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NORMATIVE OR MARKET POWER EUROPE?

The Promotion of Labour Standards in Bilateral Trade Agreements
of the European Union with South-Korea, Colombia/Peru and
Vietnam

Abstract

The European Union (EU) increasingly sees, presents and praises itself as a normative power in its foreign relations. In the realm of external trade policy, the alleged normative identity manifests itself in the promotion of social and environmental norms alongside trade liberalization. Within the literature on EU trade policy, there have been several reasons put forward to explain this phenomenon, which either perceive the EU as a Normative Power (NPE) or a Market Power (MPE) at its core. Although these two theories are often used as a conceptual framework to understand the normative dimension of EU trade policy, they have rarely been tested on their explanatory power. This paper aims to fill this lacuna in the literature by analysing the extent to which EU has acted as a NPE or a MPE in the promotion of labour standards in its bilateral trade agreements with South-Korea, Colombia/Peru and Vietnam. It will be argued that the NPE and MPE theory both fail to adequately explain the way in which labour standards have been promoted through the three trade agreements and brings forward the collusive delegation argument to explain how the Commission has managed to stay relatively immune from normative and market power interests and promoted its own specific agenda concerning the topic instead.

Key words: EU trade policy, EU-Vietnam, EU-Korea, EU-Colombia/Peru, free trade agreements, norm promotion, Normative Power Europe, Market Power Europe

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List of abbreviations

ACP	African, Caribbean and Pacific
ASEAN	Association of Southeast Asian Nations
BusinessEurope	Confederation of European Business
CCP	Common Commercial Policy
CLS	Core labour standards
Commission	European Commission
Council	European Council
CSF	Civil Society Forum
CTSD	Committee on Trade and Sustainable Development
DAG	Domestic Advisory Group
DGBEB	Directoraat-generaal Buitenlandse Economische Betrekkingen
EBA	Everything But Arms
EEAS	European External Action Service
EEC	European Economic Community
ESF	European Services Forum
ETUC	European Trade Union Confederation
EU	European Union
EUVFTA	EU – Vietnam free trade agreement
FTA	Free trade agreement
GSP	Generalized System of Preferences
IFHR	International Federation for Human Rights
ILO	International Labour Organisation
ITC	International Trade Committee
KCTU	Korean Confederation of Trade Unions
KOREU FTA	EU – South-Korea free trade agreement
KORUS FTA	US – South-Korea free trade agreement
LDC	Least developed country
MFA	Ministry of Foreign Affairs
MPE	Market Power Europe
MS	Member State of the European Union
NGO	Non-governmental organisation
NPE	Normative Power Europe
PA	Principle-Agent
Parliament	European Parliament
PCA	Partnership and Cooperation Agreement
ToL	Treaty of Lisbon
TPP	Transpacific Partnership
UK	United Kingdom
UN	United Nations
US	United States

Introduction

In 2006, the European Commission (Commission) Communication published the “Global Europe” strategy, in which it announced a shift in its trade liberalization strategy moving away from the focus on multilateralism towards a more bilateral engagement with its trading partners (Commission, 2006). According to the official rhetoric of the European institutions, through its trade policy, the European Union (EU) not only pursues commercial interests, but also aims for normative goals. Indeed, in addition to trade and non-trade barriers, the “new generation” FTAs, as the trade agreements concluded after 2006 are called, also cover regulatory issues concerning social and environmental standards. In its most recent trade and investment strategy document “Trade for All: Towards a More Responsible Trade and Investment Policy” of 2015, the Commission reconfirmed its stance, stating that, along with real economic results for consumers, workers and companies, the EU also takes into account and promotes its core principles and values such as human rights, sustainable development, environmental regulation and labour rights in its trade policy (Commission, 2015).

This strategy has been applauded by some authors in the literature on EU trade policy as a manifestation of the normative power of the organization. Institutionalists and ideationalists argue that the normative ambitions of the EU originate from its unique multi-level organizational structure and the core principles and values that constitute its founding treaties. This, according to the Normative Power Europe (NPE) thesis of Ian Manners, predisposes the EU to act as a normative power in its external policy through which it changes the conception of what is “normal” in international relations (Manners, 2002; Sicurelli, 2015). With its vast market as a bargaining chip, the EU is argued to make use of the prospect of market access as a tool to promote its own norms, turning the organisation into a (self-proclaimed) ‘force for good’ (Nicolaidis and Meunier, 2007). The idea that the normative dimension of EU trade policy is the outcome of its constitutive founding principles, has been maintained by authors such as Van den Hoven (2006), Riddelford (2010) and Hirsch (2017), who point at the Union’s efforts to promote human rights, labour standards and other norms through its trade relations. Others have focused on the distinctive way through which the EU promotes its norms, arguing that the Union’s emphasis on dialogue and cooperation is normatively different from the more coercive methods the United States (US) for example uses to spread its norms (Behrens and Janusch, 2012).

Authors writing from a realist understanding of political economy have dismissed the claims made by the NPE thesis and judge the lofty ideals proclaimed by EU officials as being merely empty rhetoric. As the EU remains a vast internal market at its core, Damro (2012) has argued that, instead of a normative power, the EU should rather be conceived as Market Power Europe (MPE). According to the MPE thesis, the normative dimension of EU trade policy is the result of mobilized interest groups which lobby for the expansion of certain market regulation. The MPE also holds that the ability to do so is linked to the relative bargaining position vis-a-vis the trade partner (Damro, 2012; da Conceição-Heldt and Meunier, 2014). Moreover, some authors have registered tensions between interests and values in the negotiation positions of the EU in the recent trade negotiations and show that the mobilization of certain interest group can conflict with the normative dimension of EU trade policy (Hoang & Sicurelli, 2017). The MPE theory thus predicts a less stable normative regime and might provide a better explanation than the NPE theory for the inconsistencies that some authors have found in the way that the EU has used its trade policy to promote its norms in the past (Orbie, 2011).

The EU increasingly sees, presents and even praises itself as a normative power (Smith, 2011; Manners, 2015).¹ However, although the two abovementioned theories are commonly used as a conceptual framework to understand the *reasons* behind the emergence of the normative dimension of EU trade policy, the literature on EU trade policy has scarcely tried to see to what extent they succeed to explain the way the EU manifests itself in its trade relations (Campling *et al*, 2016). While Orbie and Khorona (2015) and Hoang and Sicurelli (2017) have made a preliminary attempt to integrate both theories in their analysis of the negotiations on respectively the EU-India FTA and the Singapore and Vietnam FTAs, both studies remain descriptive in nature and fail to make decisive statements about the explanatory value of both theories. This is surprising, because the diverse nature of the trade relations and interests at stake in the array of FTAs that the EU has concluded since the publication of the Global Europe strategy, provides us with an ideal hypothesis-testing ground for the two theories.

The promotion of labour standards is a good case in point. The Commission has made it clear that it wants trade liberalization to be accompanied by the promotion of labour standards, but at the same time rejects a one-size-fits-all approach and tailors its labour provisions to the domestic situation of its trading partners (Commission 2006, 2012, 2015). The differences between those partners in terms bargaining power vis-à-vis the EU, their place in the global supply chain and the nature of the trade relationship make both theories predict very different outcomes about the way in which the EU will model its labour provisions in the individual trade agreements, ranging from comprehensive social chapters exporting the European social model to the inclusion of merely symbolic provisions that ultimately have little to no effect on the domestic situation of the trading partner. The research question therefore asked in this paper is: *To what extent do the NPE and the MPE theory explain the way in which the EU has promoted labour standards through its FTAs?*

To answer this question, this paper will look into the labour clauses in the trade agreements with South-Korea (2011), Colombia and Peru (2012) and Vietnam (2015). To analyse to what extent the EU has promoted labour standards as a NPE or a MPE, a qualitative methodology put forward by Manners and Tocci (2008) is used to split up the analysis by looking into normative intentions, means and impact of the labour clause in the agreements. The data that is used consists of primary sources such as actors' statements in the media, position papers and government reports and secondary sources of academics. The results have been triangulated with semi-structured interviews that were held in March 2017 with members of the Trade Department of the Ministry of Foreign Affairs of the Netherlands (DGBEB) by the author, with the aim of gaining a comprehensive understanding of the motivations behind the normative dimension of EU trade policy. It will be argued that the NPE and MPE theory both fail to adequately explain the way in which labour standards have been promoted through the three trade agreements and instead uses the collusive delegation argument to demonstrate how the Commission has managed to stay relatively immune from normative and market power interests and promoted its own specific agenda concerning the topic.

The paper is structured as follows. The first part sets out the main ideas prevalent in the literature on the motivations behind the normative dimension of EU trade policy and connects them to the NPE and the MPE theses. The next chapter builds a research design in which a clear set of verifiable predictions based on both theories are put forward. The third part provides a brief overview of the development of the normative dimension of the EU trade policy and focuses specifically on the growing role of the promotion of labour standards herein. In the fourth part, the

¹ President of the European Commission José Manuel Barroso for example claimed in an interview that "we [the EU] are one of the most important, if not the most important, normative power in the world" (Peterson, 2008).

normative dimension of EU trade policy is analysed by looking at the negotiation process, outcome and effect concerning the promotion of labour standards in the three chosen trade agreements. The last section analyses the results of the case studies and uses the collusive delegation argument to explain the way in which the Commission behaved during the negotiations.

Chapter 1. Theorizing the normative dimension of EU trade policy

Normative Power Europe

As the EU is “neither a state nor a non-state actor, and neither a conventional international organization nor an international regime” (Ginsberg, 1999), scholars of EU studies have gone outside of classical state-centric ideas in International Relations (IR) scholarship to describe the organization’s identity in its foreign policy. The various attempts to grasp the ‘actorness’ of the organization have resulted in the “Europe-as-a-power” debate, in which the ontological questions surrounding the EU’s *sui generis* nature lead to all kind of attempts, or “qualifying adjectives”, to describe the way we should view the EU in foreign policy (Bickerton, 2011). Starting with François Duchêne’s (1972) idea of conceptualizing the EU as a ‘civilian power’, stressing its unique break with conventional military power, other labels that have been offered are Nye’s ‘Soft Power’ (Nye, 2004), Cooper’s ‘postmodern’ (Cooper, 2004) and Kagan’s ‘Venusian’ power (Kagan, 2003). All tried to find an answer outside the conventional state centric view on power of states on what kind of power the EU is, what it says as a power and what it does as a power.

