and non-interference in the 19th century, believing that those are the key requirements for peace and prosperity (Palen, 2015). There are two parts to this argument: first of all, the interdependence argument, first presented by Montesquieu in the abovementioned treatise: ''Peace is the natural effect of trade. Two nations who traffic with each other become reciprocally dependent; for if one has an interest in buying, the other has an interest in selling; and thus their union is founded on their mutual necessities'' (Baron Montesquieu de Secondat, 1748)

The second part of the liberal peace argument is based on the theory of economic development through trade. If trade leads to prosperity, this may lead to a stronger middle class, which then has the means and knowledge to fight authoritarianism (Bhagwati, 2002, pp. 43-44). The evidence for this is mixed: after it happened with South Korea, many people (for example in US Congress) hoped that this would be the case with China, too. However, the quick economic development of the country seems to only have strengthened the position of the Chinese Communist Party in Chinese society.

2.2 Arguments for trade restriction

Currently, we are seeing a backwards movement in globalization. After over 70 years of nearly unfettered liberalization, major countries are turning to protectionism once again. This process is currently sped up by the COVID-19 crisis, but was already happening before. These policies are not just the products of rogue leaders going against the world, but rather have real societal support, which is broader than might be thought if one only resides in academic circles. After we just explained that trade leads to economic growth and peace, this is a notable development to say the least. So what are the arguments for trade restriction? According to Van den Bossche & Zdouc (2013) there are at least eight negative effects that trade liberalization can have. It can have effects:

- on jobs and wages (affected by delocalization and outsourcing, or the threat thereof);

- on the global ecosystem as well as the local environment (by promoting unsustainable patterns of production and consumption);
- on world poverty and hunger (in the face of growing income disparity between the rich and the poor);
- on the economic development of developing countries (by obliging these countries to open their markets too far too fast, and not protecting or promoting their export opportunities);
- on social, labor, health and safety regulation (as a result of regulatory competition resulting in a 'race to the bottom');
- on the livelihood of hundreds of millions of small farmers (endangered by the importation of cheap agricultural produce);
- on cultural identity and diversity (threatened by the rise of a global Anglo Saxon popular monoculture);
- on national sovereignty and the democratic process (under threat from international organizations promulgating rules for the global economy beyond the control of individual States).

To conclude, there are good arguments for and against trade liberalization. The problem, as is the problem in so many issues these days, is the lack of a productive argument in the issue. As said by Oxfam in a 2002 report:

> Current debates about trade are dominated by ritualistic exchanges between two camps: the 'globaphiles' and the 'globaphobes'. 'Globaphiles' argue that trade is already making globalisation work for the poor. Their prescription for the future is 'more of the same'. 'Globaphobes' turn this world-view on its head. They argue that trade is inherently bad for the poor. Participation in trade, so the argument runs, inevitably leads to more poverty and inequality. The corollary of this view is 'the less trade the better'. The anti-globalisation movement deserves credit. It has raised profoundly important questions about social justice – and it has forced the failures of globalisation on to the political agenda. However, the war of words between trade optimists and trade pessimists that accompanies virtually every international meeting is counter-productive. Both world views fly in the face of the evidence – and neither offers any hope for the future.'' (Oxfam, 2002)

If we want to truly see a better world for everyone, we need to take a critical look at trade liberalization and corresponding local policies. This critical look does not mean to tear it down, as some politicians are proposing (and implementing), nor does it mean to simply continue on the path of the last century. A constructive debate is needed, free from emotional charge.

2.3 Differences between trade and FTAs

When a survey (Booth, 2012) asked a panel of economic professors at leading universities in the United States whether freer trade improves efficiency, consumer choice and leads to greater gains than any employment effects, not one of the 37 respondents disagreed with the statement, while only two indicated that they were uncertain. When the same survey asked the experts whether the citizens of the USA were better off with the North American Free Trade Agreement (NAFTA) than without, again no one indicated that they disagreed, and two indicated that they were uncertain. It turns out that economics professors equate free trade with free trade agreements. This sounds merely logical. Reality, however, shows us that the story is different. Caliendo and Parro (2015) show that NAFTA increased US welfare by a mere 0.08%, while half of these gains were at the expense of other countries, i.e. at the expense of Mexico. Furthermore, McLaren and Hakobyan (2016) showed that there were also distributary issues with regards to the gains in welfare that were not at the expense of the trading partners. How is that possible? Did we not establish that due to the theory of comparative advantage, freer trade will lead to welfare gains in the long run? Rodrik (2018) shows us that while that is true, free trade agreements only barely concern themselves with true barriers to trade anymore. He gives the example of two FTAs signed 19 years apart:

> ''The US–Israel Free Trade Agreement, which went into force in 1985, was the first bilateral trade agreement the US concluded in the postwar period. It is quite a short agreement—less than 8,000 words in length. It contains 22 articles and three annexes, the bulk of which are devoted to free-trade issues such as tariffs, agricultural restrictions, import licensing, and rules of origin. The US–Singapore Free Trade Agreement went into effect in 2004 and is nearly ten times as long, taking up 70,000 words. It contains 20 chapters (each with many articles), more than a dozen annexes, and multiple side letters. Of its 20 chapters, only seven cover conventional trade topics. Other chapters deal with behind-the-border topics such anti-competitive business conduct, electronic commerce, labor, the environment, investment rules, financial services, and intellectual property rights. Intellectual property rights take up a third of a page (and 81 words) in the US– Israel agreement. They occupy 23 pages (and 8,737 words) plus two side letters in the US–Singapore agreement.'' (Rodrik, 2018, p. 75)

We can thus see that FTAs expanded way beyond the initial agreements which concerned themselves with tariffs and quotas. Rodrik (2018) posits that while economists fear that protectionist interests impede development, currently interest groups not on the import side, but rather on the export side are the players holding countries back for their own gain. He identifies four specific aspects of trade agreements which are detrimental to society at large:

- Trade-Related Intellectual Property (TRIPs) rights

TRIPs refer to patents and copyrights. Critics such as Noam Chomsky argue that this is merely to protect the interests of multinational corporations from developed countries (Chomsky, 2012). While earlier patent rules regarded 'process patents', whereby you patent the process, not the product itself, current TRIPs regulations allow companies to patent products themselves. This means that even if you figure out a more efficient way to make, say, a certain medication, you are not allowed to make it. This leads to developing countries paying exorbitant prices for medications developed in the developed world. Proponents of these rules argue that they foster innovation as they make sure that the inventor of a certain innovation is duly rewarded for his work. Patents are seen as an incentive for research and development (R&D). There is even an argument for developing countries: it has been argued that the Global North and the Global South have different needs, and will thus develop different patents. For example, southern firms might focus more on combating diseases such as dengue, malaria and zika, which are more prevalent in the south. Thus, they might also be benefited by stronger patent protection to foster their R&D (Diwan & Rodrik, 1989). As the attentive reader will notice, this is the same Rodrik who is criticizing TRIPs now, and he was defending them back then. What happened there? In a footnote in Rodrik (2018, p. 77), he explains that the 1989 paper ''was motivated by a challenge that came down to us from the then chief economist of the World Bank. Wouldn't it be nice if someone could make a positive economic case for TRIPS for the developing nations? It turned out someone could.''

- Cross-border capital flows rules

Another criticism of Rodrik (2018) relates to capital flows. As capital flows freely, it exposes countries to the globalization of not just economic development, but also economic downturn. By having financial flows without restriction, developing countries cannot protect their markets when there is an economic downturn in the developed world. While Rodrik (2018) claims that most economists are against free capital flows, and Siegel (2013) showing that even the International Monetary Fund (IMF) is against including free capital flow in FTAs, these provisions continue to be implemented.

- Investor-state dispute settlement (ISDS) procedures

. .

''If you wanted to convince the public that international trade agreements are a way to let multinational companies get rich at the expense of ordinary people, this is what you would do: give foreign firms a special right to apply to a secretive tribunal of highly paid corporate lawyers for compensation whenever a government passes a law to, say, discourage smoking,

> protect the environment or prevent a nuclear catastrophe. Yet that is precisely what thousands of trade and investment treaties over the past half century have done, through a process known as 'investor-state dispute settlement', or ISDS.'' (The Economist, 2014)

Initially starting in Bilateral Investment Treaties (BITs) and later expanding to FTAs, Investor-state dispute settlement (ISDS) procedures have been applied in treaties between countries since the 1980s. These provisions are mainly designed to protect the investing party from discriminatory policy or nationalization of their assets. They allow investing companies to directly sue countries if policy is applied to their detriment. Opponents of these provisions argue that they limit national sovereignty. Proponents argue that these tribunals do not have the power to overturn local law, but can merely make countries pay monetary compensation to companies which incur damages (IBA, 2015). Furthermore, laws in the national interest are expressly protected.

- Harmonization of regulatory standards

The last piece of criticism of Rodrik (2018) relates to the harmonization of regulatory standards. Proponents argue that this reduces transaction costs due to clarity for companies wishing to expand beyond national borders. Again, opponents argue that this limits national sovereignty. A famous example of this is the case of genetically modified organisms (GMOs). The European Union banned these because of pressure of consumer groups. While these provisions were applied to domestic as well as foreign firms and were thus non-discriminatory, the USA still made a case of protectionism that was compelling enough for the WTO to agree (EC – APPROVAL AND MARKETING OF BIOTECH PRODUCTS, 2006). Rodrik (2018, p. 78) argues that ''the trouble is that unlike in the case of tariffs and quotas, there is no natural benchmark that allows us to judge whether a regulatory standard is excessive or protectionist. Different national assessments of risk—safety, environmental, health—and varying conceptions of how business should relate to its stakeholders—employees, suppliers, consumers, local communities—will produce different standards, none obviously superior to others.''

3. Framework of International Trade

In this sub-chapter, an overview will be provided of the framework of international trade. The World Trade Organization (WTO) is understood as the body and concurring set of rules which make up the international trade system. After looking at the historical context of how the WTO came into existence and its development since the early days of the GATT '47, the main objectives, rules and principles of the WTO will be examined. Free Trade Agreements (FTAs), an exception to WTO non-discrimination rules, are so widely proliferated and important for international trade that they will be covered in a separate section at the end of this chapter. In that section, the history of FTAs will first be covered, after which their various forms and functions will be looked at.

3.1 The World Trade Organization

3.1.1 Development of the WTO: from Bretton Woods to Doha

In the 1920s, the world experienced economic prosperity. When the stock market crash of 1929 led to a worldwide economic downturn, more and more countries turned to protectionism, exacerbating the already poor conditions. Ultimately, this contributed to the general circumstances which led to the Second World War. Towards the end of the Second World War, the Allied countries came together at the United Nations Monetary and Financial Conference, held at the Mount Washington Hotel. As this hotel is situated in Bretton Woods, New Hampshire, USA, the conference became known as the Bretton Woods Conference. The participating countries saw the need for an international structure to prevent the repetition of events, and created the multilateral system in which we live to this day. They famously created the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD), which later became a part of the World Bank. While the Bretton Woods Conference was for monetary and financial matters, the parties present recognized the need for an international trade system to complement the institutions they had set up. Among the recommendations made by the nations present at the Bretton Woods Conference, one can find a recommendation regarding 'International Economic Problems'. In the pre-ambulatory clauses of this recommendation, the nations acknowledged that ''in Article I of the Articles of Agreement of the International Monetary Fund it is stated that one of the principal purposes of the Fund is to facilitate the expansion and balanced growth of international trade'' However, at the same time they recognized that ''the complete attainment of this and other

purposes and objectives stated in the Agreement cannot be achieved through the instrumentality of the Fund alone.'' This led to the first point of the operative clauses of section VII recommending the nations present ''to reach agreement as soon as possible on ways and means whereby they may best: (1) reduce obstacles to international trade and in other ways promote mutually advantageous international commercial relations'' (United Nations, 1944, p. 941)

Hereby, the ideological groundwork for the World Trade Organization (WTO) was laid. However, because the ministers and diplomatic envoys present were rather of financial nature than trade experts, they did not make the trade institution or framework which they recommended. Rather, this was done at the United Nations Conference on Trade and Employment, starting in November 1947 in La Havana, Cuba. At this conference, the parties present discussed the establishment of an international trade organ. At that time, the organization they had in mind was not to be named ''WTO''. Rather, the working name it had was the ''International Trade Organization (ITO)''.

Indeed, the negotiations in Havana led to an agreement, the Havana Charter, which would establish such an organization. In March 1948, 56 countries signed the Havana Charter, which should have established the ITO as well as an international currency and an international clearing union (ICU). There was one hitch, however. The United States Congress refused to approve the charter, and after President Truman announced in 1951 that he would stop submitting it, the other countries also did not ratify it (Van den Bossche & Zdouc, 2013).

What would they do after the stillbirth of the ITO? Well, there was another agreement regarding trade. During the preparatory negotiations on the ITO, in 1947, countries negotiated on three parts: firstly, the ITO charter, but at the same time tariff reductions and general clauses regarding obligations relating to the tariff reductions were also discussed. And so, on the 30th of October, 1947, as negotiations were still underway on the ITO, the General Agreement on Tariffs and Trade (GATT) was signed in Geneva. The GATT was initially just seen as a temporary treaty. It was supposed to become a part of the ITO, and merely signed earlier because the negotiating parties were worried that the leaking of upcoming tariff changes would disrupt world trade so much that they felt it was better to implement it immediately (Jackson, 1998, p. 17). However, when the ITO did not get established, the focus shifted to the GATT.

Initially signed by 23 countries, the GATT provided countries disillusioned by the ITO process with an alternative which still covered many of their trade needs. It would help them reciprocally lower tariffs and to be able to solve trade disputes. Because of this, more and more countries started joining the GATT. Starting in the 1950s, the original 23 countries quickly expanded, a development of membership that continues to this day. This meant that the GATT, original meant as a simple treaty, turned into the de facto international organization for trade. While originally, only article XXV of the GATT (Contracting Parties, GATT, 1947) provided for some form of joint action by the members, this was expanded through a process of trial and error, turning the GATT from a simple treaty into an international institution with the procedures to match (Van den Bossche & Zdouc, 2013).

All these new countries would not leave the GATT as it was, but kept negotiating. Under the GATT, and still under the WTO, negotiating took place in so-called 'rounds' in which members would lower tariffs on a reciprocal basis. This process of bargaining and exchanges worked very well for the first five rounds, greatly reducing tariffs between the contracting parties. The sixth round, called the Kennedy Round, started in 1964. It was named after President Kennedy, who was assassinated a year prior. Being negotiated by 66 countries representing over 80% of global trade, this round was the first round where non-tariff barriers were discussed. Not coincidentally, it was also the last round where tariffs were the primary focus. This was because tariffs were already reduced by so much that non-tariff barriers started becoming a larger impediment to trade than tariffs themselves. Another novelty of this round was the introduction of 'linear cuts'. While in the previous rounds tariffs were cut on a case by case basis, the Bridge Club, a group of rich countries leading the negotiations offered cuts across the board (Minoru, Macrory, Appleton, & Plummer, 2005, p. 172). Because developing countries could not reciprocate this, it led to the implementation of a 'Trade and Development' clause in the GATT granting exceptions to developing nations, making it possible to consider this round a victory for the developing world. At the same time, the progress on non-trade barriers was slim. This led to a new round, the Tokyo Round, starting in 1973, which was more successful regarding non-trade barriers, while not completely satisfactory to some parties either.

Finally, in 1986 the Uruguay Round started. This round was supposed to be the round where services and intellectual property was incorporated, something the USA was heavily in favor of, while developing countries protested. Because of that, it was not included in the initial goals set in the 1986 ministerial declaration which kicked off the negotiation round. Another thing

that was not included in this declaration, and was indeed not discussed for the first years of the negotiation round, was the establishment of a fully-fledged international organization for trade. The only things included were ‘’regular monitoring of trade policies and practices of CONTRACTING PARTIES; improving the overall effectiveness and decision-making of the GATT; and strengthening the GATT’s relationship with the IMF and the World Bank to achieve greater coherence in global economic policy-making’’ (Punta del Este Ministerial Declaration, 1986). However, first Italy, then Canada, and then the European Community all called for the establishment of such an organization. While the USA and most developing countries were not very eager to overhaul the institutional system (Jackson, 1991, p. 17), a draft agreement including the establishment of a ‘Multilateral Trade Organization’ was put forward in 1991 (Draft Final Act, 1991). While the USA kept opposing the idea, more and more countries started agreeing to the idea, until the USA also caved in late 1993. This led to the conclusion of the Uruguay Round as all contracting parties signed the Marrakesh Agreement in April 1994, thereby establishing not the technical-sounding Multilateral Trade Organization, but rather the WTO.

What negotiators had started in 1944, was now a reality. Not only was there now a trade organization, tariffs on trade had decreased significantly, with tariffs on industrial goods by developed countries falling from 40+ to an average of 4% between 1947 and 1994 (Jackson, 1998, p. 78). But negotiations were not over. While they were for the Uruguay Round, a new round started a few years later, in November 2001. This round, which is ongoing until today, is called the Doha Development Round. It takes its name from the city in Qatar where it was agreed to start the round, while the Development part of the name comes from its objective: it is focused on making fairer for developing countries. The main issue of contention is agriculture, with developing countries, headed by Brazil and India, expressing their concern with the agriculture subsidies of the EU and the USA. Rightfully so, as the Common Agriculture Policy and the USA’s government subsidies impede farmers from the developing world from competing on a level playing field with producers from those countries. This impedes development heavily as many people in poorer countries depend on agriculture for their livelihood. Because of this, the countries declared that the start the they wanted to make ‘’substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support." (Doha Ministerial Declaration, 2001) While to an untrained eye this has nothing to do with agriculture, it is front and center for trade specialists.

While many points have been agreed on already in the Doha Round, agriculture still seems to hold back an agreement. Various estimates have prophesized big increases in world trade if it does get concluded (e.g. Brown, Deardroff, & Stern, 2002; Adler, Brunel, Hufbauer, & Schott, 2009). Furthermore, former Director-General Pascal Lamy has said that ''[u]nless we can complete the Doha Round in the near future, and maintain markets open, we will find it harder to address other challenges where international cooperation is essential. This involves issues such as climate change, coherence between a future climate change regime and the trade regime, managing increasing prices and scarcity of some raw materials, and ensuring adequate coherence between regional and multilateral approaches to trade cooperation.'' (Lamy, 2010) Lastly, another effect is that the lack of a formal Doha Round agreement leads to countries looking for different options in international trade negotiations, which then leads to the further proliferation of Preferential Trade Agreements (PTAs) (Hartman, 2013), such as the agreements covered in this thesis.

3.1.2 WTO Basics & Principles

3.1.2.1 Role of the WTO

The WTO is an intergovernmental organization, meaning that the Organization itself does not have any power. Many people equate it to institutions such as the IMF and the World Bank, because, as explained above, they were created in the same time period and are seen as a part of the same multilateral system that the world has operated in since the Second World War. However, there are some crucial differences. As the WTO is an intergovernmental organization, all the decisions are made by the member states, or 'contracting parties' as it is called in WTO jargon. This is done by a system of positive consensus. Positive consensus means that for an agreement to be reached, no one member state has to object. One country can thus stop the whole negotiation process, or, for example, the accession of a new member state. In practice, this plays out through a system of reciprocal concessions during the negotiations. Certain member states are interested in the lowering of say, the agricultural tariffs of another member state, while that member state might want to see lower tariffs on industrial goods in the first member states. Through long negotiations, every country ends up with a certain mix of wins and losses and when every member state agrees, a new agreement is signed. This system of intergovernmentalism also means that the WTO secretariat does not have any power. They are facilitators of the negotiations, nothing more. Unlike the IMF or the World Bank, the WTO does not dispense money to member states, ever. They can thus also not apply conditions to

such money as for example the IMF does, with its Structural Adjustment Programs being the point of much criticism. Another thing that the WTO does is to arbitrate disputes. Through its dispute settlement system, explained in more detail below, member states can resolve issues that arise from non-compliance with the rules that they themselves have set up.

3.1.2.2 WTO Principles

The WTO has a set of basic principles, which were agreed upon by the contracting parties. The over-arching principles are that the system is rules-based and non-discriminatory. Furthermore, the WTO subscribes to the idea that freer trade improves world conditions, described in subchapter 2.1.1. To reach these goals of non-discrimination and freer trade some basic principles have been set up:

The first principle is the Most Favored Nation (MFN) principle. In short, MFN treatment means that a member state treats all other member states in the same way as they do all the others. If a member state affords, for example, a certain tariff to one member state (or even to a non-member), they have to give that same tariff to all member states. This guarantees the equal trading between all member states. An exception to this rule is a free trade agreement. So, if you afford preferential tariffs to a certain state in the context of an FTA, it is allowed. Another exception relates to developing countries. If a member state wants to foster development by giving a country a special tariff, it is allowed to do so without having to grant that tariff to all countries. As the name 'most favored nation' can be confusing, it might be important to note that it derives its name from the idea that everyone gets treated as the most favored nation gets treated (WTO, 2020).

The second principle is called National Treatment. In short, national treatment means that foreign firms have to be treated equally to domestic firms. As soon as a good has entered the market, it has to be treated as if it is a domestic good. So while tariffs may be applied, when those have been paid, the product, service, patent, etc. may not be discriminated against based on its origin (WTO, 2020). Critics point out that National Treatment is not afforded to actual people, thereby giving more rights to companies than to humans (Chomsky, 2012).

Another principle is that of Special & Differential Treatment, often abbreviated to S&DT or simply SDT. S&DT provisions are meant to help developing countries in general, and to

provide developing countries with a way to implement WTO agreements without damaging their economies. They include (WTO, 2020):

- longer time periods for implementing agreements and commitments
- measures to increase trading opportunities for these countries
- provisions requiring all WTO members to safeguard the trade interests of developing countries
- support to help developing countries build the infrastructure to undertake WTO work, handle disputes, and implement technical standard
- provisions related to least-developed country (LDC) members

Furthermore, the WTO intends to foster trade by increasing transparency. This is done by virtue of the MFN principle, as this improves clarity, but also by all countries clearly publishing their various tariffs and laws and having a trade policy review policy in which the secretariat publishes regular reports on countries' trade policies.

Lastly, under article XX of the GATT countries are able to restrict trade under certain circumstances relating to safety. This can be national security, but also public health, animal health, plant health and other environmental considerations. However, these policies may not be used as a means of disguising protectionist policies (WTO, 2020).

3.1.2.3 Tariffs and non-tariff barriers

In the restrictions to trade that countries apply, one can generally distinguish between two forms of trade barriers: tariff barriers and non-tariff barriers.

Tariff barriers, also known as customs duties, are the most common and known forms of trade barriers for trade in goods. The WTO Appellate Body defined customs duties as follows: ''it is upon entry of a product into the customs territory, but before the product enters the domestic market, that the obligation to pay customs duties … accrues'' (European Communities - Measures affecting the import of certain poultry products, 1998, p. 51) These are the tariffs that have been lowered so much throughout the eight rounds of GATT negotiations, and the same tariffs that former US President Donald Trump raised on products from the EU, China and other countries (e.g. Long, 2018; Horsley, 2018). Tariffs generally serve two purposes. They are a source of revenue for the government, and serve to protect a domestic industry (Van den Bossche & Zdouc, 2013, p. 207). As developing countries need the revenue more as well as

having a need to protect their domestic industries in their development, it is no surprise that these countries generally apply significantly higher tariffs than their more developed counterparts. Developed countries generally still have relatively high tariffs on certain key product groups such as agricultural products and certain industrial goods such as clothing. Developed countries also often raise tariffs according to the production stage. Raw materials often have no or very low tariffs applied to them, while (semi-)processed goods have higher tariffs (Van den Bossche & Zdouc, 2013, p. 208). While this keeps raw materials cheap and fosters manufacturing in the developed world, it impedes development for countries where the raw materials often come from, as they are discouraged to process the materials themselves. Because tariffs are generally transparent and easier to overcome than other barriers, countries have decided that they are the most desirable trade barrier. However, there are other barriers to trade.

Non-tariff barriers are, unsurprisingly, defined as ‘’all government imposed and sponsored actions or omissions that act as prohibitions or restrictions on trade, other than ordinary customs duties and other duties and charges on imports and exports’’ (Santana & Jackson, 2012) The most known form of this is a quantitative restriction. A government can, for example, limit the quantity of cars that are allowed to be imported per year. Total prohibitions are also seen as quantitative restrictions. Under article XI of the GATT 1994, quantitative restrictions are banned. The Appellate Body made clear that the contracting parties banned quantitative restrictions with a broad understanding of them, including all de facto quantitative restrictions (Japan - Trade in Semi-Conductors, 1988) such as import licenses, quotas, embargoes and export restraints. However, as with any trade agreement, there are exceptions to this rule. Some exceptions include but are not limited to critical food shortages, certain agricultural exceptions, and measures necessary to protect national security, public morals or human, animal or plant life or health (GATT 1994).

Other important non-tariff barriers to trade are technical barriers to trade and sanitary & phytosanitary measures. Technical barriers to trade (TBT) is the WTO term for regulatory measures impeding trade. In the GATT 1994, the contracting parties made the TBT Agreement relating to these barriers, which aims to harmonize international trade regulation to provide clarity to companies. Sanitary and phytosanitary measures relate to human, animal, and plant life and health. These measures also have an agreement dedicated to them under the GATT 1994: the SPS Agreement.

3.1.2.4 WTO Dispute settlement

Under the GATT 1947, there were two articles for dispute settlement: Article XXII and Article XXIII. Article XXIII specified that ‘’If any contracting party should consider that (...) any objective of the Agreement is being impeded (...) the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. (...) If no satisfactory adjustment is effected between the contracting parties concerned (...) the matter may be referred to the CONTRACTING PARTIES.’’ (Contracting Parties, GATT, 1947)

While this was satisfactory at first, it had one large issue. This issue was that because it referred the dispute to the contracting parties if it was not resolved, the defending party could simply block any legally binding decision due to the GATT’s consensus-based system. This problem was fixed in the Uruguay round, and with the founding of the WTO a real dispute settlement system was created. The provisions for it are written down and agreed upon in the Understanding on Rules and Procedures for the Settlement of Disputes, or simply the Dispute Settlement Understanding (DSU).

Under the DSU, member states can bring other member states in front of a panel if they believe that the other party is not applying the rules agreed upon. Natural persons or companies cannot bring disputes in front of the WTO. However, it is possible for multiple member states to file the same complaint to the WTO. The panel that is established will then provide a ruling whether the defending party is in the wrong. If it rules that the defending party is indeed in breach of the WTO Agreements, this decision may be appealed. The ‘Supreme Court’ is called the Appellate Body. If the Appellate Body rules that the defending party is acting inconsistently to the WTO Agreements, this does not mean that the defending party now has to change its laws, or even that it has to pay compensation for lost profit up until the point of the complaint. However, something needs to happen going forward. There are a few options if the Appellate Body rules that, say, a subsidy is unlawful under a previously negotiated agreement:

- Settling out of court

Under the DSU it is preferred that the parties figure out ‘’[a] solution mutually acceptable to the parties to a dispute and consistent with the covered agreements’’ (Contracting Parties, Article 3.7 DSU, Annex 2 of GATT 1994). This usually means that the defending party grants

a certain benefit to the complainant, such as a lowered tariff in another economic sector important to the complainant. This can be done at any time during the dispute settlement process, and it stops the procedure if both parties agree.

- Compliance

If no such solution is found, ‘’the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements.’’ (Contracting Parties, Article 3.7 DSU, Annex 2 of GATT 1994). This means that the defending party simply drops the law that is offending the WTO Agreements. As mentioned above, the Appellate Body only requests this going forward; no compensation needs to be paid for the time that the law was up and running. As the dispute settlement procedure usually takes a few years, countries can thus break the law for a few years without facing real consequences.