Of these conceptualizations, the NPE concept of Ian Manners has arguably hosted the most attraction within EU-studies (Manners, 2002). Manners argues that the EU is normatively different from states and projects universal norms and principles in its relations with third countries, as its “particular historical evolution, its hybrid polity, and its constitutional configuration” predisposes it to do so (*Ibid*). What these norms are, are left rather vague, but through a “series of declarations, treaties, policies, criteria and conditions” Manners subtracts five core values that are fundamental for the European Union: peace, liberty, democracy, rule of law and human rights. Additionally, he detects four minor norms: social solidarity, anti-discrimination, sustainable development and good governance. These, together with the core values, according to Manners are all constitutive for the EU’s own identity and are transmitted into the international system by its external policies, thereby constituting a “force for good” in the world (Bicchi, 2006).

Inevitably, both the focus on this ‘European uniqueness’ and the ethical claims made by the theory have yielded a storm of critique. Authors writing from a realist, social constructivist, liberal intergovernmentalist and English School perspective have all dismissed the NPE-thesis for their own reasons, pointing at the primacy of interests above norms (Hyde-Price, 2006; Toje, 2008), the difficulty in defining what constitutes a norm (De Zutter, 2010) or dismissing the idea of the EU being a power altogether, assuming that the organisation is little more than an appliance of its (more powerful) Member States (MSs) (Bull, 1983; Mearsheimer, 1994). In spite of these critiques, the concept has gained a prominent place in discussions about the nature of the EU on the world stage up until the point that we can speak of a “neo-normative turn in theorizing the EU’s international presence” (Whitman, 2013). Since its conception, scholars have found proof for the NPE-thesis in a host of foreign policy dimensions, for example in its avocation of the abolition of the death penalty worldwide (Manners, 2002), the promotion of children rights (Manners, 2008), democracy and human rights (Szymanski and Smith, 2005; Brantner and Gowan (2008), peace (Björkdahl & Richmond, 2009), sustainable development (Lightfoot and Burchell, 2005) and conflict prevention (Manners, 2006).

A normative power in trade

Within the body of literature that has emerged on the NPE theory, the field of EU external trade policy has received relatively little scrutiny. Orbie (2011) has suggested that a reason for this omission may lie in the fact that academics often presume that the EU’s international role in this area is reduced to “selfish economic interest”, therefore leaving EU trade literature dominated by rational

choice institutionalist perspectives and political economists who either neglect the normative dimension of the EU's external trade policy or "reduce this issue to the traditional protectionist/free trade dichotomy whereby social considerations are seen as protectionist sentiments spurred on by trade unions, vulnerable industries and short-sighted policy-makers". Despite these presumptions, there have been a few studies into the EU's externalization of labour standards, environmental regulation and human rights through its trade policy (Van den Hoven, 2006; Riddelford, 2010; Hirsch, 2017). Others have seen a manifestation of the normative power of the EU in the generous transition periods the Union grants to its trade partners in liberalizing certain economic sectors important for the country, while usually committing itself to instant liberalization of around 98% of its tariffs (Leeg, 2014). Many others, however, have dismissed these claims and pointed at the prevalence of interests above values in the general trade strategy of the EU (e.g. Mattlin, 2012; Woolcock, 2014) and have dubbed the normative dimension of EU trade policy a "smokescreen" for protectionist or even neo-colonial policy (Storey, 2006).

The abovementioned debate between "'norms' and 'interest' people" (Orbie, 2011), has recently been criticized by Orbie and Khorona (2015) as revolving around a "false dichotomy", based on the wrong assumption that the two are mutually exclusive. This argument has been supported by Martin-Mazé (2015), who pleads for a deeper understanding of the complex relationship between interests and norms, which, he argues, do not necessarily oppose each other. A problematic feature of NPE-thesis is that it never defines the relationship between the two concepts. In his seminal article of 2002, in which he introduced the concept of NPE, Manners never uses the word interest. Critics hold, however, that normative behaviour on the one hand can originate from commercial interest and that the promotion of market norms, such as liberalizing trade and creating an equal level playing field for companies, on the other hand can be seen as normatively inspired as well (Orbie and Khorona, 2015). This confusion around what constitutes a norm in trade policy has been confirmed in interviews with Dutch trade officials, who see their advocacy for trade liberalization as normatively inspired (author's interview 10 March, 2017). Market norms have, however, been "conspicuously absent from the NPE literature", even though the "customs union, the internal market and monetary integration are defining features of the EU" (Orbie & Khorona, 2015). Instead, Parker and Rosamond have made a distinction between cosmopolitan liberalist norms such as human rights and social standards and economic liberalist norms, arguing that both should be seen as part of the EU's normative identity (Parker and Rosamond, 2013). Yet, the authors are quick to point out that the EU's economic identity cannot directly be called neo-liberal, as market integration has been influenced by a multitude of intellectual currents such as German Ordoliberalism, French Colbertism and Anglo-Saxon neoliberalism (*Ibid.*).

There are two main arguments that support the NPE claim stemming from the EU's institutional design, in which the Commission is mandated by the European Council (Council) as the sole negotiator on behalf of its 28 MSs and the other European institutions. First, Nicolaïdis and Meunier (2007) have argued that the internal conflict within the EU between protectionist, free-trade and ideationally minded MSs compel the EU's trade partners to endorse proposals from the Commission that integrate trade liberalization with regulatory barriers including environmental and social clauses in order to bridge the demands by its principals. As the European Parliament (Parliament), the Council and, depending on the character of the trade agreement, the individual MSs all have to give their consent to the final document, the EU's internal conflict can paradoxically be used as a strength in its negotiations (*Ibid.*). A counter-argument has been made by Young and Peterson (2014), though, who suggest that the EU's internal conflict ultimately harms the EU's potential to promote its norms through trade, as the conflict between the more liberalizing actors and the protectionist states ultimately results in a "watering down" of the of the human rights and

sustainable development clauses in the trade agreements negotiated by the EU. A second way in which the Union's institutional arrangement might strengthen the role that norms play in EU trade policy is brought forward through the collusive delegation argument, which holds that by handing over negotiating power to the unelected Commission, the EU is granted a certain independence from interest groups in its trade policy as it is immune to pressuring over re-election support (Dür, 2007). This immunity, as is argued by authors such as Nicolaïdis and Meunier (2002), Meunier (2005) and Woolcock (2005), allows the Commission more leeway to implement trade policies that further the public good against the resistance of protectionist interest groups (Dür, 2007).

Research has also been done on the role that civil society plays on the normative dimension of EU trade policy. Langan (2014) has found, for example, that in the negotiations on a trade agreement with the African, Caribbean and Pacific (ACP) countries, the discourse of the EU on 'aid for trade' and 'decent work' was inspired by, and produced to a large extent in co-operation with, Non-Governmental Organizations (NGOs). Poletti and Sicurelli (2016) argue that the EU's promotion of regulation on biofuels has mostly been shaped by a partnership between the industry and NGOs. In contrast, though, others have argued that the institutional structure of the EU in reality prevents civil-society actors from having impact on the trade policy-making. Dür and De Bièvre hold that the collusive delegation argument also defuses the ability of NGOs to use their power in threatening or enhancing the success in their re-election in order to push for normative goals (Dür and De Bièvre, 2007). Moreover, Hannah (2011) has shown that in the case of the liberalization of intellectual property rights, NGOs do not have the resources to compete with the interests of business and industry.

A market power in trade

The primacy that the NPE thesis gives to the role of norms in EU trade policy has traditionally been downplayed in the literature (Hoang and Sicurelli, 2017). Instead, scholars have pointed at the prevalence of business interests and material gains as the drivers of its action in this field (*Ibid.*, Orbie, 2011). Indeed, Lightfoot and Burchell found that the EU finds it difficult to behave as a normative power when it comes to sustainable development, as it rather gives priority to 'free market liberalism' (2005). Moreover, Young (2007) has shown that due to the commercial interests at stake and the broad agenda pursued, social norms easily conflict with other external policy objectives. These and other studies have revealed that, although the EU might be designed to pursue a more normative trade policy than other actors do, in many cases a conflict between material and ideational interests continues to emerge and is decided in the favour of the former.

According to the MPE-thesis, the normative dimension of EU trade policy is the result of mobilized interest groups lobbying for the promotion or prevention of externalizing market regulation (Damro, 2012; 2015). Protectionist interest groups push for the externalization of the EU's regulatory barriers in order to create an equal level playing field, by committing other countries to apply more stringent rules in terms of labour standards or environmental regulation. Falkner (2007), for example, goes to show that the normative leadership that the EU displayed in the Doha Round in its promotion of international regulation on biotechnology was inspired by the mobilization of protectionist interest groups from within the agricultural industry. Moreover, De Bièvre and Eckardt (2011) claim that anti-dumping regulation is mainly inspired by import-competing groups. On the other hand, import-dependent industries, firms and retailers that rely on imports for their production processes, and exporting firms will push for further liberalization in their field, notwithstanding the possible (negative) effects of such action on the partner country and might push for laxer regulation

on certain human rights issues in order to prevent domestic labour costs from rising (Woolcock 2014).

The MPE-thesis also holds that the ability to externalize its market regulation and thereby spreading its (market) norms depends on the relative market size of the trade partner (Damro, 2012). This idea had already been opined by Lavenex and Schimmelfennig (2009), who suggested that the role that the EU displays in its foreign policy is determined by its power and interdependence in relation to its competitors at the global level. Based on this premises, Heldt and Meunier argue that the more symmetrical the bargaining position the EU is vis-à-vis its trading partner in the negotiations, the more primacy it gives to the role of material interests due to the mutual economic interdependence and the consequent mobilization of business interest (Heldt and Meunier, 2014). Vice versa, the authors expect the EU to act in a more normative way when it is negotiating with a more asymmetrical negotiating partner due to its low degree of interdependence (*Ibid.*)

Chapter 2: Building a normative research design

How to identify a normative power?

This chapter aims to set out a research design that can be used to identify whether the EU has acted as a normative or a market power in the promotion of labour standards in its bilateral trade relations. The previous chapter already briefly touched upon some of the problems with defining what normative behaviour in trade policy exactly constitutes of. This problem is not confined to the area of foreign policy, as normative research in general has been bothered by the “absence of clear criteria for assessing Europe as a normative power” (Orbie, 2011). Manners has suggested a list of core norms and principles that according to him constitutes the EU’s normative identity (cf. Chapter 1), but these can often be interpreted in multiple manners (e.g. with which parts of the population should the EU be solidary with?) and have little practical value. Moreover, other authors have argued that the list proposed by Manners should by no means be seen as exhaustive.