- Retaliation

If the defending member state refuses to get rid of the offending law, or if the time period for withdrawal of the law expires, the Appellate Body may grant the complaining member state the right to retaliation. This is seen as a last resort. (Contracting Parties, Article 3.7 DSU, Annex 2 of GATT 1994). This retaliation takes the form of heightened tariffs or other measures technically in breach of WTO Agreements. Because of that, it is called a ‘’suspension of concessions’’ (Contracting Parties, Article 3.7 DSU, Annex 2 of GATT 1994).

To summarize, the Appellate Body acts as a school teacher: if one child complains, it determines whether the other child was in the wrong and if they were, it tells them to ‘stop doing that’. If the offending child keeps doing it, it grants the complaining child the right to ‘do it back’. However, there is a problem. The teacher’s contract has expired, and the United States of America refuses to appoint a new teacher. The seven judges on the Appellate Body are on four year terms, and are appointed by the members. However, the USA has been blocking the appointment of new judges, and so, slowly but surely, the contracts of the judges have run out. At the time of writing, only one judge is left. His term will expire on the 1st of December, 2020. As the Appellate Body needs at least three judges to deliver rulings, it means that it cannot function currently.

3.1.2.5 Types of WTO Agreements

There are three types of Agreements under the WTO framework: the most important ones are the multilateral agreements. These are the agreements such as the GATT 1947 and GATT 1994, which were agreed upon by all member states. New members who accede to the WTO need to sign these agreements as well. Next to that there are plurilateral agreements, also called Annex 4 agreements. This is because they formed the 4th annex to the GATT 1994. These agreements are agreed upon by only a part of the membership body and relate to specific sectors such as dairy or civil aircraft. Finally, the WTO allows Preferential Trade Agreements (PTAs). PTAs include FTAs as well as customs unions. To qualify for WTO recognition, these agreements must eliminate restrictions for substantially all trade within a reasonable amount of time. While they are an exception to the MFN rule, they may not increase restrictions on parties outside of the PTA, or if they do in the context of a customs union, compensation must be paid.

3.2 Free Trade Agreements

PTAs are also known as Regional Trade Agreements (RTAs) or Free Trade Agreements (FTAs). In this thesis, the latter designation will be used. As the most important exception to the MFN rule, FTAs are proliferated around the world. Currently, 305 FTAs are in force worldwide (WTO, 2020). In this chapter, this important part of the international trade framework will be looked at. First, we will take a look at the history of FTAs, after which the various forms and functions of FTAs will be examined.

3.2.1 History of FTAs

Starting in the 16th century, mercantilism was the dominant economic doctrine. In mercantilism, while trade was encouraged, free trade agreements were not. While trade was taking place, it was operating under heavily protectionist frameworks of law. It was a time where each country tried to maximize exports while minimizing imports. The idea was that through protection of the domestic market and exporting as much as possible, the domestic industry would maximize its revenue by selling to the domestic as well as the international market. When, in the late 18th century, Adam Smith and David Ricardo explained how free trade would benefit everyone, including domestic industry, the change into free trade began. Because of these thinkers, British producers and merchants started feeling that protectionism was being a hindrance rather than a help.

Britain began to repeal its protectionist policies by lowering or eliminating tariffs and other restrictions, and laid the groundwork for FTAs by passing the Reciprocity of Duties Act in 1823 (UK Parliament, 2020). This act stated that if another country reduced the tariffs on British goods, Britain would reciprocate. Initially, Britain was reducing tariffs unilaterally, and by 1825, average tariffs in Britain had fallen from 50% to around 20%. Other countries started to catch on to the idea, and in 1860 the first FTA was signed: the Cobden-Chevalier Treaty between Britain and France (WTO, 2011, p. 49). This treaty reciprocally reduced tariffs between the two countries, and crucially included a MFN clause, which stated that the signees could not impose any trade prohibition on the other party without applying the same prohibition to other nations.

The Cobden-Chevalier Treaty sparked a wave of bilateral treaties between various countries in Europe, leading to a great liberalization of trade on the continent, and because of the colonial empires of the time, throughout the world. After this initial peak in FTAs, there was a backwards movement. First the economic crisis of the 1870s, later the First World War, and finally the Great Depression were all great setbacks to the development of FTAs. Some FTAs were signed after the Great Depression. The problem with these FTAs was that they were defensive trading blocs to shield the interests of their signees and to try to become self-sufficient within their networks: Britain and its colonies put in place a system of ‘’Imperial Preferences’’; Germany concluded agreements with Southern and Eastern European countries; and Japan built a network of bilateral agreements within East Asia. While the United States initially also moved towards protectionism with the 1930 Hawley-Smoot Tariff Act, it changed course just a few years later. In 1934, the Reciprocal Trade Agreement Act was passed, an act much like the original British Reciprocity of Duties Act. Just like other countries, the USA started signing bilateral treaties with countries in their ‘’backyard’’. However, there was one crucial difference: these FTAs included MFN clauses (WTO, 2011, p. 50).

Then, the Second World War happened. After, the victors agreed that a part of the reason for this horrific war was the fragmentation of the trading system. They came together to form the ITO, which ended up being the GATT as described in chapter 2.1. These negotiations were almost the end of FTAs. The US wanted to only grant an exception to the MFN principle to customs unions, but not to FTAs. However, Britain insisted on keeping its Imperial Preferences system, and so the exception was granted to FTAs as well (WTO, 2011, p. 51).

Now, one could expect that after the signing of the GATT, the conclusion of new FTAs would diminish. This was not the case. Three new waves of increased FTA proliferation have taken place:

The first wave took place in the 1950s and ‘60s, when the first steps of the European integration project led to other regions attempting similar arrangements, which usually failed.

The second wave came when the European integration project took its next step with the move towards a creation of the common market in the late 80s to early 90s. This, combined with the falling apart of the Soviet Union, led to many new FTAs being signed in Europe and the Middle East and North Africa (MENA) region. This led to the United States pursuing a similar strategy, which in turn motivated countries in the developing world to integrate economically within their respective regions as well: it was during this time that projects such as MERCOSUR started, and that the Association of Southeast Asian Nations (ASEAN) took steps towards regional economic integration. In this second wave, FTAs started to become more comprehensive than simply the reduction of restrictions on trade in goods: especially the US started incorporating areas such as investment, services trade and intellectual property rights more and more.

The third wave came with the turn of the century, and is still ongoing. While it can be said that the EU and US are the main propellers of this wave, it is notable that many Asian countries are also enthusiastically entering FTA negotiations. This wave is characterized by not only regional but also cross-regional FTAs, and by bilateral as well as plurilateral agreements Furthermore, it is important to see that the FTAs currently being signed are another order of magnitude more comprehensive than those signed in the late 80s and early 90s. We can thus see that FTAs in this wave are getting bigger in scale as well as scope. This is likely caused by the failing of the Doha round, as mentioned in chapter 2.2.1. While this might worry people who view the WTO positively, it may be noted that the previous waves resulted in the multilateralization of the issues initially solved by regional FTAs: when European countries first integrated and other countries worried about their exports to Europe, tariffs were subsequently multilaterally lowered in the Dillon round of 1960, and when in the second wave the US started incorporating services, investment and intellectual property, this led to the GATS and TRIPS agreements with the founding of the WTO at the end of the Uruguay round. This may offer hope for the Doha round (WTO, 2011, pp. 51-54).

3.2.2 Various forms of FTAs

There are various forms to categorize FTAs. Two common forms will be covered in this subchapter: the amount of participants and the degree of integration. After, the difference between bilateral investment treaties (BITs) and FTAs will be briefly covered.

- Amount and type of participants

One way of categorizing is the number of participants. If an FTA is between two countries, it is bilateral; if it is between more than two, it is plurilateral. It can also be between two blocs, such as, for example, between the EU and ASEAN (such an agreement does not exist, this is just an example)

- Degree of integration

Another way to categorize FTAs is the degree of integration. A simple FTA is not the same as a customs union: an FTA simply eliminates or significantly reduces restrictions among members. However, it leaves the members free to have their own, independent policies towards non-members. For example, even though the EU has an FTA with Canada, Canada and the EU still have their own separate policies towards the USA. A customs union, on the other hand, does not leave that option. It is thus everything an FTA is, plus the communizing of policy towards non-members. When former US President Donald Trump asked German Chancellor Angela Merkel if the US could sign an FTA with Germany (Pasha-Robinson, 2017), the answer was no because of this exact reason. As the EU is a customs union, Germany cannot unilaterally enter into FTAs: it must be done through the EU. While international trade law stops at this distinction between FTA and customs union, a further degree of integration can be discerned: a common market, such as the EU, is a customs union which allows the free movement of labor and capital; and an economic union, which is a common market which also has a common fiscal and monetary policy among members. The US can be seen as an economic union, while the EU is slowly moving towards this state as well.

- Difference between BIT and FTA

Bilateral investment treaties (BITs) are treaties between two countries relating to the rules on investment. Usually, the idea is to foster foreign direct investment (FDI) between the countries by putting in place certain safety measures for the investors of the other party. While there are

many such suggestions, research suggests that BITs can be incorporated into FTAs as an investment chapter without any detriment to them (Lo, 2008).

3.2.3 FTAs as a diplomatic tool

Countries use FTAs for more than just directly trade-related issues. This phenomenon is called ‘’issue linkage’’. There is a wide range of literature regarding issue linkage in trade. An important work is that of Horn, Mavroidis, & Sapir (2010). Horn et al. (2010) examined issue linkage in FTAs concluded by the USA and the European Union. In doing this, they came to the conclusion that a distinction had to be made between various issues linked to trade. They distinguished ‘’WTO plus / WTO +’’ from ‘’WTO extra / WTO X’’. In this framework, WTO + refers to provisions which build upon those agreed upon under the WTO, while WTO X refers to provisions which relate to commitments which go beyond the scope of the WTO. An example of a WTO + provision could be one relating to investment regulation, while a WTO X provision would relate to, say, human rights or environmental standards. In a World Bank review of 279 FTAs signed between 1958 and 2015, Hofmann, Osnago, & Ruta (2017) showed that FTAs are getting deeper over time, with numbers of WTO + and WTO X provisions steadily increasing. Hofmann et al. (2017, p. 3) show that almost 90% of FTAs include at least one WTO X provision. We can thus see that countries are increasingly using FTAs not only for trade purposes, but for general diplomatic purposes, intending to use trade as a foreign policy tool.

3.2.4 FTAs as an industry tool

It is often alleged that FTAs are an industry tool, used by financially strong domestic industries to protect their own interests. This criticism is given by civil society, as evidenced by large demonstrations and petitions against FTAs such as the TTIP and TPP, as well as by certain academics: Rodrik (2018) argues that FTAs are ‘’the result of rent-seeking, self-interested behavior on the part of politically well-connected firms: international banks, pharmaceutical companies, multinational firms." Wandel (2019) postulates that ‘’the [free trade] agreements have a high content of managed trade riddled with loopholes suitable to foster sneaky protectionism and entrench special interests.’’ However, is this the case? Conconi (2018) notes that ‘’ there is no systematic empirical evidence on whether the non-trade provisions contained in trade agreements protect the interests of large corporations.’’ To find out more, she, together with other researchers, developed a model for studying this phenomenon. First, Blanga-Gubbay, Conconi, & Parenti (2020) used publicly available lobbying data under the Lobbying

Disclosure Act of 1995 to show that firms lobbying on FTAs are over 99% of the time in favor of said FTA, while also being larger than non-lobbying firms and more likely to be engaged in international trade. They then found out that this could not be explained by existing literature and thus developed a model based on two features: lobbying expenditures are paid ex-ante, or in other words before the ratification of the desired FTA; and legislators in both countries are biased in favor or opposed to the FTA. They found that firms spend more on lobbying in favor of an FTA in the following cases:

- When tariffs for their final good would be reduced in the foreign country
- When tariffs for their components or materials which they import would be reduced in the home country
- When the foreign countries in the FTA were particularly important in terms of their market and sourcing potential
- When the depth of FTAs, as measured by Hofmann et al. (2018), increased
- When legislators were less likely to favor ratification

Most of this seems quite logical: if an FTA increases the revenue or reduces a cost, firms will lobby more to make sure it gets ratified. However, the fourth point may be of concern. As the case seems to be that with an increase of WTO + and WTO X provisions, lobbying expenditure also increases, it seems that these provisions favor corporations in ways which are not as transparent as the lowering of tariffs. Conconi (2018) notes that ‘’ [a]necdotal evidence suggests that large corporations may indeed be able to ‘’buy" favorable provisions in trade agreements.’’ She gives the example of a large pharmaceutical firm spending over USD 2 million on lobbying for the Trans-Pacific Strategic Economic Partnership Agreement (TPP), after which intellectual property provisions did indeed seem to favor pharmaceutical companies. However, Conconi (2018) also realizes that anecdotal evidence does not hold up in academic circles, which is why she suggests that ‘’[m]ore work is needed to shed light on the role played by firms in shaping the content of trade agreements’’ (Conconi, Linking Trade Policy to Non-Trade Issues: Selected Survey of the Literature, 2018) Wandel (2019) who is so certain that FTAs are riddled with loop holes, agrees that ‘’[f]iguring out which special interests in detail and to what extent they were involved, and which holds the upper hand in shaping these trade agreements would be an important direction for further research’’.

4. EU Trade Policy

Now that we know how the international trade system works, it is time to look at EU trade policy, and specifically at how the EU treats non-trade issues in its trade policy. First, the historical development of EU trade policy as a core competence of the EU will be looked at. Then, the way the EU uses its trade policy to promote its non-trade goals will be examined.

4.1 Historical development of EU trade policy

Just like the negotiators at the Bretton Woods conference, European leaders also knew something had to change after the Second World War. The ideas of Kant and Montesquieu of peace through interdependence found new followers in the government cabinets of Europe, and led to an agreement.

It all started on the 9th of May, 1950. On that day, Robert Schuman, foreign minister of France, held a speech now known as the Schuman declaration. In this declaration, Schuman advocated for placing the French and German coal and steel industries under a common authority. His reasoning was quite simple: as coal and steel are indispensable resources for building weapons and machines of war, the merger of German and French industries would make war ‘’not merely unthinkable, but materially impossible’’ (Schuman, 1950). After not only Konrad Adenauer, chancellor of West Germany, but also the leaders of other countries expressed interest, the agreement was opened up to other nations. And so it came to be that on the 18th of April, 1951, the Treaty establishing the European Coal and Steel Community was signed in Paris. This community gave countries the chance to build trust as they did not have to fear for war anymore. If any country were to start rearming, the other countries would immediately notice.

This relief of tension led to a steady increase in cooperation and new ideas, and on the 25th of March, 1957, the Treaties of Rome were signed. One of the treaties created the European Atomic Energy Community, a body coordinating civil nuclear research between the parties. The other is more relevant for trade policy: it established the European Economic Community (EEC). By 1968, the EEC was a full customs union, a deep FTA which removed tariffs between the signatories and provided free movement to the workers. Crucially, it also defined common policies on agriculture, transport, and trade. With the establishment of the EEC, it is thus the first time that one can speak of a ‘’European trade policy’’.

While the combined economies of the EEC had a stronger voice in the WTO, this was initially mainly used to defend national policy space within each member state (Woolcock, 2011). However, as the years went on, the European member states started to integrate more, ideologically and practically. Especially the Single European Act, signed in February 1986, had a large effect on European trade policy. This was because it introduced qualified majority voting on trade matters. Now, countries could not veto trade policy anymore. The effect was immediate: during the Uruguay round of GATT negotiations, held between 1986 and 1994, the European Communities, as they were now called, had a common approach on almost all the issues (Woolcock, 2011).

Soon after the Uruguay round was concluded, the European Union (EU) – for now the last name change of the European bloc – wanted to start another round. After a few years of pushing, the Doha Development Round (DDA) finally started in 2001. While the EU had a comprehensive round in mind, with a broad agenda including government procurement, competition and investment, other countries were not as enthusiastic. In 2006, after several negotiations and ministerial conferences, it became clear that the DDA was going to focus solely on market access, and especially on agriculture. Agriculture was and is a point where the EU and especially the USA are not willing to make concessions beyond a certain point. At the same time, non-agriculture market access (NAMA) is already so broad in the EU and the USA, that there are few concessions left to be made there. When the EU recognized this it started focusing more on bilateral negotiations for FTAs with important markets. These markets were selected based on their market potential, level of protection against EU goods, and whether they were negotiating with competitors of the EU. This was made official with the Global Europe strategy, presented in 2006 (European Commission P. M., 2006). While the comprehensive trade route did not work in WTO negotiations, the EU had more power in bilateral negotiations. So, FTAs signed by the EU started to get deeper and more comprehensive. The best example of this is the FTA signed with South Korea in 2010: it was the most comprehensive FTA signed by the EU until that point, and was called the first in a ‘’new generation’’ of FTAs. In that same year, the Commission (2010) presented the new trade strategy: ‘’Trade, Growth and World Affairs (TGWA)’’. In this strategy reciprocity was emphasized, and more importantly, human rights, environmental and labor standards, and sustainable development were encouraged with FTA partners. Another part of this strategy was that the EU was now going for the ‘big ones’, seeking FTAs with the biggest economies of the world. One of those, obviously, is the USA.

The FTA that was to be signed with the USA was called the Transatlantic Trade and Investment Partnership, or TTIP. It was negotiated between 2013 and 2016, without ever reaching a conclusion. The main reason for it breaking down was the great civil unrest it caused: massive protests erupted in cities in Germany, Sweden and Austria, among others (e.g. Nienaber, 2016). The criticism was mainly focused at the investor-state dispute settlement system and at the idea that TTIP would be a 'living agreement' which allowed regulators to converge rules through, for example, mutual recognition, without opening up the agreement. The people of Europe were thus afraid of losing their democratic power to investors and regulators. Moreover, they were annoyed by the secrecy in which the negotiations were taking place.

All of this led to the presentation of a new trade policy of the EU: the ''Trade for All'' strategy (European Commission, 2015). This is the latest trade strategy of the EU to date, and it answered many of the public's questions and alleviated some of its worries: it increased transparency standards for trade negotiations; it replaced ISDS with an Investment Court System with publicly appointed judges and clear rules for current and future negotiations; it stated that no trade agreement will ever lower regulatory standards; and it aims to promote sustainable development, environmental and labor standards, and human rights in new ways through its FTAs (Gstöhl, 2016).

4.2 Non-Trade Policy Objectives (NTPOs) in EU Trade Policy

4.2.1 Definition

As mentioned in chapter 2.2, trade can be used as a diplomatic tool. By including WTO-X provisions in FTAs and other trade policy, the EU uses its economic power to influence other countries. Hofmann et al (2017) showed that the EU does this more than, for example, the US. At the same time, the provisions that the EU uses are also less enforceable than those the US implements in its trade agreements. But what goals does the EU actually attempt to achieve through its trade policy? -

These goals are called Non-Trade Policy Objectives (NTPOs) or also Non-Trade Issues (NTIs). NTPOs can be categorized in various ways. One such categorization is that of the Design of Trade Agreements (DESTA) project. Based on the DESTA project, NTPOs can be classified in four main categories: civil and political rights, economic and social rights, environmental protection, and security issues (Dür, Baccini, & Elsig, 2014).

- Civil & Political Rights (CPR)

This category relates to issues such as human rights and democracy. The EU started implementing these from 1989 (Bartels, 2013). Over the years, they have steadily become more and more prominent and systematic, referring to international treaties such as the Universal Declaration of Human Rights and/or the Helsinki Accords (Borchert, Conconi, Di Ubaldo, & Herghelegiu, 2020). These days, in the new generation FTAs, they are consistently incorporated as an essential clause, giving the EU an enforcement mechanism through Article 60 of the Vienna Convention, which governs the termination or suspension of treaties.

- Economic and Social Rights (ESR)

Economic and Social Rights (ESR) refers mainly to labor standards and social policy norms. The EU incorporates these rights into FTAs by referring to the core labor standards of the International Labor Organization (ILO).

- Environmental Protection (EP)

This category of NTPOs is concerned with the protection of the environment. The provisions on environment became prominent a bit later than those on civil & political rights, but have made great gains in importance, especially since the Lisbon Treaty (Velluti, 2016).

- Security issues

This category is the youngest one of them all. In the Common Foreign and Security Policy (CFSP) of 2003, the EU included a clause which stated that in all future international agreements signed by the EU, a clause against proliferation of weapons of mass destruction (WMD) should be included (Grip, 2009). Even though in the early years this was not always the case, every FTA since the Lisbon Treaty has such a clause (Borchert, Conconi, Di Ubaldo, & Herghelegiu, 2020).

In the new generation FTAs of the EU, there are entire chapters called Trade & Sustainable Development (TSD) chapters. These chapters include provisions on ESR and EP. The first time sustainable development was included in an EU FTA was in 1993, in the FTA with Hungary. However, it only really became prominent after the Lisbon Treaty, with the FTA with South Korea being the first one to include a dedicated TSD chapter. Since then, every FTA the EU has concluded has included such a chapter. TSD chapters include three types of provisions (Harrison et al., 2019):

- Substantive standards, which consist of minimum requirements for the signees relating to the various obligations set out in the chapter ;
- Procedural commitments, which consist of how these standards are going to be achieved. This includes provisions on transparency, cooperation and not undermining current standards and regulations;
- Institutional mechanisms, which govern the practical implementation of the TSD chapter. This is usually done through committees which are advised by Domestic Advisory Groups (DAGs). These committees oversee and review the implementation. If any provisions are breached, an expert panel is instated which investigates the claims and then makes recommendations on how to proceed.

4.2.2 Development over time with Legality principle

The EU did not always use trade in the same way as it does today. Over time, NTPOs started gaining more prevalence in the FTAs the EU signed and signs. Borchert, Cononi, Di Ubaldo & Herghelegiu (2020, pp. 5-7) use the concept of legalization from Abbott et al. (2000) to show just how NPTOs have gained prevalence in EU trade agreements over the years.

Using the definition of Abbott et al. (2000), legalization has three criteria:

- Obligation, which shows to what extent the partners are legally bound to the rules and commitments laid out in the treaty
- Precision, which refers to the (un)ambiguity of the rules defining the conduct required, authorized or proscribed
- Delegation, which analyzes to what degree third parties have been granted authority to interpret, implement and apply the rules set out in the treaty

These three criteria are used to come to a legality ‘score’, which ranges from complete legalization to absence of legalization. The results of their analysis can be seen in Figure 1.

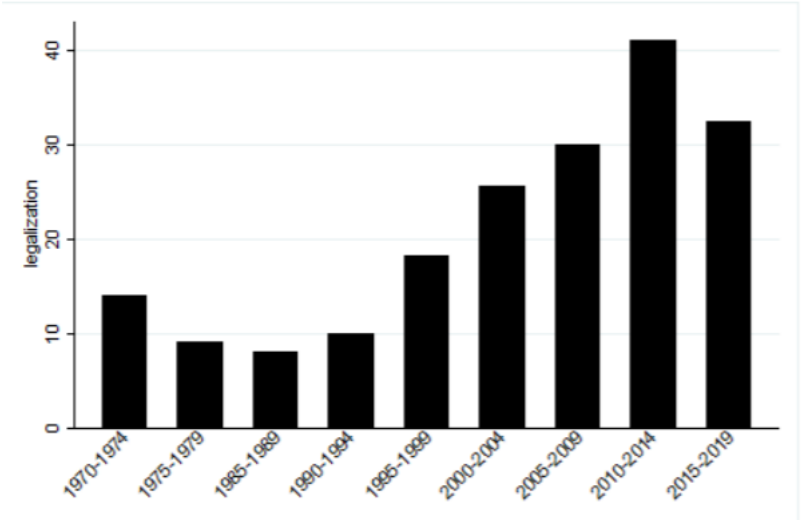

Table 4.1: Evolution of Legalization of NTPOs in EU Trade Agreements (Borchert, Conconi, Di Ubaldo, & Herghelegiu, 2020, p. 7; based on Lechner, 2016)

As we can see, NTPOs have increased greatly in prominence over the last three decades. Borchert et al. (2020, p. 6) note that this increase mainly comes from ESR and EP provisions. But why does the EU use FTAs to reach these goals?

4.2.3 Why through FTAs?

There are various reasons for using trade, and specifically FTAs, to promulgate the NTPOs discussed in the previous sub-chapter. Primarily, it just seems effective, with human rights provisions in FTAs gaining more success than Human Rights Agreements (HRAs) (Hafner-Burton, 2005). But is it all from the kindness of our heart, or are there other reasons? That is what I wish to examine in this sub-chapter.

- European values

Let's start with the stated intent of promulgating European values. This was codified into EU law with the Lisbon Treaty, of which article 21 stated the following:

> ''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.'' (European Union, 2007)

The words ‘action on the international scene’ are crucial here. That is because this formulation explicitly includes trade, as it is part of all action on the international scene. If it would have said ‘The Union’s foreign policy shall be guided ...’, the article would have a significantly more specific scope, excluding trade.

While trade is included in the words ‘action on the international scene’, measures of hard power and political measures are too. However, the EU usually prefers to refrain from hard power measures. Looking back to the statement made by Mr. Eyskens, which I referred to in the introduction of this thesis, we can see that the EU has been a ‘military worm’ partly by choice. This has to do with Europe’s internal history of war, but also with its history as a colonial power. However, it still wants to reach it goals. Politically, it is still too fragmented to influence countries significantly – a ‘political dwarf’. This leads it to use its power as an ‘economic giant’. And so, it uses trade to promote the European values described in Article 21. Already in the late 90s, Sapir (1998) argued that trade policy is “the principal instrument of foreign policy for the EU”.

- Competitive position

While article 21 provides a rosy view of why the EU promotes NTPOs, many scholars think there are other reasons. One of those reasons is the competitive position of EU firms. Lechner (2016, p. 4) finds that ‘’strong lobbying by import-competing firms and trade unions leads to stricter social and environmental clauses in PTAs. Negotiating partner countries that provide a cheap workforce and exert import pressure on the domestic market are especially prone to stimulate lobbying by NTI advocates. By contrast, strong lobbying by trade liberalization advocates - such as exporters, import-dependent firms, and multinationals - is expected to degrade environmental and social issues in PTAs.’’

We can thus see that there is some form of protectionism going on through NTPOs supposedly implemented to improve conditions in partner countries. But how does this work?

Let’s take labor standards as an example. Wandel (2019) argues that by making developing countries comply with labor standards of the developed world, their main comparative advantage – their relatively low price of labor – is partly taken away. While rich countries can afford such standards due to high productivity, poorer countries rely on their labor to be competitive. Ultimately, such labor standards thus may benefit the workers in developed

countries while stifling the development in developing countries. Rodrik (2018) adds that while to us it may seem inhumane to work in a factory all day for a low wage, for many workers in developing countries it is preferable to working on the field for even lower wages, with possibly the same or an even higher amount of hours.

The same goes for environmental protection: if other countries have to comply with the same rules as the EU, it might become economically viable to produce certain products of which production has been outsourced. This is also the case with certain natural materials which we have in our soil, but which are not being mined as other countries are doing it cheaper.

- Geopolitical considerations

Some scholars also argue that there are geopolitical considerations in the FTAs the EU signs. Through incorporating certain NTPOs, countries in Europe's periphery may be made more 'western'. While the evidence for this is not clear, one thing is: Russia interpreted the DCFTAs with the EU's Eastern partners as a geopolitical offensive. It responded with the creation of the Eurasian Economic Union, its enlargement to Armenia and interference on Ukrainian territory. (Gstöhl, 2016)

- Political reasons

Some scholars also argue that there are political reasons for the inclusion of NTPOs in FTAs. Meissner & McKenzie (2019) ask the question why the European Parliament insisted on including a strong human rights clause in the Comprehensive Economic and Trade Agreement (CETA), the FTA with Canada, a country which belongs to the top five countries regarding fundamental human rights. Now, they would not ask this question if this was routine. However, it is not. While the CETA includes a clause which irreversably terminates the FTA in case of human rights violations, the EU's FTA with Vietnam does not set out the suspension of trade in case human rights are breached (Meissner & McKenzie, 2019, p. 1275). There are similar examples with the Mexico, Singapore and Colombia & Peru FTAs. In interviews conducted by Meissner & McKenzie (2019), involved actors admitted that they believed that the conditionality clause in CETA would never be used. Still, the European Parliament drew a red line: the clause had to be a part of the CETA. Meissner & McKenzie (2019) use organizational action theory to postulate that this is due to political reasons: the European Parliament wanted to position itself as a supporter of the public interest.