In his seminal article, Manners gives us some general guidelines as to what constitutes normative behaviour, which he defines as action that “shapes the conceptions of ‘normal’” (Manners, 2002). This definition is closely related to the commonly used definition of a norm of Finnemore and Sikkink (1998) as “a standard of appropriate behaviour”. This definition would conveniently liberate the normative power thesis from its force-for-good connotation, De Zutter (2010) argues. However, in that case protectionist or even mercantilist trade policy can be said to be rooted in normative convictions, such as solidarity with a countries’ own labour force. Without clear rules about what constitutes a norm, it is not surprising to see that in Tocci’s comprehensive study on the methodology of the NPE research design (2008), several authors argue that the United States (Hamilton, 2008), Russia (Makarychevc, 2008), India (Kumar, 2008) and China (Womack, 2008) can all be said to be a normative actor in their own way. Interestingly, all authors possess the nationality of the country they argue in favour of, suggesting a close link between our own identity and what we perceive as normative behaviour. Clearly, a neutral definition of a norm renders the NPE-thesis useless.

When we choose to go with a morally non-neutral interpretation of normative behaviour instead, there awaits a difficult task of establishing clear criteria for ethically good foreign policy. Sjursen (2006) and Ericksen (2013) have argued that a normative power is promoting norms that are specifically aimed at strengthening the wider milieu. Accordingly, these norms should be cosmopolitan and universal in nature, norms that are to be found in widely agreed to international treaties. Although this gives us more practical guidelines to determine whether the promotion of a certain norm can be regarded as normative behaviour, this method has been criticized on the basis of Gramscian or Foucaultian ideas about the relationship between norms and power (Behrens Janusch, 2012). The universality of a norm should be closely triangulated with the context in which the international treaty was written, the number of ratifications it has received and the specific wording and the exemptions attached to the document (*Ibid.*). If the international agreement was not achieved by consensus or through the use of force, the promotion of this norm through trade is not a display of normative power but a practice of imperial and hegemonic reign (*Ibid.*). With these considerations in mind, I believe it is nevertheless possible to establish a list of norms of which the promotion can be said to be truly strengthening the wider milieu without display of hegemonic behaviour.

The promotion of core labour standards (CLS) is a good case in point. The 1998 Declaration on Fundamental Rights and Principles at Work was established within the International Labour Organization (ILO) and its signees commit themselves to respect and promote labour principles and

rights in four different categories: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation (ILO, 1998). All categories are linked to two fundamental ILO conventions, which are to be ratified, correctly implemented and promoted. There exists a broad international consensus among both developing and developed countries on the universality of these principles, even though many of its signees have not yet ratified or implemented the conventions correctly due to a diverse set of reasons such as administrative inability (Orbie, 2011).

The legality and the universality of labour standard norms make their promotion a good starting point for researching the normative power of the EU. But simply including a clause on labour standards in a FTA would not directly confirm the NPE thesis. Campling *et al* (2016) argue that we should carefully scrutinize the model of the labour clause before we can say anything about the reasons behind the action, arguing that “Ideologically, will the model seek to promote overall improvements in labour standards in third countries, or focus only on key export industries? Politically, is the model mere window-dressing or is it well-crafted policy-making that can have a real impact? Ideationally, will a normative-power or soft-law agenda only be of interest conceptually, or will it actually have an effect in the real world?”. In this respect, Manners and Tocci (2008) have proposed a tripartite analysis to investigate normative foreign policy, by splitting up a normative research design into three dimensions: intentions, means and results.

Intentions, means and ends

In opposition to a normative power, a market power can have different *intentions* to including norms in its trade agreement. First, a market power can use norms strategically to maximize their utility, for example by using social and environmental standards to protect home markets (Behrens and Janusch, 2012). Second, a market power can use norms symbolically, in which case the market power is not aiming for the diffusion of the norm, but uses the norm to legitimize a profitable policy which could be contested otherwise (*Ibid.*). In both cases, a market power would not include the norm in the trade agreement if it would not increase its gains (*Ibid.*). Therefore, simply implementing a labour clause in a trade agreements would not necessarily confirm the NPE thesis. Indeed, such a clause would be desired from the standpoint of import-competing firms and are often viewed regarded as way of undoing their comparative advantage as a low-wage country by the EU’s developing trading partners (Orbie 2011). If this were the case, we might see labour standards specifically tailored to export-industries able to compete with European producers. If there are no commercial interests at stake for European business, we can expect interest groups to push for the rapid negotiation of a trade agreement in order to benefit from trade liberalization as soon as possible. In that case, the Commission would likely be more prone to push for a symbolic clause in the agreement, in order not to prolong or obstruct the negotiation process. Therefore, we should find out whether the EU has consistently promoted labour standards and whether this has been done in a manner adequate to the problems in the country in order to be able to speak of normative intentions.

As the *means* through which norms are promoted concerns, a normative power would ideally make use of persuasion, positive conditionality and dialogue, supplemented with development assistance and substantial incentives in terms of market access (Orbie, 2011). This is not to say that a normative actor would entirely abstain from the use of hard power, but sanctions should only be invoked when an international consensus exists about the persistent violation of labour standards and preceded by extensive dialogue and negotiation on the matter, preferably with the involvement of civil society organizations and third country governments into the decision-making process (*Ibid.*) In any case, the EU should be acting according the logic of “doing least harm” and “being

reasonable”, according to Manners (2008). Instead, in the case of MPE we can expect the EU to make use of its relative market size as a leverage to secure the most optimal situation for its firms. Therefore, we should also analyse the manner in which the EU has promoted labour standards to distinct between the NPE and the MPE.

The promotion of a norm can be done with the most genuine intentions and through soft and amiable mechanisms, but in order to truly constitute a normative power and shape the idea of what is normal in international relations, we should also expect to find evidence that the norm in question has been transmitted to the trade partner. The third part of the analysis should therefore analyse the execution of the labour clause in the trade agreement and the *impact* it has on the overall labour situation in the partner countries. If we see a lack of commitment in the execution part of the labour clause and if we fail to see any or only selectively changes (in certain export sectors) in the labour situation in the partner country, it is more likely to assume that the clause has been inserted because of considerations closer to the MPE thesis.

A fourth dimension that I will add to the tripartite analysis set out above, is the *relative bargaining power* of the trade partner vis-à-vis the EU. As has been outlined in the previous chapter, MPE expects the EU to increasingly behave as a normative power as its relative bargaining power in trade negotiations grows. In line with the literature on negotiation analysis, I will classify the bargaining power of the EU’s trade partner during the negotiation process by its relative market size and its alternatives to the negotiated trade agreement (da Conceição-Heldt, 2013). While this first pillar is sufficiently straightforward, the second pillar is based on recent research done by da Conceicao Heldt which shows that the better actors can argue that they have a good outside option to the trade agreement that is being negotiated, the greater their ability becomes to stick to their initial negotiating positions and refuse concessions (*Ibid.*)

The expectations with regard to the labour clause in EU trade agreements following from the two theories are summarized below.

	Normative Power Europe	Market Power Europe
Intentions	<i>Consistent in the way in which it promotes labour standards</i> <i>Labour clause is designed to adequately deal with trade partner’s domestic situation</i>	<i>Inconsistent in the way in which it promotes labour standards</i> <i>Labour clause has obvious shortcomings to have impact on trade partner’s domestic situation</i>
Means	<i>Use of persuasion, positive conditionality and dialogue. Hard mechanisms only when legitimized and necessary</i>	<i>More prone to make use of coercion</i>
Impact	<i>Positive impact on overall labour standards</i>	<i>No impact or only in certain export-industries on labour standards</i>
Relative bargaining power	<i>Consistent in its normative behaviour irrespective of bargaining position</i>	<i>More normative behaviour negotiating with asymmetrical bargaining position</i> <i>Less normative behaviour negotiating with symmetrical bargaining position</i>

Methodology, case selection and data

As the above outlined programme suggests, this study will make use of a qualitative research design making use of a method of structured focused comparison of labour provisions in the EU's most recent FTAs to analyse the normative dimension of EU trade policy. Whereas most FTA-studies are done by large-*N* analyses, this study makes use a qualitative methodology of only three cases due to the restricted number of cases available (Hafner-Burton, 2009). Making use of a small number of case studies moreover allows for an in-depth analysis of the specific mechanics at work behind the negotiation process and outcome.

Since the publication of the EU's new bilateral trade strategy in 2006, the EU has signed an array of international agreements that deal with trade policy. As this research aims to look at the normative role of the EU through its external trade dimension, I divert the agreements exclusively dealing with trade from the more comprehensive agreements which are in part politically inspired, such as the Association Agreements with Central America (2012), Moldova (2014) and Georgia (2015). This leaves us with five exclusively trade related agreements that have been concluded in the last decade, concerning South-Korea (2010), Colombia and Peru (2012), Singapore (2014), Vietnam (Feb. 2016) and Canada (Sep. 2016). In order to maximize the utility of the research design outlined above, the cases should differ in terms bargaining power vis-à-vis the EU, their place in the global supply chain and the nature of the trade relationship. The FTA with Singapore is not preferable as a case due the special nature of the political and social situation of the city-state and the lack of data available. Canada and South-Korea are both high-income, developed countries, with whom the EU trades in high-ends manufacturing goods and machinery and have a somewhat similar bargaining position in relation to the EU. As the agreement with Canada has been signed only recently and more data is available on the agreement with South-Korea, I pick the latter together with the EU-Colombia/Peru FTA and the EU-Vietnam FTA as my three case studies.

This research will make use of a variety of primary and secondary sources, consisting of actors' statements in the media, position papers and government reports and academic literature. The results have been triangulated with semi-structured interviews that were held in March 2017 with members of the Trade Department of the Ministry of Foreign Affairs of the Netherlands (DGBEB) and the Europe Department in order to gain a comprehensive understanding of the motivations behind the normative dimension of EU trade policy. With this data, I will reconstruct the situation prior to the negotiations in terms of bargaining position and domestic situation on labour standards to paint the background to which the negotiations took place. After that, I use the method of process-tracing to analyse the casual mechanisms responsible for the outcome of the trade negotiations by disentangling negotiation process into small steps and comparing them with the subsequent outcome (George and Bennet, 2005). Then, I outline the design of the labour clause in the trade agreement in case. Lastly, I will make use of the latest primary and secondary data available to assess to what extent the labour clause has been executed and its overall impact on the domestic situation.

Chapter 3: The rise of the normative dimension in EU trade policy

Norms in the structure of the EU

Since the Treaty of Lisbon of 2009 (ToL), the normative dimension of EU trade policy has been firmly anchored into the legal structure of the Union. The core aims of the Common Commercial Policy (CCP) are set out in Article 206 of the Treaty of the Functioning of the European Union (TFEU), stating that the EU shall “contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers” (Velutti, 2016). Moreover, since the ToL, the CCP is also required to conform to the more general aims of the EU in external policy, which are laid down in Article 21 (1) of the Treaty of the European Union (TEU) and sets out normative aims such as the promotion of democracy, rule of law and human rights. On top of that, the ToL strengthened the role of the Parliament in EU trade policy, as the institution, which is commonly seen as a strong human rights advocate, now has to give its consent to concluded agreements (*Ibid.*).