- Recent decline in multilateralism

Even though multilateralism is not directly included in the categories of DESTA, it is a very important goal for the European Union. Recently, the decades of effort towards the interdependent system we have today have slowly been eroding. With Xi Jinping in China, Putin in Russia, Bolsonaro in Brazil, and until recently Trump in the USA many of the world's biggest countries have leaders that are not averse to isolationism and protectionism. President Biden does not seem to materially deviate too much from the foreign policy strategy of Trump either. As Europe knows the value of interdependence through experience, it might be the only real defender of the multilateral system that's left. As Colgan & Keohane (2017) note, populist leaders, whether left- or right-wing, try to increase sovereignty and weaken national and international institutions. Through provisions protecting the rule of law in countries with which the EU signs agreements, the multilateral world order will indirectly also be protected. At the same time, the mere action of signing these agreements upholds the international system. By signing them, the EU and the counterparty legitimize institutions such as the ILO. Moreover, as the European integration example shows that interdependence promotes peace, the EU even indirectly supports security through these agreements as well, next to the direct security provisions described above.

4.2.4 Actors and stakeholders

Now that we know the what and the why, we need to know the who. Trade is an exclusive competency of the EU. This means that a single member state may not conclude an FTA by itself. A good example of how this works is the following exchange: "Ten times Trump asked [Ms Merkel] if he could negotiate a trade deal with Germany. Every time she replied, 'You can't do a trade deal with Germany, only the EU,'" the official told The Times. "On the eleventh refusal, Trump finally got the message, 'Oh, we'll do a deal with Europe then.'" (Pasha-Robinson, 2017)

So who does one talk to to 'do a deal with Europe'? The most important actor is the European Commission. In the process of concluding an FTA, the Commission prepares and negotiates it, after which it proposes the FTA to the Council of the EU and the European Parliament for ratification. If the agreement is a so-called 'mixed agreement', meaning that individual EU countries share in the responsibility for certain parts of the FTA, it also needs to be ratified by all the individual member states' parliaments.

While this is the basis of the process, it involves many negotiating rounds, in which the Council and the Parliament also give their opinions, possibly influencing the negotiations. There are also people from business, trade unions and NGOs influencing the negotiations: this is known as lobbying. Lobbying is a part of the FTA in general, and of the process of coming to NTPO provisions specifically. As Lechner (2016, p. 9.) notes, ‘’interest group activity varies across types of non-trade issues and from partner country to partner country.’’

- Business

Business is often active on labor rights and environmental standards. As explained above, authors such as Rodrik (2018) and Wandel (2019) would argue that this is a form of protectionism, as business interests try to increase their profits by stifling competition from abroad. Lechner (2016) shows that this is a simplified view. There is indeed one sub-section of business that is rather protectionist: the import-competing industries. As they do not want increased competition, they lobby for increased barriers, sometimes taking the form of NTPOs. On the other hand, there is another sub-section, the import-dependent firms, that lobby for trade to be as free as possible, and thus against NTPOs. They do this because if standards increase abroad, their imported goods will be more expensive (Eckhardt, 2013). The same goes for large multinational companies, which often produce in low-wage countries and do not want their production costs going up because standards rise. We can thus see that business lobbies in various ways, depending on the specific interests of the company or industry.

- Trade unions

Trade unions are more active with regards to labor rights. This is because as trade open up, they face competition from abroad. If the workers abroad do not need to adhere to the same standards, those at home might be outcompeted with regards to the price of labor. At the same time, trade unions are also motivated because of the quality of the jobs at home. They also want strong protections, simply because they themselves will then be protected.

- NGOs

Non-governmental organizations (NGOs) are active on a large array of NTPOs in FTAs. Compared to business and trade unions, NGOs lobby for protections relating to the most categories of NTPOs, including human rights (CPR), labor rights (ESR), and environmental protection (EP). They want to design FTAs to include a multitude of NTPOs, preferably more broad than the set included currently, while also including strong enforcement provisions.

However, they have a problem: they are not very effective. As shown by Dür & Bièvre (2007), NGOs have a difficult time keeping up with trade unions and business while lobbying for NTPOs. This is because as costs and benefits are so far apart while lobbying on an FTA, they have a hard time keeping their donors motivated. Their only advantage is found in the category of human rights. As they are basically the only ones lobbying this, they have a larger influence.

4.2.5 Effectiveness of NTPOs in FTAs

So we know which NTPOs the EU is including in its FTAs, and we have an idea as to why. But are they effective? The evidence is mixed. One study of EU FTAs concluded before 2010 found that FTAs with provisions for labor standards improved the rights of workers in those nations (Postnikov & Bastiaens, 2014). Another study found that while FTAs are not ideal forms of human rights governance, they are more effective than Human Rights Agreements (HRAs), as they have stronger enforcement clauses (Hafner-Burton, 2005).

The labor rights gains seem to mainly be made in the time leading up to ratification: the ILO (2013) found that pressure exerted during the negotiation period of FTAs can lead to support for and changes in labor rights. This was confirmed to be the case by Garcia & Masselot (2015), who found that due to the EU placing importance upon labor rights during the negotiations on an FTA with Malaysia, the country ratified certain ILO conventions.

So what about when an FTA is in place? Various authors argue that NTPOs are not very effective anymore. The first reason for this is that FTAs are regulated under GATT Article XXIV. Article XXIV provides the exception for MFN treatment for FTAs. However, it sets the condition that trading partners have to eliminate duties and other barriers to trade on ‘substantially all trade’ between them. Referring to positive and negative conditionality as a ‘’carrot-and-stick’’ mechanism, Borchert et al. (2020, p. 20) argue that ‘’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’’. So, not having a carrot or a stick, the EU’s only option is suspending or withdrawing completely from the agreement. There are multiple problems with this:

First of all, as FTAs are reciprocal, the EU is also hurting itself when it suspends or terminates a trade agreement. This means that the EU rarely does this, even when trading partners blatantly violate human rights (Beke, D'Hollander, Hachez, & Perez de las Heras, 2014). The only times it has actually suspended parts of an FTA, it suspended technical cooperation programs, rather

than tariff preferences. This shows that the EU is reluctant to actually suspend FTAs, even when provisions are being violated.

Secondly, Trade & Sustainable Development chapters have clauses excluding them from the regular dispute settlement mechanisms, which means that the EU could not even suspend the treaty if it wanted to. This means that for labor rights and environmental standards, it has to resort to other measures. Usually, the EU turns to dialogue: Civil Society Meetings (CSMs) and Domestic Advisory Groups (DAGs) are set up which meet once a year. At these conferences, progress is discussed. If there are concerns, an expert panel is established. While this sounds reasonable, the evidence does not support this system. Harrison et al. (2019) researched this process in trade agreements the EU signed with Caribbean states in the context of the CARIFORUM Economic Partnership Agreement (EPA), as well as the FTAs with Moldova and South Korea. They show that this system has severe problems. The CSMs, for example, have very limited resources, with a methodological approach for monitoring the social impacts of the EPA only being developed eight years after the EPA had come into force. Furthermore, when Harrison et al. (2019) interviewed people appointed to expert panels, they appeared to be unaware of their functions, or sometimes even of being appointed at all. Harrison et al. (2019) state that in their three case studies, they found no evidence of improvement of labor standards due to the inclusion of TSD chapters in the respective agreements.

On a structural level, Harrison et al. (2019, p. 271) found that ‘’the appropriateness of the EU model is brought into question in terms of substance (for instance, should the focus always be on ILO core labour standards?), process (for instance, what are the possibilities and limitations of dialogue in the context of particular political situations and relationships?), and scope (such as, should there be a focus on labour-related obligations beyond those contained in the TSD chapter?).’’ EU officials interviewed by Harrison et al. (2019) said that they thought that the situation would improve if TSD chapter enforceability was increased by making it a part of the ‘essential elements’. However, as explained above, this would not help a lot either. Other ways would make more sense: Harrison et al. (2020, p. 272) suggest that ‘’[i]n the same way that the EU has addressed context-specific commercial issues in a bespoke manner (such as in the annex to deal with non-tariff barriers in automobile parts under the Korea FTA), it ought to extend the same treatment to fundamental labour rights by designing provisions that articulate with the most pressing labour issues in each trade partner.’’

There is another alternative to promulgate NTPOs through trade policy. Instead of bilateral treaties, the EU could unilaterally influence other countries through its Generalized System of Preferences. Scholars such as Borchert et al. (2020) recommend this route. What is this Generalized System of Preferences?

4.2.6 Generalized System of Preferences

The Generalized System of Preferences (GSP) is a key component of the WTO provisions on Special and Differential Treatment, the system benefiting developing countries described in chapter 2.2.1.2. Simply put, the GSP makes it possible for developed countries to extend preferential (i.e. reduced) tariffs to developing nations. It is an exception to the Most-Favored-Nation rule. The legal framework for this was laid with the 1979 ‘’Enabling Clause’’ under the GATT, which said that “contracting parties may accord differential and more favorable treatment to developing countries, without according such treatment to other contracting parties” (GATT, 1979). As these reduced tariffs are extended unilaterally, developed countries can increase or decrease tariffs for developing countries at will. This gives them a ‘’carrot-and-stick’’ mechanism in which they can reward what they consider ‘good’ behavior and punish ‘bad’ behavior. (Conconi, 2018, Borchert et al., 2020). For this reason, researchers such as Borchert et al. (2020) consider this the best avenue for reaching non-trade goals through trade policy. Conconi & Peroni (2012) also show that GSP preferences can be effective.

So how does the GSP of the EU work? The EU has three levels in its GSP (European Commission, 2020):

- Standard GSP

A country qualifies for the standard GSP of the EU if it has an income level below ‘’upper middle income’’, according to World Bank data. Furthermore, it may not benefit from other arrangements such as an FTA with the EU. The standard GSP partially or fully removes tariffs on about 66% of goods. A country can ‘graduate’ from the GSP if it becomes an upper middle income country, while a specific sector can be graduated if it proves to be competitive enough to not need a preferential tariff. In practice, this means that if a certain sector in one single country provides over 57% of a certain good to Europe, this sector is deemed competitive and not in need of preferential treatment. The exceptions to this are, not surprisingly, agriculture and textile products.

- GSP+

Countries which qualify for the regular GSP which also comply with 27 international conventions related to human rights, labor standard, environmental protection and good governance may apply for GSP+. GSP+ slashes all abovementioned tariff lines to 0%. Apart from these conditions, the countries have to agree to be monitored. In this monitoring process, the European Commission exchanges information, goes into dialogue with government and civil society, and involves stakeholders to see whether the conventions are actually being followed. While nine countries currently benefit from GSP+, three more (Bangladesh, Cambodia and Myanmar) are temporarily taken off of it due to alleged breaches of the agreements. The European Commission is actively engaging with these countries to improve the situation.

- Everything But Arms (EBA)

The third category is called Everything But Arms (EBA). This is because it slashes all tariff lines to 0%, except for arms and ammunition. The countries which qualify for this are the Least Developed Countries (LDC) as defined by the United Nations Committee for Development Policy. These countries need not apply, they are added to the EBA program automatically. The program's beneficiaries stay there until they develop out of LDC status, but may also be removed if they seriously and systematically violate human rights and labor standards (European Commission, 2020).

As we can see, there are certain ''carrot-and-stick'' elements in the EU GSP. The carrot is the GSP+ program, while the stick is being removed from it or from the EBA program. However, it is still not very flexible. Countries qualify for the GSP according to set rules: if you are below upper middle income, you qualify. Countries can thus still get a piece of carrot without actually complying with European standards. Another criticism of this system is that it may lead to higher tariffs for the rest of the world. Limão (2007) argues that as the EU wishes to offer substantial reductions of tariffs to countries complying, it may be incentivized to keep tariffs to third parties higher. He is thus saying that to make, for example, GSP+ attractive, the normal GSP rates might be kept higher.

5. The Case of Colombia

In the previous chapter, the international trade framework was discussed. Then the EU's trade policy was examined, especially looking at Non-Trade Policy Objectives. In this examination, we saw what NTPOs the EU uses, and why. We saw how previous research and theory regarding the effectiveness of NTPOs in FTAs of the EU is relatively pessimistic. In this chapter, I wish to examine whether that pessimism is justified. I will do this by way of a case study of a single FTA of the European Union, namely the FTA between the European Union and the Andean Community. This FTA was originally negotiated between the European Union and its member states, and Colombia and Peru. These negotiations concluded in 2011, with the agreement being applied to these two countries and the EU starting in 2013. Ecuador joined the agreement in 2017, and Bolivia, as a member of the Andean Community, has the right to seek accession as well (European Commission, 2021).

For this case study, I will look solely at the case of Colombia. In the case study, I want to look at whether the TSD chapter in the FTA between the EU and Colombia had an effect, and if so, to what extent. I will do this in three parts. First, I will look at the history and current situation regarding human rights, labor rights and environmental standards in Colombia. Secondly, I will look at the TSD chapter in question, dissecting its articles to see how it is supposed to improve the situation. Thirdly, I will look at internal and external reports regarding the FTA. The internal reviews are conducted or commissioned by the European Parliament and the European Commission. The external reviews were done by NGOs, specifically by the Transnational Institute and the International Office for Human Rights Action on Colombia (Oficina Internacional de Derechos Humanos – Acción Colombia / Oidhaco). This will be combined with the results of a series of interviews I conducted with experts from journalism, activism, academia and business. These three parts will be followed by a discussion section, where I discuss the key findings of the case study, the practical implications of those findings, and possible avenues to improve this research project in a future iteration.