The normative dimension of EU trade policy has not always been so decisively embedded in the structure of the European integration project. The European Economic Community (EEC) Treaty, the EU’s predecessor, did not contain any reference to fundamental rights. Smismans argues that this omission was deliberate, since the Court of Justice of the EU already confirmed in early case law that human rights was not the domain of the EEC.² Moreover, de Búrca (2011) opines that the ToL should not be seen as “the culmination of a linear, unidirectional and developmental progress towards a clear EU human rights policy”, as the EU “lacks a serious and coherent human rights policy and mechanism” and “maintains double standards between its internal and its external policies” until today. Cannizzaro (2014) has pointed out that the specific wording of the relevant article can be seen as not particularly strong, since it holds that the Union should “‘be guided by’ rather than ‘uphold’ and ‘promote’ principles in its ‘action on the international scene’” (in Velutti, 2016). On top of that, although the role of the Parliament has been strengthened and the institution has indeed refused to give its consent to some international agreements on normative grounds, it is generally held that its role is limited and that it can “only exercise influence on the general policy choices” (Leeg, 2014; Orbie and Khorona, 2015; Velutti, 2016).³

Unilateral trade policy

The first display of a normative agenda in the EU’s trade policy was through the Generalized System of Preferences (GSP), an autonomous trade arrangement set up in 1971 and part of the CCP. Through the scheme, developing countries and territories are eligible for preferential access to the EU market in the form of reduced tariffs for their goods. Since January 1995, the EU has inserted and subsequently expanded social considerations into the scheme, making the ratification and compliance to certain CLS a prerequisite for countries to become eligible for the preferential trading regime. Moreover, the EU provided extra incentive through the introduction of the GSP+ scheme in 2005, offering additional benefits for applicant countries in return for the ratification and effective implementation of other international agreements in the field of labour standards, sustainable development, human rights and good governance. The preferential access granted under the GSP+ scheme may be withdrawn from the beneficiary in case of non-compliance to the necessary conventions. Since the reform of the scheme in 2012, countries can lose their status if the World

² See for example Case 1/58 Friedrich Stork & Cie v High Authority of the European Coal and Steel Community, EU:C:1959:4; Case 40/64 Marcello Sgarlata and Others v Commission of the EEC, EU:C:1965:36.

³ The Parliament did not give its consent on the Terrorist Finance Tracking Program with the United States to protect data protection rights of EU citizens; the multilateral Anti-Counterfeiting Trade Agreement for potential threat to civil liberties and the EU-Morocco Fisheries Partnership Agreement.

Bank classifies the country as high or upper middle income economies in the last three years (Commission, 2012).

The EU's unilateral trading strategy can be seen as strong evidence of the role that normative considerations play in EU trade policy. The scheme has been established on the premises that, although trade liberalization ideally occurs on a reciprocal basis, it is fair to differentiate between developed economies, developing countries and emerging markets and the least developed nations in the level of trade liberalization (Woolcock, 2014). This explains why the GSP scheme also contains an Everything But Arms (EBA) arrangement since 2001 for 49 countries listed by United Nations (UN) Development Programme as 'Least Developed Countries' (LDCs), guaranteeing full duty-free and quota-free access to the EU for all their exports except for arms and armaments (Commission 2013). Moreover, committing less developed trade partners to a certain level of labour standards is considered as an essential element to prevent a race to the bottom from occurring in developing countries, as trade liberalization can have a downward pressure on labour conditions for countries to become more competitive. Through the scheme, the EU helps the development of developing countries and improves their social and political situation.

There have been questions about the effectiveness of the scheme, however. The implementation of the GSP+ scheme has led to critique because of the dubious record of CLSs of various beneficiary countries. Velutti (2016) shows that Guatemala, "a notorious labour rights violator", joined the scheme in 2014 and ceased to be a member as of 1 January 2016, not because the Commission threatened with the suspension from the GSP+ scheme due to labour rights abuses, but because it could enjoy preferential market access under the 2012 EU-Central America trade agreement. There have also been problems under the EBA in the case of the Cambodian sugar industry. This industry has thrived under the preferential access granted under the regime, but in the absence of effective human rights safeguards the policy of the Cambodian government to grant private investors large plots of land has had an adverse impact on the human rights situation, with forced evictions and land seizures as a consequence (Velutti, 2016).

The way in which the Commission has used the possibility of suspending beneficiaries from the scheme has hosted mixed results. On the one hand, it can be claimed that the Commission has had success in committing beneficiaries to international law in some cases. In 2009, the Commission opened an investigation into the judgement of the El Salvador Supreme Court which rendered the countries' ratification of ILO Convention No. 87 on freedom of association and the right to organize unconstitutional and three years later, the Commission initiated an investigation into the decision of the Bolivian government to withdraw from the UN Single Convention on Narcotic Drugs as of 1 January 2012. In both cases, it can be argued that the prospect of losing GSP+ benefits was the reason for the two countries to reverse their action and continue its compliance with the international agreements (*Ibid*). On the other hand, the EU has been criticized for not applying the scheme consistently. As of today, suspension of members under the GSP scheme has only occurred in three instances: in the case of Myanmar in 1997 in reaction to forced labour practices, in the case of Belarus in 2007, when investigations of the ILO and the Commission revealed "serious and persistent violations of the rights of freedom of association and collective bargaining in Belarus" (Orbie and Tortell, 2009) and in the case of Sri Lanka in 2010, due to significant shortcomings in respect of the countries' implementation of three UN human rights conventions (DG Trade News, 2010). However, Orbie and Tortell point out that countries in which similar practices took place, such as Turkmenistan and Uzbekistan, continue to have access to the scheme (*Ibid*).

Bilateral and regional trade agreements

Normative considerations have also been visible in the bilateral and regional trade policy of the Union. As of today, the EU has concluded, and is in the process of negotiating, an array of international trade agreements. These agreements can be divided into four types: exclusive trade agreements; trade and economic cooperation agreements; association agreements; and partnerships with southern or eastern neighbouring, candidate countries or the ACP group countries. Since the 1990s, every international agreement that the EU negotiates includes a hard nucleus of human rights, referred to as the essential clause. Generally, such a clause states that respect for human rights, rule of law and democracy are the basis for the agreement and commits both parties to reciprocal obligations. Violation of the commitments under the essential clause constitutes a material breach of the agreement and justify suspension or other counter-measures. The effectiveness of this clause has been called into question, however, due to the position of the Commissions to make use of the sanctions under the clause only in case of the most extreme and blatant violations of human rights (King, 2011).

Since the EU-Mexico FTA of 1997, the EU has also started to draw labour rights into its trade agreements. Although this particular trade agreement only contained one article on the social clause stating that both parties would maintain a structural dialogue on a broad range of 'social issues', without referring to the ILO, the Cotonou Agreement with the ACP countries (2000) already contained much more ambitious commitments on labour rights. Article 50 of the Cotonou Agreement confirms the parties' commitments to the fundamental ILO conventions and rejects the use of labour standards for protectionist purposes (Orbie and Tortell, 2011). Moreover, social rights are explicitly part of the human rights clause and the creation of a dispute settlement qualified to take "appropriate measures" in case of a violation of the essential elements means a soft enforcement mechanism of labour standards, at least in theory (*Ibid.*, Velutti, 2016). Labour standards also found their way into the FTA with Chili (2002) and the EU-CARIFORUM Economic Partnership Agreement (2007) with the Caribbean ACP countries. However, with the exception of the Cotonou Agreement, the labour standards provisions in the FTAs prior to the new generation FTAs should be seen as "objectives to be achieved rather than enforceable legal commitments as they do not provide for genuine enforcement mechanisms" (Marx, Wouters, Rayp and Beke, 2015).

Chapter 4: Applying the research design

The EU-South-Korea FTA

Negotiation setting

The first of the new generation trade agreements to be signed after the EU released its Global Europe strategy in 2006, was the EU – South-Korea FTA (KOREU). Negotiations started in 2007 and were concluded in 2010, producing the “most comprehensive FTA ever negotiated by the EU” at the time (Commission, 2009). The EU had been clear about its intentions to start the negotiations. The Global Europe strategy stated that:

“The key economic criteria for new FTA partners should be market potential (economic size and growth) and the level of protection against EU export interests. [. . .] We should also take account of our potential partners’ negotiations with EU competitors, the likely impact of this on EU markets. [. . .] Based on these criteria, ASEAN, Korea and Mercosur [. . .] emerge as priorities.”(Commission, 2006)

The emergence of South-Korea as a pivotal partner was not only due its growing market (11th largest economy in the world based on purchasing power parity (PPP) (World Bank, 2016). In comparison, the single market of the EU is the second largest economy based on PPP when treated as a country (*Ibid.*)) with high income consumers, but the desire to start negotiations with South-Korea and the ASEAN countries was driven as well by the fact that the US had already started to get active in the broader East- and South-Asian region a few years earlier. In April 2007, one month before the official negotiations between the EU and South-Korea kicked off, the US had concluded the negotiations on the Korea-US (KORUS) FTA which included comprehensive liberalization commitments of the Korean government for American goods and services. The EU therefore had a major incentive to minimize the loss of European firms in terms of market access vis-à-vis American companies in the country. In return, according to Elsig and Dupont (2012) Korean officials saw the agreement as an offensive tool to create better market conditions on the European markets for South-Korea vis-à-vis Japan. The KOREU was not Korea’s only endeavour at trade liberalization, however, as the country was simultaneously looking at other possible trade agreements with an “impressive number of partners” (Parliament Briefing, 2009).⁴ Although Whitman and Blick (2013) have dubbed the country ‘only’ a “medium sized Northeast Asian regional economic power” in their analysis of the character of the relationship between the two trading partners, I argue that, taking in regard the sizeable Korean economy, the strong incentives on both sides to pursue a trade agreement and the number of outside options for the Korean government, the bargaining position of South-Korea in relation to the EU during the negotiations on KOREU FTA was relatively symmetrical.

As the KOREU was the first of the new generation trade agreements that was to be concluded, the design of the social clause on labour standards would most likely serve as a template for the following agreements. Although South-Korea already had relatively high social standards, the country had not ratified four of the eight fundamental ILO conventions and NGOs reported worrisome trends concerning the retreating status of the right to organize and collective bargaining system (Friedrich Ebert Stiftung, 2016).