5.1 Situation in Colombia

In this subchapter, I will examine the situation in Colombia over the last decades relating to human rights, labor rights and environmental standards.

5.1.1 History of the Colombian armed conflict

When analyzing the human rights situation in Colombia, it is imperative to consider the internal armed conflict. While different scholars have different definitions for the starting date of the

conflict, one date that is always mentioned is the founding of the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia / FARC). This far-left guerilla group was founded on May 27th, 1964 as a Marxist-Leninist peasant force. The FARC, along with other guerilla groups such as the National Liberation Army (Ejercito de Liberación Nacional / ELN), fights for social justice. According to them, this should be provided through communism and/or the redistribution of land. Obviously, these guerilla groups were not created out of nowhere. For the roots of the conflict we have to go back to the early 20th century, a time period during which Colombia could be characterized as a 'banana republic'.

The term 'banana republic' was coined by American author O. Henry (1904), based on his experiences in Honduras and describing Central and South American countries at the time. As the Economist puts it: ''His phrase neatly conjures up the image of a tropical, agrarian country. But its real meaning is sharper: it refers to the fruit companies from the United States that came to exert extraordinary influence over the politics of Honduras and its neighbours'' (The Economist, 2013). These fruit companies, in particular the United Fruit Company, had also found their way to Colombia. There, it exploited the local workforce while suppressing any call for unionization, often leading to conflict between the company and its workers. These tensions culminated in a large strike in the north-eastern town of Ciénaga in November 1928. The strike continued for several weeks, with the United Fruit Company refusing to negotiate with the workers. Finally, the strike was forcibly put down by the Colombian military, which killed unknown amounts of strikers, with estimates ranging from one hundred to several thousand victims (Brungardt, 1995).

This event, known as the 'Banana Massacre', caused public outrage in Colombia. It led to a great increase in interest in left-wing organizations and political parties, such as the Liberal Party. While to a European eye it might seem curious to characterize a Liberal party as a left-wing party, this was and is the case in Colombia and many other developing countries. While currently more center-left and social-democratic, the Liberal Party of 1940s Colombia was rather socialist. Under the leadership of the charismatic lawyer Jorge Eliécer Gaitán, it was also very successful. In 1948, Gaitán, the likely winner of the upcoming elections, was assassinated (Weyl, 1960). Immediately this sparked massive riots in Bogota, known as the Bogotazo. Down the line, it provoked a period in Colombian history known as La Violencia. La Violencia was a civil war fought between the Conservative Party supported by the public security forces on the one side, and the Liberal and Communist Parties supported by guerilla groups on the other. It lasted 10 years and killed over 200.000 people. It culminated in an agreement between the

Liberal and Conservative Parties known as the National Front. Under this agreement, the presidency would alternate between the two parties.

Many people accepted this agreement, others had already demobilized following an offer of amnesty for any fighters who laid down arms in 1953. However, not everyone was content with the agreement. Especially communist fighters often stayed active, organizing themselves in small enclaves in the countryside. One of these enclaves was called the Marquetalia Republic. The Colombian government regarded these enclaves as unwanted and wished to regain control over the areas occupied by the communist groups. This led to Operation Marquetalia in 1964, in which the Colombian army surrounded and subsequently overran the enclave. While the mission was successful, most of the communists there had fled and survived, only to reunite later. They would go on to found the Bloque Sur ('Southern Bloc') later that year, which eventually would be renamed into the FARC two years later, in 1966.

This marked the beginning of more than 50 years of armed conflict which, some argue, continues to this day. The conflict is fought between far-left guerilla groups on the one side, and national security forces supported by far-right paramilitary militias on the other. However, recently there was a breakthrough. In June 2016, after four years of negotiations, a peace deal known as the Havana Accords was signed between the FARC and the Colombian government. This deal was to be ratified by a referendum. While the deal was supported by the Colombian government and the international community, former Colombian President Álvaro Uribe campaigned against it. He believed the FARC was being let off too easy, and was also against the 10 guaranteed seats their newly established political party was promised in the 2018 and 2022 elections. The deal was to be ratified through a referendum and in early October 2016 the Colombian public rejected the deal with a majority of 50.2% and a turnout of 37.4% (BBC News, 2016). The government and the FARC then renegotiated the deal, and signed a revised agreement on the 24th of November, 2016. The Colombian Senate and House of Representatives both overwhelmingly voted in favor of the revised deal, with no one voting against. However, Uribe's supporters in Congress, forming around 30% of the elected officials, simply boycotted the vote.

5.1.2 Current Human Rights Situation

Violations relating to guerilla groups

One would think that with a peace accord, there would be peace. However, while the situation has improved, it is not over. Several factors play into the continuation of the armed conflict.

First of all, there is a group of FARC fighters which refused to put down arms after the peace treaty. Second of all, Iván Duque, a protégé of Álvaro Uribe, won the 2018 presidential election, with one of the main features of his campaign being his opposition to the peace treaty. Ever since he assumed office, human rights violations against demobilized FARC members have been increasing. According to Human Rights Watch (2021), over 300 former FARC fighters had been killed by August 2020. This causes more former fighters, including former second-in-command and top negotiator of the peace deal Iván Márquez, to join the FARC dissidents, the group who did not put down arms. While former FARC fighters are the victims of human rights abuses, these dissidents are also belligerents. In areas where they are active, there are reports of forced displacement, killings, and child recruitment (Human Rights Watch, 2021).

Next to these FARC dissidents, there are also other guerilla groups who are still active. While the signing of the peace treaty was a great step forward, it was signed only with the FARC. Other guerilla groups, such as the ELN, are still active. In areas where these groups are active, there are human rights abuses, fighting between the military and the groups. They fund themselves through drug trafficking and illegal mining.

Violations relating to paramilitary groups

In reaction to these far-left guerilla groups, far-right Colombians started forming paramilitary militias. While there are varying accounts of how these groups started, the most common origin story is that they were created by newly rich drug-lords. As they were buying large amounts of land with their newly acquired wealth, the FARC and other guerilla groups started trying to take the land for local peasants, as well as kidnapping family members of the cartel leadership for ransom. This led to the creation of the paramilitary group Death to Kidnappers (Muerte A Secuestadores / MAS) in the 1980s. MAS and other paramilitary groups were ruthless in their objectives, and by 1987, official government statistics revealed that the paramilitary groups had been responsible for more deaths up until that point than the guerilla groups (Aviles, 2006). By the early 2000s, it was estimated that paramilitary groups were responsible for 80% of all killings relating to the conflict in Colombia (Viera, 2008). These groups were tied to drug cartels, but also to politicians, security forces and economic elites. Between 2003 and 2006, a demobilization process was conducted. However, the process was flawed and successor groups to those militias initially demobilized continue to commit human rights violations (Human Rights Watch, 2021).

Violations relating to public security forces

Not only paramilitary and guerilla fighters violate human rights in Colombia: the government's own security forces, in the form of the army and the police, also do. A famous scandal is that of the 'false positives'. Between 2002 and 2008 the government had a policy which rewarded military commanders who could show they had killed certain amounts of guerilla fighters, and punished those who did not kill enough. This led to soldiers abducting or misleading mostly poor Colombian citizens into following them to deserted areas, then killing them, placing weapons on their bodies, and reporting them to the government as killed guerilla fighters. By now, many mid to lower-level soldiers have been prosecuted and convicted, but senior army officials have broadly been getting away with their actions. To make matters worse, in 2019 the army reinstated policies which were similar to the ones which led to the false positives. A review commission was instated by President Duque, but never reported on their findings (Human Rights Watch, 2021).

Apart from the army, the police also conduct regular human rights violations, especially in the context of citizen protests. In 2019, Human Rights Watch (2021) reports that the police engaged in arbitrary detentions and used excessive force against protestors. More recently, the Inter-American Commission on Human Rights (IACHR), the human rights body of the Organization of American States (OAS), released a report strongly criticizing the excessive use of force by the Colombian National Police during the ongoing protests. These protests, which started on the 28th of April, 2021, started after Duque announced a tax hike, and are in reaction to this but also more broadly towards the Duque government. The IACHR (2021) report postulates that during these protests, the government treated the citizens as its enemies, antagonizing rather than protecting them. The Colombian government argues that it respects protestors, but was acting against vandalism and low intensity urban terrorism (Ministerio de Relaciones Exteriores, 2021).

Violations relating to community leaders

Another big issue in Colombia is the killing of community leaders and activists. Human rights activists who defend the rights of indigenous Colombians, Afro-Colombians, and other groups are routinely killed. As of October 2020, the Office of the UN High Commissioner for Human Rights (OHCHR) had documented killings of 49 human rights defenders in 2020 alone, and was verifying another 50 cases (Human Rights Watch, 2021). Another group that suffers under this form of violence are labor union leaders. This leads us to the next topic: labor rights.

5.1.3 Current Labor Rights situation

Colombia is a signature to all eight fundamental International Labor Organization (ILO) conventions. These include convention C087, regarding the Freedom of Association and Protection of the Right to Organize, and convention C098, the right to Organize and Collective Bargaining. Regarding both these conventions, the ILO draws up yearly reports. In its 2020 report regarding convention C087, the ILO (2020) notes the following violations:

(i) the murder between January 2019 and March 2020 of 14 trade union leaders;
(ii) during the same period, four attempted murders, one case of forced disappearance and 198 cases of death threats against members of the union movement;
(iii) the murder on 26 July 2020 of a union leader in the agricultural sector;
(iv) the following and spying upon, by army agents, of various trade union and social leaders, including the Vice-President of the National Union of State and Public Service Workers of Colombia (UTRADEC) and the Human Rights Secretary of the General Confederation of Labour (CGT), Mr Humberto Correa between February and December 2019; and
(v) the incapacity of the Government to provide specific and adequate protection for trade unionists who are victims of death threats, or to make progress in processing the many historical cases of murders and other violent crimes and resolve the majority of the most recent cases.

Clearly, the right to freedom of association, the right to collective bargaining, and the right to organize have all been violated in 2020. This was not the first year in which that happened; it is systematic and has been going on for decades now. According to the National Trade Union School (Escuela Nacional Sindical / ENS) 3.280 trade union members have been murdered between 1971 and 2018 (Justice for Colombia, 2021). These killings are mostly carried out by paramilitary groups, but also by the national security forces. In the vast majority of cases, these deeds go unpunished. According to a 2019 International Trade Union Confederation (ITUC) report, ‘’most of these crimes have not been successfully prosecuted, with the national government still failing to provide the resources required for the conduct of timely and conclusive investigations and to bring those responsible to justice. In short, the framework for protecting the lives of trade unionists and their families remains inadequate, placing them in a constant state of threat.’’ (ITUC, 2019)

Not surprisingly, in 2021 Colombia is still the deadliest country for union members (ITUC, 2021), and remains in the top 10 worst countries for workers. While Colombia was one of the Latin American countries with relatively strong unions up until 1990, by 2009 only 1.2% of workers were covered by a collective agreement, and only 4% of the workforce was unionized (ITUC, 2009).

5.1.4 Current Environmental situation

Colombia is the world's second most biodiverse country (OECD, 2014). Around half of the country is covered in forest, and the country is blessed with an abundance of water and natural resources. However, there are significant problems, mainly related to deforestation, air pollution and water pollution.

Deforestation

Deforestation is happening at a fast pace in Colombia. One study found that between 1990 and 2005, 5.116.071 ha of forest was lost (Armenteras, Cabrera, Rodriguez, & Retana, 2013). Because of this, by 2006 71% of forest in the Colombian Andes, where most of the people live, was gone (Etter, McAlpine, Wilson, Phinn, & Possingham, 2006). Many of this deforestation is linked to only a few practices: logging for timber, cattle ranching, illegal crop farming and mining activities. The attentive reader will have noticed that I already mentioned that guerilla groups often fund themselves through drug trafficking and mining. It would thus seem that these groups are the perpetrators of deforestation. To a certain extent, they are. However, at the same time, they often protected the forest. This was usually not done out of their great love for healthy ecosystems, but rather because the trees provided them with cover from army planes and helicopters. Now, since the peace treaty, the FARC has not been protecting these forests anymore, leading to an uptick in logging. This uptick was not insignificant: the area deforested in 2016, the year of the peace deal, was 44% larger than the year previous (Brodzinsky, Deforestation soars in Colombia after Farc rebels' demobilization, 2017). Other groups, including paramilitaries, other guerilla groups, and groups with no particular political affiliation who simply want to make money, were already growing coca and mining illegally, and have now moved into the areas previously controlled by the FARC as well. In an interview with The Guardian, Colombian human rights ombudsman Carlos Negret said that other illegal armed groups moving into these areas ‘’want to control the illegal economies that have fueled Colombia's war." (Brodzinsky, 2017a)

Of course, this deforestation results in a great loss of biodiversity, as the natural habitats of the local animals gets destroyed, leading to the extinction and endangering of many different species. Their plight is not helped by the fact that after drug smuggling and illegal mining, wildlife trafficking is the third most lucrative illegal activity in Colombia (Zimmerman, 2003).

Air pollution

Whoever has ever been to Bogotá will know that the air quality is less than ideal. Air quality has been measured since 1967, and today sensors are widely spread throughout the city. More than half of those sensors surpass emission limits considered safe by the WHO (Lozano, 2017). This is mainly caused by the many cars and trucks in the city. However, this is also a problem outside of the major population centers. As Colombia's transport infrastructure is mainly based around road transport, emissions relating to this sector is relatively high. As we can see in Table 1, between 2000 and 2011 the emissions relating to transport grew from 18% to 22%. This trend continued and according to El Tiempo, reporting on documents from the Colombian government's internal auditing service, this number had risen to 37% by 2019 (El Tiempo, 2020).