⁴ On the wish list of the Korean government in 2009 were FTAs with Australia, Peru, New Zealand, Canada, Turkey, Colombia and the Gulf Cooperation Council. It also signed a Comprehensive Economic Partnership Agreement (CEPA) with India in August 2009. (Parliament briefing)

Stakeholders

A strong proponent of a legally binding and comprehensive social clause with an enforcement mechanism in the agreement was the European Trade Union Confederation (ETUC), representing national trade unions on the European level (ETUC, 2006a). It had already voiced concerns when the Global Europe strategy was published (ETUC, 2006b). Without proper rules concerning labour standards, the ETUC feared that the aggressive tone on liberalization in the document would lead to unfair competition for European workers and deteriorating labour conditions in third countries and called the outlined policy “a flagrant contradiction with the Commission's commitments to improve coherency between trade policy and development, social and environmental objectives” (ETUC, 2006a).

During the negotiation process of the KOREU FTA, the ETUC tried to move the Commission to adopt an ambitious clause on labour standards in the agreement. Concerning the scope of the clause, the ETUC envisioned it to cover the eight fundamental ILO conventions, the right to employment, protection of maternity, and health and safety at work, social protection through public and private processes and dignified and fair work (ETUC, 2006b). Moreover, the ETUC desired the creation of a social dialogue committee between the two parties and labour unions from both sides. In terms of enforceability, it looked towards the American FTAs which included a sanctioning mechanism, arguing that “a strong labour chapter will send a strong message to working people that their calls for fair trade are being heard” (ETUC, 2014).

A similar standpoint was taken by the Parliament. During the negotiations, the Parliament's International Trade Committee (ITC) advocated the establishment of a comprehensive social development chapter and asked the Commission to include additional multilateral conventions and the EU's own Decent Work Agenda alongside the fundamental ILO conventions in the clause. Moreover, similarly to the demands of the ETUC, the Parliament insisted on the inclusion of a hard conditionality mechanism linked to the successful implementation of the social standards envisioned in the treaty. Again, the sanctioning mechanism in the American FTAs was seen as a model for the chapter. An alternative for the Parliament would be to make the social clause equal with other parts of the agreement and thereby opening the dispute settlement procedure to all social partners (Parliament, 2010).

Less vocal on the matter were NGOs. Although groupings such as Friends of the Earth Europe and the World Wildlife Fund were very active during the negotiation phase in encouraging the inclusion of strong environmental protocols in the agreement, the relative absence of grave labour rights violations, other than issues concerning collective bargaining, resulted in a lack of mobilization of social NGO during the negotiations.

Organized business, on the other hand, was a major stakeholder affected by the trade agreement. The agreement contained a large potential for export expansion and only limited challenges for the import-competing sectors (Elsig and Dupont, 2012). In the policy paper of the association outlining its position on the negotiations, the Confederation of European Business (BusinessEurope), the main representor of organised business on the EU level, advised the Commission to negotiate a deal that ensured a minimum level playing field for EU companies in all sectors in Korea on par with the US as soon as possible and made no references to labour standards (BusinessEurope, 2006). Concerning import-competing interests, competition for agricultural products was not an issues at stake, which explains for the absence of mobilization of the agricultural sector (Elsig and Dupont, 2012). The European car industry, on the other hand, could be severely affected by the agreement and gradually strengthened its resistance against it. The EU represents a key market for Korean car manufacturers and amounted for 20% of all automotive EU imports in

2007 (Parliament, 2009). In return, EU exports towards the country were very modest and consisted mainly of upmarket luxury cars (*Ibid.*). The way the automotive industry protected their defensive interests, however, was by requesting the Commission to focus on resolving problems concerning various market issues, technical regulation and non-tariff barriers instead of pushing for more stringent labour standards in the agreement (ACEA, 2012).

The Council showed no collective preference concerning the exact scope and content of the labour clause and gave the Commission a broad mandate on the topic. Bossuyt (2009) observed that Germany, Belgium, Denmark and the UK had been pushing for a comprehensive social clause during the KOREU negotiations, but that most other MSs had no clear preferences at all. This trend is more generally seen within the Council, Orbie points out (2011). Although the aforementioned MSs that were active on the matter differed from the ‘usual suspects’ in the case of normative trade preferences, which one author puts at France, the Benelux and the Scandinavian countries (Sicurelli, 2015), interviews with Dutch trade officials confirmed that the Council is generally divided between a relatively stable small number of MSs that advocate for the promotion of norms in EU trade policy and a majority of MSs to which this topic is a non-issue (author’s interview 2 March, 2017; Orbie, 2011). As a result, the Council was not negative towards the inclusion of a chapter on labour standards in the agreement, but statements regarding its design remained vague and the issue was not seen as a priority (Sicurelli, 2015). Noteworthy in respect to the composition of the group of proponents of a strong labour clause during the negotiations is that it differed almost completely from those MSs representing strong car manufacturing industry of low- and middle-price ranges (Germany, Italy, Hungary, the Czech Republic, Spain and Portugal), which might have been motivated by protectionist motivations to be in favour of a strong labour clause due to the sizeable Korean car industry (Elsig and Dupont, 2012).

As the chief negotiator of the agreement, the Commission had its own ideas about the scope of the labour provision. In one document, entitled “Promoting Core Labour Standards and Improving Social Governance in the Context of Globalization” (2001), EU Commissioner for Trade at the time, Pascal Lamy, set out the “social dimension of globalization” approach, which emphasized the importance of the ILO CLS in EU trade policy and promotion thereof in a non-coercive, non-binding manner (Commission, 2001). In the Global Europe strategy (2006), advanced by his successor Peter Mandelson, the preference was given by a multilateral approach as well, relying on international rules for the scope and rejecting the use of sanctions. Summing up, Mandelson (2006) stated that:

“The EU has always rejected a sanctions-based approach to labour standards – and that will continue. But equally, we can do more to encourage countries to enforce basic labour rights, such as the ILO core conventions, along with environmental standards - not simply in principle, but in practice. Cooperation and social dialogue are certainly important. Transparency, through an independent mechanism, will also help us highlight areas where governments should take action against violations of basic rights. We are also considering an incentives approach.”

In response to the chosen course, Commission officials involved in trade further elaborated that they did not believe in the universality of the European social model nor in the effect of the sanctions and were reluctant to play the role of “policeman of the world” (interviews in Postnikov, 2014). In this respect, the wishes of the Commission lay closest to the interest of business.

Negotiation outcome

The KOREU was the first EU trade agreement that contained a chapter solely devoted to sustainable development (Chapter 13). The agreement commits both parties to ratify and successfully implement

the eight fundamental conventions of the ILO and states that both parties can retain their domestic level of social regulation as long as it is line with international standards, but cannot weaken their standards in order to become more competitive. Furthermore, the KOREU FTA envisions a consultative approach towards the implementation of social standards. The agreement foresees for the establishment of a joint Committee on Trade and Sustainable Development to monitor implementation of the Chapter, a Domestic Advisory Group (DAG) comprised of relevant stakeholders from civil society advising on the implementation the Chapter and a civil society dialogue mechanism, known as the Civil Society Forum (CSF) in which civil society representatives of both parties can meet with each other and the governments. Although the chapter was made legally binding, in respect of enforceability, the Commission had chosen for a soft mechanism. The chapter includes a dispute resolution mechanism consisting of a panel of experts, whose decisions are recommendatory in nature. Non-compliance with the decisions will not be sanctioned but instead the parties are encouraged to come to a mutual understanding.

The outcome of the negotiations clearly resonates closest with the initial preferences of the Commission. The Sustainability Chapter was small in scope, committing both parties only to the bare minimum of labour standards, although it had been made legally binding on request of NGOs. The enforceability mechanisms thereof, however, remains on a soft basis and gives preference to monitoring, dialogue and peer-pressure with involvement of civil society. As the sustainability development chapter did not become a bone of contention during the negotiation process, Postnikov argues that the final document fully reflects the preferences of the Commission concerning the scope of the labour clause.

Impact of the agreement

Because of the relatively short time span that the agreement has been in effect and the similarity with the social provisions included in the KORUS FTA, it is difficult to assess the precise impact of the KOREU on the overall labour standards of the country. Nevertheless, some preliminary observations can be made.

To date, the DAG and CSF have met several times and their meetings seem to be sufficiently institutionalized (Van den Putte, 2015). The mechanisms are, however, still “very much in the process of being developed” and a dominating theme in the first meetings of the DAG and the CSF was the establishment of the Rules of Procedure (*Ibid.*). True engagement with the South-Korean civil society seems to be problematized by the fixed amount of representatives that can participate in the meetings, insufficient funds for civil society representative to attend and a general unwillingness of the Korean government to interact with civil society (*Ibid.*, Vogt, 2015). The composition of the South-Korean domestic advisory group has been fiercely criticized by its European counterpart, as it consisted mainly of professors with ties to the South-Korean Government. The Korean Confederation of Trade Unions (KCTU) was only included after putting significant pressure by the Commission, (Vogt, 2015; Van den Putte, 2015). In response, the South-Korean government has argued that the representatives have the know-how needed for a fruitful discussion (Van den Putte, 2015).

Notifications of labour rights violations have persisted since the treaty came into force. In 2014, the legal status of the Korean Teachers’ Union was withdrawn and the headquarters of the KCTU was raided (Vogt, 2015). Moreover, Amnesty International continued to report on discrimination and exploitation of migrant workers in the agricultural sector (Amnesty International, 2014). Also, notifications of the violent break-up of strikes in the car industry continued (Business Human Rights, 2014). Although these concerns have been brought forward by the European group in the DAG, the South-Korean government was not moved to take adequate measures (Vogt, 2015). Instead, it diverged the attention by promising to carry out a relatively unrelated project concerning

the implementation of the ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (*Ibid.*). Some DAG participants have argued that the body lacks leverage to have any real impact (Van den Putte, 2015). Others have blamed the Commission for its alleged unwillingness to invoke formal consultations, which is the first step in the dispute settlement process (Vogt, 2015). Indeed, this stands in stark contrast with the American dispute settlement mechanisms, in which also societal actors can lodge complaints over labour violations (Campling *et al*, 2016). The lack of any mechanism to impose penalties or arbitrate dispute and a weak domestic advisory group has let some authors to believe that the KOREU FTA has no strong effect on the working conditions of the Korean workforce (*Ibid.*). All in all, although "any mechanism was better than none", as one Korean participant observed, the existing provisions set out in the Sustainability Chapter of the KOREU agreement seem to be insufficient to have a real impact on the overall labour rights in the country (Van den Putte, 2015).

EU-Colombia/Peru FTA

Negotiation setting

The Multiparty Trade Agreement with Colombia and Peru (EU-Colombia/Peru) originally envisioned a regional trade agreement between the EU and the Andean Community, but negotiations soon faltered after their launch in 2007 as the two other members of the quartet, Bolivia and Ecuador, could not agree on the provisions on intellectual property rights protection (Commission, 2012). The EU opted to proceed with the negotiations with the remaining two members, with whom it came to an agreement in 2012. However, as Ecuador was classified as a high-middle income country in the reform of the GSP+ in 2012 and its preferential market access under the scheme was set out to expire in the end of 2014, the country restarted negotiations to the agreement to avoid a disadvantageous position in the EU market vis-à-vis its neighbouring countries and acceded to the agreement in December 2014 (Garcia, 2016). The fourth and final member of the Andean Community, Bolivia, is still qualified for the EU's unilateral trading scheme due to its lower level of development and is therefore less pressured to accede to the FTA than Ecuador (*Ibid.*). Nevertheless, the Bolivian government is currently discussing plans for Bolivia to join the Agreement with EU authorities (*Ibid.*).

Colombia and Peru are both classified as "upper middle income" countries according to the World Bank and rank between the fortieth and the fiftieth in the world in terms of economy size (World Bank, 2016). At the time of the negotiations, the EU was in the top-three sources of imports and destinations of exports for both countries and experienced a growth in trade volume nearing 10% between 2006 and 2010 (DG Trade, 2017). Both countries were beneficiaries of the GSP+ system and could therefore lose their preferential market access after each periodical review. A FTA would offer more legal certainty on binding commitments on trade liberalization.

The intention of the EU to negotiate a trade agreement with the regional bloc was, as had been the case for the KOREU FTA, mainly motivated by preventing a loss or recover market share vis-à-vis American producers, which by 2008 had signed a FTA with both countries (Garcia, 2016). As Garcia points out, impact assessments for agreements with Mercosur, Andean states and Central America all expected meagre outcomes in terms of extra welfare effects for the EU and investment and trade with Latin America had already been prospering since the liberalisation of their economies in the 1990s (*Ibid.*). In addition to the US, also China had started to become more active in the region and its FTAs with Chili (2005) and Peru (2009) proved that Latin America should be regarded as an emerging force at the global stage and that the EU could not permit to be left out (Carina, 2012). Therefore, despite the large differences in economic clout between Colombia and Peru and the EU and the necessity for both countries to negotiate a deal to obtain more stable liberalization

commitments, the increased attention that Latin America received in the recent years and their outside options to the agreement gave the countries at least some ability to withstand the demands made by the EU during the negotiations. I therefore classify the bargaining position of the two countries as 'only' relatively asymmetrical.

As beneficiaries of the GSP+ system, both countries already had ratified the core ILO conventions along with other international agreements related labour rights in order to become eligible for the preferential trading scheme. Many problems in the overall labour standards still persisted, however, the most severe of them being the proliferation of child and forced labour, gender discrimination, the share of the population employed in the informal sector (in both countries more than two-thirds, although this number has been dropping in the last decade (Orbie, 2016)) and not respecting trade union rights. The problems with the latter were especially notorious in the case of Colombia, where right-wing death squads threatened and assassinate hundreds of trade unionists since the 1990's (Politico, 2012).

Stakeholders

More or less the same stakeholders were active during the negotiation process on the EU-Colombia/Peru FTA as had been the case during the negotiations on the KOREU FTA. This time, however, the ETUC and national trade unions were even stronger in their call for the inclusion of a comprehensive and enforceable social clause in the agreement with a special emphasize of monitoring and enforcing the correct implementation of the right to organize and collective bargaining. Also NGOs were more vocal in their preferences on the labour clause during the negotiations with Colombia and Peru. Two main lines of opposition were brought forward. First, European and Colombian NGOs united under ABColombia protested against the persistent human rights violations in both countries of which especially the displacement of people and the illicit appropriation of lands and other assets legitimized by the Colombian and Peruvian government in rural areas has been criticized (ABColombia, 2012). It was feared that the trade agreement would create extra competition for land and water, which in turn would have negative effects for the indigenous groups living in these rural areas, despite both countries being a signee to the ILO Indigenous and Tribal Peoples Convention (Woolcock, 2014; Garcia, 2016). Secondly, NGOs were afraid that the labour provision to which the two countries would be committed to in the FTA would be both smaller in scope and less effective in terms of enforceability than had been the case under the GSP+ system. Indeed, the countries had to ratify and display at least some form of commitment at the effective implementation of a host of core and non-core labour standards under the scheme to remain eligible for the preferential tariff arrangement and could be withdrawn relatively easily compared to the toothless enforceability mechanism that had been introduced in the KOREU FTA in case of a violation. The Parliament picked up on the demands by civil society and advocated for the inclusion of a comprehensive labour chapter as well.

As was the case in the run up to the KOREU FTA, organized business did not speak about the labour standards provision and again urged the Commission for a rapid negotiation process in order to minimize the loss of competitiveness vis-à-vis the US. The European Services Forum (ESF), representing the European services sector, stated that "given that the US has now moved to ratify its agreements, a delay on the part of the EU is seen as having negative consequences for EU service exporters." In terms of import-competing interests, the real threat was in the agricultural sector, as most exports to the EU comprised of products in the agricultural realm. Whereas the Peruvian and especially Colombian output in the vegetables, fruits and nuts sector were projected to gain from trade liberalization (resp. 0.7% and 11%), a negative sectoral change in output in the sector was projected for the EU threats (-1.5%) (Orbie, 2016). In the case of Peru, two flexibilization rounds in

the 1990s (from 1991-92 and 1995-96) had liberalised a once highly regulated labour market and resulted in a deterioration of working conditions in the sector (*Ibid.*). In addition, the Agricultural Sector Promotion Law (Law No 27360) of 2000 sought to set up a special export regime for agriculture by providing employers in the sector more flexibility compared to general labour law in terms of working hours, holiday length and compensation in case of unfair dismissal (*Ibid.*). However, although import-competing interests were heavily defended during the negotiations by business interest groups and the Ministers of Agriculture in the Council, their line of argumentation concerned a plea for the creation of an equal level playing field through expansion on environmental norms such as environmental regulation and animal welfare instead of pushing for more stringent working conditions (NRC, 2012).

The Commission made it clear during the negotiations that it saw the Sustainable Development chapter of the KOREU as a blueprint for a labour clause in the negotiations on the EU-Colombia/Peru FTA. In response to the criticism that this particular design would be insufficient in terms of scope, the Commission argued that by signing the human rights clause, both countries were *de facto* legally compelled to the same relevant conventions the country had agreed to through its status under the GSP+. The Commission also foresaw a link between the human rights clause and the already established Cooperation and Political Dialogue Agreement between the EU and the Andean Community of 2003, of which article 1 reads that “respect for the Universal Declaration of Human Rights as well as the rule of law underpins the policies of the parties and constitutes an essential element of the Agreement”. According to the Commission, this article should be interpreted as also covering social rights including labour standards. In regard to the enforceability of the human rights clause, it argued that the human rights clause obligates the Parties to the Agreement to ensure the respect of these human rights in their jurisdiction and violation enables the other party to adopt appropriate measures. However, in response to the calls for specific monitoring and enforcement mechanisms on the Sustainable Development chapter, Commission officials responded that the trade agreement would constitute a “partnership between equals” and that therefore the agreement is “different in nature and spirit” than the GSP+ and regarded the responsibility to monitor compliance with labour provisions as the “exclusive competence of the respective parties” (Marx, Lein and Brando, 2016).

The stance of the Commission triggered an even bigger reaction from societal actors and the Parliament. The ETUC issued a release stating that it was against signing a FTA without a binding mechanism on human rights and labour standards and that to do otherwise would “damage the EU’s reputation as a leading force in the promotion of human rights and basic freedoms” (ETUC, 2013). In addition, the Parliament issued a resolution in June 2012 in which it underlined the necessity of the Peruvian and Colombian governments to design, possibly with the aid of the Commission, a transparent and binding roadmap regarding the protection of trade unionists and human rights in general (Garcia, 2016). Furthermore, it asked for the establishment of permanent institutionalised mechanisms guaranteeing the role of civil society. Interestingly, it also mentioned that “new European Parliament powers regarding international agreements [...] bring new responsibilities”, suggesting that the ToL had made the institution grown in its - self-ascribed - role as human and labour rights watchdog (Parliament, 2009, 2012).

Negotiation outcome

Labour standards in the EU-Colombia/Peru agreement are dealt with in a similar fashion as in the KOREU. The agreement contains a Sustainability Chapter (Title IX), which commits the contracting parties to promote and implement the eight fundamental ILO conventions. A reference to ILO Convention No 169 on indigenous and tribal rights is lacking (Garcia, 2016). Moreover, again it is

stipulated that both parties should not lower their current levels of labour standards lest to become more competitive, but also should not use labour standards for protectionist trade purposes. Likewise, in the EU-Colombia/Peru FTA, the Sustainability Chapter has been made legally binding, yet compliance and enforceability mechanisms remain on a soft basis. The monitoring of the chapter is covered by an STSD, an intergovernmental body that oversees the implementation of the Chapter and carries out an open dialogue with the public at large on the implementation. Moreover, there should be a domestic advisory group which should have a “balanced representation”, discuss the implementation of the Sustainability Chapter and “may submit opinions and recommendations on the implementation of this Chapter, including on their own initiatives” (Garcia, 2016; Orbie, 2016).

There are also differences with the KOREU FTA. In contrast to the EU-Korea agreement, it is not necessary for the two countries to establish a new civil society mechanism to follow up on the labour provisions of the trade agreement. Moreover, the opinions and recommendations of the DAG should be in accordance with domestic law and the composition of the group is not explicitly prescribed to be independent (Orbie, 2016). Also, the text does not refer to the possibility that one Party “may request consultations with the other Party regarding any matter of mutual interest arising under this Chapter, including the communications of the Domestic Advisory Group(s)” (*Ibid.*). On top of that, whereas the KOREU FTA mentions the possibility for the Panel of Experts to seek advice from the CSO in case of a dispute, this is not the case in the EU-Colombia/Peru FTA. The commitments in the EU-Colombia/Peru agreement thus should be seen as more conservative and flexible than the KOREU FTA, in the sense that they aim to maintain the current situation (no additional labour reforms or new mechanisms are required) and that it offers both governments much leeway in terms of labour protection and the functioning of the civil society mechanisms (*Ibid.*).⁵

Impact of the agreement

The execution of the mechanisms set out in the labour provisions in the trade agreement have had a cumbersome start and faces some structural problems. Lack of clarity and transparency made it unclear for a long time for civil society organisations that applied whether they would be chosen or not (Van den Putte, 2015). In the case of Peru, the DAG is not able to effectively perform a monitoring role until this day and is not consulted or given opportunities to participate in the intergovernmental meetings in the STDS (Ebert, 2016; Orbie, 2016). Lack of capacity, support and training seriously hamper the already low possible effects of the participation of civil society, participants claimed (Van den Putte, 2015). Non-state actors have argued that without proper monitoring and enforcement mechanisms, the DAG and the CSO risk to be adding “yet another layer of legal-institutional commitments without any practical traction” (Marx, Lein and Brando, 2016). One commentator even called the Sustainability Chapter a “half-hearted exercise by the EU to tick the box on its treaty obligations” (*Ibid.*). In contrast, Garcia has argued that the fact that labour standards fall under the human rights clause which are therefore enforceable by ‘appropriate measures’, make it “immaterial that the obligations set out in the sustainable development title are essentially unenforceable”. Other scholars argue that it remains to be seen to what extent the EU will invoke the human rights clause in the case of persistent labour rights violations (Velutti, 2016).