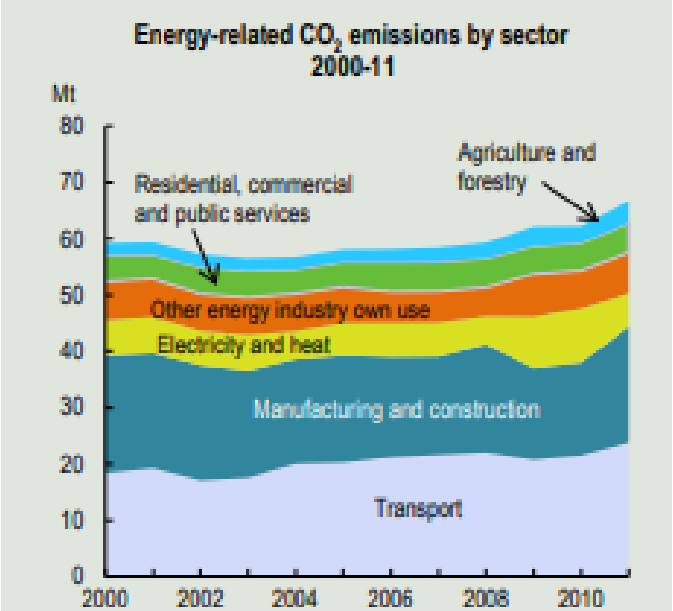

Table 5.1: Energy-related emissions by sector 2000- 2011(OECD, 2014)

The OECD claims that ''every year the health costs related to poor air and water quality are equivalent to 2% of GDP. These costs would be higher if estimates took account of the health impact of Colombia's high use of mercury and other hazardous chemicals in the mining sector'' (OECD, 2014, p. 5). This use of mercury in the mining sector brings us to the next environmental issue in Colombia: water pollution.

Water pollution

Colombia, being a mountainous country, has plenty of fresh water, with 2,100 cubic kilometers of fresh water supply (Sanchez-Triana, Ahmed, & Awe, 2007). However, many rivers and waterways are being continuously contaminated. This contamination happens for various reasons: sometimes, guerilla groups sabotage oil pipelines. More commonly, it is the product of illegal dumping from the industrial sector, or runoff from the agricultural sector. One of the

largest and most dangerous forms of water contamination in Colombia, however, is mercury contamination from use in the mining sector. Mercury is used because it amalgamates with gold, making it easy to separate the valuable metal from the sediment in which it is usually embedded. However, excess mercury is often simply washed into the close by waterways, only to be consumed by the local population, flora and fauna. Apart from people drinking contaminated water, they can also get neurologic damage and autoimmune disorders from eating contaminated fish. As mercury travels up the food-chain, from algae to plankton to small fish to big fish, it gets progressively more concentrated and damaging. Apart from this runoff, the mercury also gets released into the air when the amalgam of gold and mercury gets separated in a process called 'roasting'. This airborne mercury can affect people even far away from the mining site. In total, about two thirds of the mercury released during mining goes into the nearby soil and water, while one third goes into the air. As mercury remains cheap and readily available, combined with the fact that it is highly portable and no extra equipment is needed, it becomes very hard to enforce any regulation trying to stop these practices (Sieber & Brain, 2014).

5.2 Structure and content of NTPOs in the FTA

Now that we know the current issues in Colombia, it is time to look at how the FTA in question tries to solve these issues. In this sub-chapter, I will look at all the non-trade policy objectives covered in the FTA between the EU and the Andean Community. These NTPOs are covered in two sections of the agreement: human rights and security issues are covered in Title I, under the essential elements, while labor rights and environmental issues are covered in Title IX, under the Trade & Sustainable Development chapter.

Title I: human rights and security concerns

Human rights are given great importance, and are covered in the very first article of the entire agreement. Article 1 of Title I goes:

''ARTICLE 1

General Principles

Respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights, and for the principle of the rule of law, underpins the internal and international policies of the Parties. Respect for these principles constitutes an essential element of this Agreement.'' (EU-Colombia/Peru, 2013, p. 7)

Article 2 relates to security concerns, more specifically in the context of non-proliferation of weapons of mass destruction (WMDs). Like article 1, it reaffirms international agreements and

generally held views on WMDs, noting that 'The Parties consider that the proliferation of weapons of mass destruction and their means of delivery, both to States and non-state actors, represents one of the most serious threats to international stability and security.'' (EU-Colombia/Peru, 2013)

As these are the first two articles of the treaty, one would think they have great importance. In a way, they do. However, it must be noted that while Article 1 states that respect for human rights constitutes an essential element of the agreement, there is no dedicated human rights monitoring mechanism established under the treaty. Rather, these articles fall under the supervision of the Trade Committee. It is not like this is the only committee established under the agreement. Article 15 (1) establishes a total of eight sub-committees, all relating to specific parts of the agreement, such as Market Access, Agriculture, etc. (EU-Colombia/Peru, 2013). However, human rights does not get a dedicated committee. Furthermore, it should be noted that the Trade Committee does not include civil society members .

Title IX: Trade & Sustainable Development

Title IX, the Trade & Sustainable Development chapter, includes the articles relating to labor rights and environmental issues. It starts with article 269 (1), in which the parties reaffirm existing international agreements relating to development, labor and environment. Then in article 269 (2), the parties set out the following objectives of this Title (EU-Colombia/Peru, 2013, p. 322). The objectives are to:

a. promote dialogue and cooperation between the Parties with a view to facilitating the implementation of the provisions of this Title and strengthening the relationship between trade and labour and environmental policies and practices;
b. strengthen compliance with the labour and environmental legislation of each Party, as well as with the commitments deriving from the international conventions and agreements referred to in Articles 269 and 270, as an important element to enhance the contribution of trade to sustainable development;
c. strengthen the role of trade and trade policy in the promotion of the conservation and sustainable use of biological diversity and of natural resources, as well as in the reduction of pollution in accordance with the objective of sustainable development;
d. strengthen the commitment to labour principles and rights in accordance with the provisions of this Title, as an important element to enhance the contribution of trade to sustainable development;
e. promote public participation in the matters covered under this Title.

These objectives are given a concrete form in the following articles. Article 269 reaffirms the recognition of international labor standards by both the Parties. The fundamental Conventions of the ILO are explicitly mentioned. It also states these labor standards should not be used for protectionist trade purposes. Article 270 regards environment, and mentions a series of multilateral environmental agreements. Article 271 is a general article, reaffirming that trad should promote sustainable development, and promoting core labor standards, investment in environmental goods and services, and best business practices. After these general articles, there comes a series of more specific articles regarding biological diversity (Art. 272), trade in forest products (Art. 273), trade in fish products (Art. 274), Climate Change (Art. 275) and migrant workers (Art. 276). These articles generally refer back to existing international treaties for the each respective subject.

Starting with article 277, the treaty now goes into how these goals are to be achieved. First, in article 277, 'upholding levels of protection', the Parties commit to not lowering their current standards for the purpose of increasing trade or investment. In article 278, the Parties recognize the importance of using scientific information when making policy relating to protecting worker health and safety as well as the environment.

Starting with article 279, the Parties go into how this is all to be monitored and enforced. First, in article 279, they commit to 'review, monitor and assess the impact of this agreement on labour and environment (…) through its respective domestic and participative processes.' (EU-Colombia/Peru, 2013, p. 336) However, they do not stop at the domestic level. In article 280 they commit to each creating a contact point for this Title within their respective administrations. More importantly, in article 280 the Parties establish a sub-committee on Trade and Sustainable Development. The wording of this article is not very strong. The sub-committee shall meet only 'as necessary' and shall 'establish its own rules of procedure'. It assesses the impact of the implementation of the FTA and makes recommendations to the Trade Committee only 'when it deems appropriate'. The decisions and reports are to be made public, 'unless the sub-committee decides otherwise' (EU-Colombia/Peru, 2013, p. 337).

In article 281, the Domestic Advisory Groups are created: 'Each Party shall consult domestic labour and environment or sustainable development committees or groups, or create such committees or groups when they do not exist.' In article 282, yearly meetings are required in which these domestic committees and the public at large can enter into a dialogue with the sub-committee.

Starting with article 283, we can see what happens when issues regarding labor standards or environment arise. First, a party may request governmental consultations from another party. If dialogue and consultations do not lead to a mutually satisfactory resolution, the sub-committee on trade and Sustainable Development can be convened. If this does also not lead to a satisfactory conclusion, article 284 provides for the possibility to request for the convention of a group of experts, which will assess whether the party in question has fulfilled its obligations under the title. This group of experts will then issue a report, including its recommendations. Following this report, the Party in question has to ‘’inform the Sub-committee on Trade and Sustainable Development of its intentions as regards the recommendations of the Group of Experts, including the presentation of an action plan to implement the recommendations. The Sub-committee on Trade and Sustainable Development shall monitor the implementation of the measures that such Party has determined.’’ The last paragraph of article 285 states that ‘This Title is not subject to Title XII (Dispute Settlement)’. This means that ultimately, neither the recommendations nor the action plan presented are enforceable under the treaty.

5.3 Literature and expert opinion on implementation and effectivity

Having laid out the situation as regards human rights, labor rights and environment in Colombia, as well as the relevant sections of the FTA which try to deal with these problems, it is now time to look at the effectivity of the FTA in dealing with these problems. For that, I have examined several reports, commissioned by the European Commission, the European Parliament and the European Economic and Social Committee and the Committee of the Regions. Of course, my research would not be complete without looking at reports from civil society as well. Lastly, I will look at the latest joint declaration of the Domestic Advisory Groups (DAGs), and the minutes of the latest meeting of the Trade Committee.

I will also relay the results of a series of six semi-structured interviews, which I conducted during the COVID-19 pandemic using electronic means. The people interviewed are from the fields of academia, European agriculture, European business, Colombian journalism and transnational advocacy for human rights and environment. Some of the people interviewed are also members of the European DAG for Colombia. I selected these participants based on their knowledge and experience regarding the subject. Another criterion for participation was quite simply willingness and availability. Next to these six interviewees, I sent emails to a very large amount of other possible participants, including people working for the Commission, members of European Parliament (MEPs), people working for the Colombian government and people

working for labor unions, human rights organizations, environmental organizations, lobbying organizations, etc. The vast majority did not reply to my (repeated) emails.

While each participant had their own area of expertise and so more knowledge on certain subjects than others, all participants had sufficient knowledge to be of value to my research. When I interviewed the participants, I made sure to obtain their informed consent regarding the interview and also the recording thereof. The interviews were conducted in several languages, based on what was the easiest for the interviewees. Some interviewees chose to speak in their mother tongue, while others preferred to speak English, as they were used to using the relevant vocabulary in that language due to their professional activities being conducted in English.

When examining the reports mentioned above, it is very interesting to note the differences in views and also in the type of information given, depending on who writes the report. Regarding the reports, those written by Commission staff promulgate rather positive views, while NGO reports are rather negative. This pessimism can also be seen in the interviewees from NGOs and journalism, while the interviewee who was a business representative was relatively positive about the FTA and the non-trade goals within it.

Let's start with the most positive reports: those from the Commission staff themselves. In the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Implementation of Free Trade Agreements (European Commission, 2018), the Commission presents a relatively good view, lauding progress being made by Colombia through the implementation of new laws and initiatives. The business representative I interviewed also presented views like this, noting that progress is slow but that there is definitely an upward trend. Most interviewees, also those from NGOs, agreed that the Colombian government keeps the FTA in the back of its head when making policy. However, the majority of interviewees also said that this was likely just for PR purposes, rather than because they actually cared.

Regarding labor, Commission staff notes that 'Colombia made advances notably through the implementation of initiatives to reduce labour informality and child labour. These included the national network of labour formalisation and the revision of the list of hazardous occupations.' At the same time, the Commission staff noted that 'the persistence of cases of violence against trade union leaders remains concerning.' (European Commission, 2018, p. 55) Several interviewees also expressed their concerns with this issue. A few said that labor rights can only be secured if basic human rights like the right to life are secured. Another issue that was

mentioned regarding labor rights was that during the negotiation process for the FTA, European and Colombian labor unions should be working together. However, as the relaxation of trade restrictions pits laborers from Colombia against those from the EU as new competitors in a single market for labor, they do not work together as much as they could.

Regarding environment, Commission staff notes that 'Colombia (…) continued to put in place initiatives to address deforestation and implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Colombia also adopted a national strategy for circular economy and a programme to support green business.' However, Commission staff also notes that '[t]he fight against the use of mercury in mining and industrial activities remains a main challenge for the country.' (European Commission, 2018, p. 55)

On the other hand we have the reports by civil society, which are significantly less positive than those from the Commission. One example of such a damning report is the report by Lyda Fernanda Forero for the Transnational Institute (TNI) and the International Office for Human Rights Action on Colombia (Oficina Internacional de Derechos Humanos – Acción Colombia / Oidhaco). This report, called 'Repercussions in Colombia of the Free Trade Agreement with the European Union after three years of implementation' (Forero, 2016).

Forero (2016) gives several examples of broken promises and violations of the TSD chapter provisions and the human rights article. She notes that while sugar exports have increased by 154% between 2012 and 2015, this increase in quantity exported did not lead to an increase in the number of workers hired or to any other improvement in working conditions (Forero, 2016, p. 5). Another example she gives relates to Poligrow, a company in the palm oil sector. This company, backed by Italian investment capital, presented itself as a good example for sustainable foreign investment in Colombia at the Expo Milan. However, Forero (2016, p. 10) notes that the company ''has invested in Mapiripán, a territory that was expropriated following the forced displacement caused by the actions of paramilitaries, especially after a massacre that took place in 2007. The communities still living in the territory have reported an intensification of threats made against them in recent years, as well as environmental damage and pollution, particularly of water sources in their territory.''

Next to giving examples, Forero (2016) also notes more structural issues: she notes that collective bargaining in Colombia is declining, with companies rather opting for something called 'union service contracts', a form of outsourcing which can be seen as a strategy to weaken trade unions. While both the ILO and the OECD have called for this arrangement to be banned,

thousands are being signed, and only three companies have faced sanctions. Moreover, according to Forero (2016, p. 7), the fines were symbolic in nature, and the companies continue with the same arrangement. Other structural problems Forero (2016) notes relate to labor inspections, informed consent of indigenous and black communities, and the extraction of natural resources as a policy for development.