Problems with violations of trade union rights, as well as practices of child labour, forced labour and discrimination continue to exist in both country. In regard to trade union rights, although the Colombian Ministry of Labour noted an increase of 48% of trade unions established in the two years after the signing of the EU-Colombia/Peru FTA, two-thirds of the Colombian workforce remains

⁵ I owe much of this observation to Orbie (2016).

active in the informal sector and thereby has no chance of being part of a trade union (Orbie, 2016). Moreover, while the rate of disappearings and killings of trade unionists has gone down, the amount of recorded threats against unionists has risen since 2011 (GAO, 2014). It is important to note in this respect that the Colombian government seems to be unable to adequately address these problems (86.6% of the murders and 99.9% of the threats are not persecuted), leading one author to argue that the violence against organized labour has not diminished, but simply “transformed its manifestations” (Oidhaco, 2014 in Marx, Lein and Brando, 2016). In Peru, the manifestation of child labour still persists and encompasses a staggering one-third of children aged 5 to 14 mainly occupied in agriculture (UNDP, 2015). Even the Commission itself noted in the assessment report of the GSP+ scheme in 2016 that, although Peru has taken several steps in the implementation of the ILO CLS, it still faced “problems in practically implementing and enforcing the fundamental conventions” and that “stronger efforts are required” (European Commission 2016).

As has been the case in EU – South-Korean trade relations, the Commission has shown reluctance to put pressure on Colombia and Peru to comply with labour standards. Vogt argues that there is no evidence of discussions on the implementation and progress on the roadmap that the Parliament had requested (Vogt, 2015). When in March 2014 a delegation of the Parliament’s INTA visited Colombia and Peru to assess the process of implementation of the agreement, they observed that “while the purely trade provisions seemed to have been implemented correctly, further progress on the commitments [...] in terms of labour rights and social dialogue was needed” and that “the Commission has not (yet) developed a proper mechanism to monitor the implementation of the Trade and Sustainable Development Chapter’ (EP, 2014).” In contrast, Vogt (2015) and Marx, Lein and Brando (2016) have argued that the American approach has yielded far more success. For one thing, while sanctioning is far from an ideal tool, the possibility of applying such a mechanism can help to get the attention of government officials (Marx, Lein and Brando, 2016). Moreover, the US has high-level quarterly visits to discuss progress with their Colombian counterparts and since April 2015 an attaché of the US Department of Labour is stationed in Bogota solely devoted to monitor the implementation of labour clauses in the country (*Ibid.*).

EU-Vietnam FTA

Negotiation setting

In its Global Europe strategy, the EU originally envisaged a trade agreement with the whole South East Asian region and started negotiations with the Association of Southeast Asian Nations (ASEAN) in 2007.⁶ The EU wished to strengthen its ties with the region and supplemented the FTA with a Partnership and Cooperation Agreement (PCA), which would deal with a more structural political dialogue with the countries. As the regional bloc soon proved to be unable to speak with one voice, the EU decided to continue on a bilateral basis with the single ASEAN members (Meredith, 2012). Whereas Singapore and Malaysia refused to negotiate a PCA before launching the negotiations on a FTA, as the EU had desired, the Vietnamese government honoured the request. The EU-Vietnam Framework Agreement on Comprehensive Partnership and Cooperation was signed in 2012, after which the two parties started the negotiations on a EU-Vietnam FTA (EUVFTA).

In terms of market size, the Vietnamese economy consists of 95 million ‘lower middle income’ consumers and its nominal gross domestic product ranks 48th of the world (PPP, World Bank, 2017). The vast internal market of the EU is the most common destination for Vietnamese products and the trade balance to this bloc is rising positively for the country, from 3.7 billion in 2005 to 23.7

⁶ Myanmar was excluded from the inter-regional trade deal by former High Representative for CFSP Javier Solana due to its poor human rights record.

billion in 2016 (Commission, 2017). Aside from the huge differences in market size, there were three additional reasons which put the EU in a particularly advantageous bargaining position during the negotiations. First, parallel to the negotiations on the trade agreement with the EU, the Vietnamese government was participating in the negotiations on the Transpacific Partnership (TPP), which involved a dozen countries bordering the Pacific Ocean among which the US. In order to avoid the administrative cost of implementing two new trade agreements, Vietnamese government officials were willing to speed up the negotiations to synchronize the conclusion of the EUVFTA with the TPP, which was envisioned to be signed late 2015. According to Hoang and Sicurelli (2017), this made Vietnam less resistant towards demands of the EU. Second, the country was and still is in the process of changing its economic philosophy discourse and puts through market-oriented economic reforms. The EUVFTA was seen by government officials as an important step towards further integration into the global economy and an opportunity to obtain a higher position in the global supply chain (*Ibid.*). On top of that, Vietnam ran a huge trade deficit with China, which had been increasing at a 25% rate in the years prior to the negotiations (Vietnam News, 2015). Trade liberalization with the EU was thought to enlarge the trade surplus with the trading bloc and this in turn was seen as a necessary step to increase the country's economic autonomy vis-à-vis China (Vietnam News, 2015; Hoang and Sicurelli, 2017). All these factors point towards a particularly asymmetrical bargaining position for the Vietnamese government during the EUVFTA negotiations in relation to the EU.

As the overall labour situation in the country was concerned, Vietnam had ratified only five out of the eight fundamental conventions of the ILO, lacking the ratification of the Freedom of Association and Protection of the Right to Organize Convention (1948), the Right to Organize and Collective Bargaining Convention (1949) and the Abolition of Forced Labour Convention (1957). There is a prohibition on trade unions not affiliated with the Communist Party's Vietnam General Confederation of Labour (VGCL) as well as prohibition of strikes (Sanchita, 2016). Moreover, NGOs have criticized the countries' use of drug offenders through "labour therapy" as a cheap source of labour who receive punishments for not meeting the daily quota (*Ibid.*). Additional problems noted with the compliance with CLS are to be found in the widespread prevalence of child labour and pregnancy-based discrimination of female workers (*Ibid.*).

Stakeholders

At the start of the inter-regional negotiations with the ASEAN, the Council suggested the Commission to split up the issues at stake. Accordingly, the PCA should foresee for the dialogue on human rights and development while the focus of the FTA should be predominantly with economic matters. In reaction to the Council, the Parliament adopted a resolution in May 2008 on trade and economic relations with ASEAN which emphasized that any agreement with the regional bloc should contain an enforceable human rights clause. However, when the EU switched to bilateral negotiations with the ASEAN countries in 2009, it was clear that the Commission favoured the separation between human rights from trade put forward by the Council and its proposal on the role of labour standards and human rights in the FTA with Vietnam was confined to a reference to the Universal Declaration of Human Rights in the preamble of the document and the inclusion of the ILO CLSs in the Sustainability chapter (UN General Assembly, 1948; Sicurelli, 2015).

During the agenda-setting phase, societal actors were highly vocal in their concerns with the labour standards situation in Vietnam and as some of the most grave violations of labour rights also constituted basic human rights violations, they urged the Commission to revise its standpoint and make a strong link between human rights and trade in the FTA (ETUC, 2012; FIDH, 2013a & 2013b). They were aided in their call by import-competing industry. Especially the European footwear and textile sectors feared that trade liberalization with Vietnam would lead to unfair competition

(Eckhardt and Poletti, 2016). Vietnam constitutes the third largest footwear manufacturer in the world since 2014 (World Footwear Yearbook, 2014) and together with China is responsible for 60% of the EU's import of footwear at the time of negotiations. The European Confederation of the Footwear Industry and the representative of the European group of textile producers on the EU level, EURATEX, therefore requested the Commission to make the provisions on CLS in the agreement sufficiently enforceable (EURATEX, 2012; ECFI, 2010). Also other sectors, for example the tuna transformation industry united at the EU level in EUROTHON, had similar requests to the Commission (EUROTHON, 2012).

The Commission did not appear to succumb to these wishes and maintained that a separation between human rights and trade was justified. When the Council gave the Commission the mandate to negotiate the FTA with Vietnam in May 2012, the document focused heavily on the market opportunities for European producers and traders in the country and remained vague about the linkage between trade and human rights (Council, 2012). Interestingly, Sicurelli (2015) notices, the liberal agenda was also shared by traditionally more protectionist MSs such as Italy and Spain, in which most of the sensitive import-competing sectors were located. Pushing for a more comprehensive and enforceable labour clause in the Council were France, the Benelux and the Scandinavian countries.

The attitude of the Commission concerning the trade/human right nexus in the FTA triggered fierce resistance of societal actors and in particular the Parliament. The latter urged the Commission in the Resolution on the future of EUASEAN relations, adopted in January 2014, to promote respect of ILO labour standards in its relations with the ASEAN countries. Moreover, in April 2014 it issued the Resolution on the state of play of the EU-Vietnam FTA, in which it demanded a binding and enforceable Sustainable Development chapter in the EUVFTA, preferably by linking the trade agreement with the PCA. This would allow the suspension of the FTA in the case of severe human or labour rights abuse. The Commission's behaviour generated even more resistance when it consistently refused to perform a human rights impact assessment of the FTA on the country, even though the FIDH had sent this request in an open letter to the European institutions in April 2013 and the Parliament had urged the Commission to do so in a resolution one year later. The Commission, however, refrained from doing so. The Vietnamese government officials had been angered by the resolutions of the Parliament on the human rights situation in their country and had threatened with discontinuing the negotiation talks. This suggests that the Commission did not want to pressure its negotiation partner more on the issue and therefore refrained from conducting an impact analysis on the salient issue (Sicurelli, 2015).