A good way to contrast the reports of the European Commission staff and Forero is the civil society participation mechanism. While the EU has set up a Domestic Advisory Group, which meets regularly, it is less clear who is in it and what is being done on the Colombian side. The Commission staff (2018) states the following on the subject: ‘’There was good progress in the involvement of civil society in accompanying the implementation of the TSD chapter. The EU domestic advisory group (DAG) met regularly throughout 2018 to discuss issues of relevance to the TSD chapter. In Colombia, the dedicated consultative group continued to be consolidated.’’

Forero (2016) was less positive in her wording: ‘’Although such a group was created in the case of the EU and has held meetings during the three years of provisional implementation of the FTA, the same has not occurred in the case of Colombia. There is no information available about who is involved in the Domestic Advisory Groups (DAG) in Colombia and the minutes of their meetings have not been made public. It is therefore impossible to know whether these groups are actually functioning or whether they meet the requirement of being independent of the government.’’

All interviewed members of the EU DAG also raised this issue. The DAG is supposed to be a new body, consisting of civil society organizations. For the EU side of the DAG, this is the case. However, it seems that Colombia used an existing government body, and simply gave them the extra responsibilities of the DAG. The issue is that this cannot be completely verified, as the participants I interviewed told me that they had a very hard time getting any list of names of who was on the Colombian DAG, and when they did get a list, it was incomplete.

Apart from the transparency issue, the participants in the interviews I conducted complained at length about other issues within the DAG mechanism. Many felt that it was just a sort of ritual where the DAG would release a yearly statement, after which nothing would really happen. One even went so far as to say that asking him the question whether this was an effective system was ‘insulting his intelligence’. Others complained that the mandate of the DAG was only for giving recommendations. One DAG member said that it could be more effective with some

small changes. One of those changes would be a simple, procedural change: the Trade & Sustainable Development committee, the overarching body which oversees the implementation of the TSD chapter, meets once a year. When they meet, the order of events is as follows: the TSD Committee have their meeting, present their findings, and then afterwards listen to civil society. At this moment, the DAG gets to speak, followed by a civil society forum where any organization can participate. According to this DAG member this leads to a situation where ''they can just present the results of their meetings, we present them the outcome of our meetings. And then we see each other again, one year later.'' According to this participant, it would be better if the DAG gets to speak first, so the Trade & Sustainable Development committee is forced to include the views of the DAG in their deliberations.

So, what report should we believe? It certainly seems that Forero (2016) has good arguments for her case, with the results of my interviews backing her up. Also, one big point of criticism from Forero (2016, p. 12) as well as from other civil society organizations was that the official reports of the Commission 'lack a more detailed review of the agreements' impacts on the structure of Colombia's economy and, leading on from that, its consequences for living conditions, workers' rights and the situation with regard to social and environmental conflicts that affect the population as a whole.' It seems that the European Commission took this point of criticism seriously, and in 2018, it commissioned an external ex-post review of the FTA. This review, conducted by BKP Economic Advisors, was to review all the impacts of the FTA over the 5 year period from its provisional implementation to 2018. It was conducted over the course of the last few years and finished in May 2021, but the final report has yet to arrive. Luckily, an interim report was published in March 2021. This interim report (BKP Economic Advisors, 2021) dove deep into all the effects of the agreement over the mentioned time period, economic as well as social. It includes an analysis of many human rights, labor rights and environmental provisions which are included in the multilateral agreements that the FTA refers to. In this analysis, one can see a pattern: regarding slavery, BKP Economic Advisors (2021 p. 170) find that ''there was no further evidence found to link the Agreement to freedom from slavery and forced labour via causal chain analysis''. Regarding child labor, BKP Economic Advisors (2021, p. 171) find that ''[i]t is not likely that the declining trend in child labour is linked to the Agreement but rather to various domestic policies.'' Regarding trade unions and trade union membership, BKP Economic Advisors (2021, p. 130) find that while the number of trade unions as well as members has increased, it is not clear whether this is the result of the FTA, or just of general economic conditions. According to BKP Economic Advisors (2021),

this kind of influence of the FTA, where the effects are slim to none, also applies to working conditions, the right to privacy, the right to adequate food, etc. Where the agreement did have an effect, the effects were often mixed, such as in the case of the right to an adequate standard of living (p. 174): ‘’sectoral divergencies in employment suggest that the impact of the Agreement on the right to an adequate standard of living has also been mixed - positive impact of the Agreement for the workers from growing sectors and negative impact for the workers from declining sectors.’’ This idea of mixed effects is recurrent: some effects are positive, some are negative. For example, the increase in pharmaceutical products coming from the EU means Colombians get better healthcare, but the increase in banana exports to the EU means there are higher rates of pollution, leading to an increase in the need for healthcare.

In summary, one can say that the agreement has limited to no effect on many human rights, labor rights, and environmental conditions. Where it does have effects, these are sometimes positive, sometimes negative, being unclear whether there are more positive or more negative effects. It is clear that the EU tries to enter into dialogue with the Colombian government, and it is also clear that the Colombian government makes policy to address some of the issues the EU raises. However, the EU is not the only one raising these issues, and it is unclear whether the Colombian government makes these policies because of external or internal pressures.

5.4 Discussion

In this section, I will present the key findings of the research, followed by the practical implications of these findings. Finally, I will suggest some possible improvements for future research.

5.4.1 Key findings

The result that caught my eye the most was the very pessimistic reasoning many participants had regarding the motivations for the European Union to include these provisions. When asked about this, the most common answer was that they were included because of the unrelenting pressure of civil society. It should be noted that some of the participants who answered this worked for civil society representation organizations themselves. The second most common answer was that it was purely for optics, or even that it was a form of greenwashing. After these rather depressing answers, the next most common answers were that there was a genuine concern among policy makers about the situation in the partner countries, and that the competitive position of European companies relating to foreign companies should be guaranteed. The logic behind this last point is that if European companies are to comply with

certain standards, it would be unfair if imported products could not, thereby giving the producers of them a competitive advantage due to the ability to cut costs at the expense of the environment or their workers. Unsurprisingly, this point was raised by the European business representative I interviewed.

As described above, many participants thought the EU included non-trade provisions because of civil society pressure and to show that they are doing something, rather than because they were genuinely concerned. This pessimism continued into their reasoning for why the Colombian government made policy. Many participants think they do this to avoid bad PR. One participant said they simply make an economic calculation, looking at whether the bad PR for violating, say, labor rights, would cost them more than these violations would bring them financially. There is certainly a sampling bias at play here. Despite numerous and repeated attempts, I was not able to interview anyone actually involved in the negotiation process of the FTA in question. These pessimistic participants were members of human rights organizations, journalists, etc. It can be argued that they present me with a skewed view. At the same time, it can be argued that these are exactly the people who know the situation on the ground. Another, less pessimistic participant presented the other side of the argument: that of the dialogue-based approach of the EU. The argument is, as described above, that it is a decentralized problem, for which there are no overnight solutions. As such, a dialogue-based approach is the appropriate way to deal with these issues, the argument goes. With this argument in mind, the EU does seem genuinely concerned, and applying the approach which they think is most effective.

Another interesting result relates to the system of the DAGs. This system really has its faults. The fact that Colombia still has not provided transparency on who is on their DAG is worrisome, as is the fact that the European DAG, while meeting several times a year and seeming genuinely concerned, is barely listened to by the Trade & Sustainable Development Committee.

Other interesting findings relate to the US-Colombia FTA and the Generalized System of Preferences. As for the comparison to the treaty Colombia has with the USA, some participants told me that they felt that the USA was more effective regarding labor, but less stringent regarding the environment. Other participants thought the deal with the USA was worse altogether, or simply lumped it in with their opinions on the European deal. With regards to the latter, participants answering in this way usually were the same participants which believed FTAs simply benefit large corporations and exacerbate inequality.

Regarding GSP+, there were differing answers. A few participants noted that just as the TSD chapter in the FTA was just an extra form of pressure, this was the same in the case of GSP+. Another participant said that he thought the dialogue-based approach of the FTA, while less enforceable, was more effective than the sanctions-based approach of GSP+. He noted that while taking away trade preferences can be a powerful threat, your leverage decreases to zero as soon as you do it. Lastly, one participant told me that he viewed GSP+ as a system to improve the European negotiation position ahead of FTA negotiations. As it is a unilateral system, the EU can take it away when it wants. According to this participant, the EU first gives unilateral preferences, getting a country used to having low to no tariffs for exporting to the EU. Then, when the EU wants to sign an FTA, it simply takes these preferences away. If the country wants to continue exporting to the EU without preferences, it has to agree to the conditions that the EU sets.

Lastly, one concept that came back a few times was that it is not simple to stop a trade agreement once it has started. The economic interests are enormous and affect many people; workers and business owners alike. Due to this, many participants did not expect the non-trade provisions to become binding anytime soon. One participant said that this is a good thing. This participant noted that while pure trade provisions such as the lowering of tariffs is something that is completely in the control of the government, human rights violations, labor rights violations and environmental pollution or destruction are very decentralized issues, acted out by many independent actors. The participant said that it is unproductive to simply blame the government for this, and that it was more effective to try to help them, using the EU's dialogue-based approach. This ties into another point that was raised by several participants, which is that progress on these issues is very gradual and not something that can be solved in the short term.

5.4.2 Practical implications

If a high-placed European Commission executive would ask me what to improve, I would say the first thing is to pressure the Colombian government to provide transparency relating to the DAG, and to make sure the procedural issues between the Trade & Sustainable Development Committee and the DAG are solved. Unless there is an actual dialogue between civil society and the parties to the treaty, the dialogue-based approach will not work.

Any other recommendations would depend on the view you take. Some participants believed it was of vital importance to make these provisions hard and enforceable. Another believed that this leverage would be quite high at first, only to be completely lost when you actually apply it.

5.4.3 Improvements for future research

The main improvement for future research relates to the sampling bias which I shortly touched upon above. This sampling bias was not due to my choices. I think it was in large part due to the COVID-19 pandemic, during which this thesis was written. The many travel restrictions prevented me from traveling to Colombia and Brussels. Especially on the Colombian side, my experience living there tells me that I would have been way more effective in my efforts to contact people if I had the chance to visit them in person. While I have never lived in Brussels, I believe that in that case it would be similar, in that being there would have greatly helped to talk to the people I wished to talk to. I would recommend to future researchers to get a larger and more varied sample of interviewees, and I would recommend them to actually go to the relevant places to achieve this goal.

6. Conclusion

In this thesis, I tried to answer the question how the European Union uses its status as an 'economic giant' to reach its goals in the world. For this, I posed the following research question:

RQ: How and why does the EU use FTAs and trade policy to achieve its non-trade goals, and are these goals being achieved?

To answer this question, I first deconstructed the international trade framework, and the EU's policy therein. Then, I conducted a case study of the EU-Colombia/Peru/Ecuador FTA, specifically focusing on the case of Colombia. In this case study, I used desk research and a series of interviews to get a view of the situation in Colombia and how the FTA allows the EU to influence circumstances on the ground.

I dissected my main research question into five sub-questions:

RQ1: What non-trade goals are promoted through the EUs trade policy?

There are various ways of classifying NTPOs. In short, the NTPOs the EU pursues can be summarized as human rights, labor rights, environmental protection and security in the form of non-proliferation of WMDs.

RQ2: How does the EU use FTAs to reach its non-trade goals?

The way the EU uses FTAs to reach these goals is by including them into the agreement in the form of provisions reaffirming existing multilateral international agreements, such as the Universal Declaration of Human Rights and the Fundamental Conventions of the ILO. While the human rights and security provisions are within the part of the agreement that falls under the dispute settlement system, provisions relating to labor and environment have their own chapter, the Trade & Sustainable Development chapter. The dispute settlement system does not apply to this chapter. Rather, a system of advisory groups and committees is set up. The EU takes a dialogue-based approach to solving these problems, rather than a sanctions-based one.

RQ3: What is the role of the Generalized System of Preferences in the EU's pursuit of non-trade goals?

The GSP is used to influence countries which did not sign an FTA with the EU yet. These countries get preferential tariffs if they comply with certain standards relating to the same goals described above.

RQ4: Why does the EU use FTAs to reach its non-trade goals?

There are various reasons the EU does this. Literature shows that the main reasons are the promulgation of European values, the competitive position of the EU's industry, geopolitical considerations and political reasons. The people I interviewed added the reason of pressure of civil society.

RQ5: Is the EU reaching its non-trade goals through FTAs?

According to my case study, there is some gradual improvement in the human rights, labor rights and environmental situation in Colombia. However, it is hard to say whether this is because of the pressure of the EU. Also, I found that there are often mixed effects, making it very possible for people to draw differing conclusions regarding the same agreement. There are multiple reasons for this:

First, it should be considered that an FTA is primarily a trade agreement. It thus mainly affects economic factors, which in turn affect the non-trade goals. Generally, there are two perspectives for this. The European Parliamentary Research Service (EPRS, 2018, p. 65) put it best: '[T]here are two different perspectives: The first asserts that FTAs generate negative consequences because of the more intensive use of natural resources, particularly in developing countries that produce raw materials (such as Colombia). This is normally accompanied by consequences that undermine environmental legislation. The other perspective presupposes that FTAs will boost social and economic development in relatively less developed countries, because of the increase in commercial activity. This is coupled with a greater availability of funds for environmental protection and conservation, along with greater consolidation of institutions''

The other issue relates to the non-trade provisions themselves. Again there are two perspectives. This time, the Directorate-General for External Policies put it best (DG External Policies, 2012): ''On the issue of human rights the Parliament will need to judge whether its consent for the Agreement is seen as a means of ensuring continued progress towards better implementation in the partner countries, or as condoning existing practices.'' While this statement regards human rights, it can be extrapolated to the other non-trade policy objectives the EU is pursuing. Ultimately, each person has to decide for themselves whether they are content with the gradual improvement the dialogue-based approach takes. Personally, I think the arguments against making these commitments binding are quite strong. I also think, however, that the EU could reinforce the dialogue-based approach with some tweaks.

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