Negotiation outcome

The EUVFTA that was signed in December 2015 contains a sustainability chapter that is modelled in a similar fashion to the chapters in the previous two agreements. However, the scope of the labour clause is wider, as the agreement not only calls on the effective implementation the ratified core ILO conventions, but also compels the partners to make progress on the ratification of the non-ratified core conventions as well as the implementation of other already ratified non-core ILO conventions (Velutti, 2016). The chapter does contain a crucial note, though, as the ratification should be done by 'taking into account domestic circumstances'. The chapter also contains a comprehensive list of specific sectors of labour rights on which the two parties will cooperate, instead of a general note on collaboration inserted in the other two agreements. While this seems to make the sustainability chapter of the EUVFTA wider in scope, weak legal language still remains however, as Velutti notes, with 'shall make continued efforts' and 'reaffirm its commitments', rather than 'shall ensure' (Velutti, 2016).

Concerning the enforceability of the human rights and labour standards in the agreement, the Commission only partially gave in to the requests of the Parliament. It did include a suspension clause in the PCA which could be triggered in case of human rights violations and made an institutional and legally binding linkage between the political agreement and the FTA (Velutti, 2016). However, it did not include the possibility of suspending the trade commitments, in contrast to trade agreements with Georgia, Moldova and the CARIFORUM (Sicurelli, 2015). As Hoang and Sicurelli (2017) notice, the PCA also does not prescribe that political dialogue should precede the consultation procedure which can be activated in non-urgent cases.

Impact of the agreement

The EUVFTA is expected to enter into force in 2018, making it too early to make any statements about the impact or the execution of the agreement. While some authors argue that the increased scope of the agreement indicates a “stronger domestic political commitment to labour reforms” (Velutti, 2016), others feel that the effect remains to be seen due to the fact that the ratification and compliance to the core ILO standards depend on the interpretation of the Vietnamese Supreme Court as to what extent the conventions are compatible with domestic law (Sicurelli, 2015). “Vietnam might change a few laws and release the odd political prisoner to show it cares about human rights and satisfy the European parliament”, Theyer (2015) opines, but the EUVFTA in his opinion will not make any real changes in the overall labour situation in the country. He also points out that the commitments in terms of labour standards remain ‘vague’ compared to the social clause in the TPP. Burke (2015) argues that the EUVFTA relies on goodwill and that it would be hard to make real changes in the Vietnamese domestic labour situation, which gives it its comparative advantage in cheap labour.

The refusal of the Commission to carry out the potential impact of the agreement on the human rights situation in the country has been brought before the EU Ombudsman by the FIDH and the Vietnam Committee on Human Rights (EUobserver, 2016). On 3 March 2016, the Ombudsman ruled that the failure of the Commission to do so constituted maladministration (Euractive, 2016).

Chapter 5: Analysis and discussion

The results of the analysis of the previous chapter are summarized below. There are four main observations to be made.

First, concerning the *intentions* behind the promotion of labour standards in bilateral trade agreements, the EU has been relatively consistent in the way it has sought to diffuse its norms, which has been predicted by the NPE thesis. At the same time, this consistency brings up questions about the commitment of the Commission to the promotion of labour standards, as critics have argued that its standard model has not been adequate to the domestic situation of labour standards in the case of Colombia/Peru and Vietnam. The labour clause commonly includes commitments on a) upholding ILO CLS; b) non-lowering of domestic labour law and c) soft enforceability mechanisms with the involvement of civil society (Orbie, 2016).

A difference in terms of legal wording does exist, although it is debateable to what extent this matters on the overall effect on labour standards in the partner country. Orbie (2016) has argued that the more flexible and conservative wording in the case of the EU-Colombia/Peru agreement in relation to the KOREU FTA is not merely a theoretical difference, but has real effect on the (non-)functioning of the civil society mechanisms. Paradoxically, contrary to the ideas put forward by both the NPE and the MPE theory, the legal wording with which the ILO conventions are promoted and civil society mechanisms are introduced seem to get weaker the worse the domestic labour standards situation is in the partner country and the better the EU's bargaining position becomes. The strength of the sustainability chapter seems to be closely related to the willingness of the partner country and the language seems to become weaker the more salient the issue labour standards and human rights becomes. This has been especially visible in the case of Vietnam, where the Commission refused to carry out a human rights impact assessment and adopted a provision that allows the Vietnamese government to compare the CLS set out by the ILO with its own domestic legal structure. This in turn seems to suggest that the Commission is not committed to promote labour standards at all cost, but rather seeks to maximize the effect with minimum costs in terms of giving in to economic demands or endangering the negotiation talks. One Dutch trade official took in a similar position, stating that: "In the end, we are talking about a trade agreement and there is only so much you can do" (author's own translation, author's interview 2 March, 2017).

Interesting in this regard is also that the overarching objective of the Commission is often put at achieving the overall best deal for European industries (Van den Putte, 2015). This research suggests that this is not always the case, as there have been high stakes for import-competing groups in all three cases to push for a strong labour chapter. The European car industry in the case of South-Korea, the agricultural sector in the case of Colombia/Peru and the textiles and footwear industry in the case of Vietnam, all had strong incentives to push for a comprehensive and enforceable labour clause in order to create a more equal level playing field in their own sector. Interestingly, the import-competing sectors did not so much push for the inclusion of more stringent labour standards, but rather looked at environmental, sanitary and technical regulation to minimize unfair competition. In a similar vein, there was no noticeable link between MSs with a large import-competing sector and their position on a strong labour clause. In the case of Vietnam, the call for a stringent labour clause in the agreement was strongest from organized business, but critics have argued that the agreement has not been modelled to adequately deal with labour practices which result in unfair competition for companies. This seems to discard the MPE theory that the promotion of labour standards is driven by mobilized interest groups. However, it must be taken into consideration that many European firms located in the country or dependent on imports might have been opposed to a

strong labour clause that can undo the comparative advantage in terms of cheap labour and might have influenced the Commission under the radar in order to avoid blaming by the public.

Concerning the *means* through which the EU has promoted labour standards in its bilateral trade agreements, a clear preference is visible favouring soft mechanisms based on peer-pressure and dialogue over hard conditionality such as fining and sanctioning. This is fully in line with the NPE thesis, which rather avoids the use of coercion to promote norms. It must be noted, however, that this approach has been fiercely criticized by both European and domestic stakeholders, who argue that if the EU really wants to have an impact on the partner country it should use some form of hard conditionality, as for example the US integrates in its labour provisions. This is not to say that the mechanisms should be dismissed altogether. Ebert (2016) has suggested that the labour provisions and related institutional mechanisms might perform an alternative function by spreading democratic principles and shared decision-making through the introduction of a platform for dialogue in countries where this was until then still lacking. In that respect, the EU has achieved this goal to some extent in the case of Colombia and South-Korea, although a real dialogue with civil society and domestic producers in Peru is still lacking.

As far as *impact* goes, a problematic feature of this study has been the fact that two of the agreements have only been in use for little more than five years, whereas the third one is envisioned to enter into force only in 2018. Nevertheless, some preliminary conclusions have been made. The civil society mechanisms that were set out in the agreements have generally been rolled out properly, although their functioning differs in success. At the same time, there are still many issues ranging from the institutional design and the practical functioning of the mechanism, the general reluctance of the government to truly engage with concerns from society and the lack of real enforcement tools. Even though it might be unfair to already look for tangible results, since the two agreements have only been in effect for less than six years, there are no signs pointing at a major improvement on CLS in the partner countries. Important to note is that there is also no sign of improvements in export sectors. In that way, in terms of impact the results seem to argue both against the NPE and MPE theses. However, to quote Manners (2008) from one of his later works, “long-term diffusion of ideas in a normatively sustainable way works like water on stone, not like napalm in the morning”. This suggests that it might be too soon to look for a real normative impact.

Lastly, the *relative bargaining position* of the EU versus its trade partner seems to have no positive correlation with the amount of normative power the EU displays. Rather, the reverse seems to be true. As stated above, the difference in the extent to which the EU is able and willing to promote its labour standards to its trade partners seems to be largely influenced by the willingness of the trade partner to accept and execute labour provisions in its trade agreements. In that respect, developed countries with whom the EU usually shares a more symmetrical relationship, might be more willing to accept legally binding commitments on labour standards because of the higher level of development and the institutional willingness and capability to execute these clauses than developing countries with a worse labour rights account and towards whom the EU has a more asymmetrical bargaining position. This fundamentally reverses the MPE thesis and predicts more ambitious chapters in trade agreements with its strong partners such as the US (started in 2013, although the negotiation talks are currently frozen), Japan (started in 2013) and Australia (probably start in 2017). On the other hand, however, the more ambitious labour provisions with these partners could also be a formal reaffirmation of the already adhered to standards and not a display of real normative power.

The results of this research outlined above suggest that the NPE and MPE theory are both unable to fully explain the normative dimension of EU trade policy. The way in which the EU has

promoted labour standards in its bilateral trade agreements seems to be less shaped by forces originating from a normative or market power identity, but more the result of the Commission's own trade agenda. Instead, it seems that the collusive delegation argument put forward in the first chapter can provide a more useful explanation for the EU's behaviour in its trade policy. Due to its position as Agent, as the sole negotiator of the trade agreement, it can considerably diverge from the demands from the Council and Parliament as its Principles and civil society and organized business as indirect Principles. Indeed, the Principle-Agent problem, which describes a situation in which the entity that makes the decisions (agent) is not the same as the client(s), the principle(s), has already been put forward by authors such as Keremans and Delreux (2010); Adriaensen (2014) and Leeg (2014) to argue that the "ability [of the Commission] to affect negotiation processes should not be underestimated" (Keremans and Delreux (2010)). This study seems to confirm this statement and has found that in the case of the labour clause the Commission has been fully able to promote its own view on the model in the negotiations on the three trade agreements.

Conclusion

This paper has looked into the normative dimension of EU trade policy and analysed the promotion of labour standards in the EU's bilateral trade agreements with South-Korea, Colombia/Peru and Vietnam. Two commonly used theories to conceptualize the reasons behind this normative dimension, NPE and MPE, have been tested on their ability to explain the way in which the EU has done so by studying the intentions, means and impact behind the labour clause and comparing these with the relative bargaining position of the EU during the negotiation process. This study has found that the abovementioned theories fail to adequately account for the way in which the EU has promoted its labour norms. Although the EU did show consistency in the model of the labour chapters and the soft mechanisms with which it has sought to diffuse its norms, as has been predicted by the NPE thesis, the failure to adequately tailor the model to the specific domestic situation of the partner country and the lack of any evidence of any improvement thereof puts doubts about the normative intentions and impact of the EU as a real normative power. However, the display of normative power of the EU does not appear to increase when its relative bargaining position vis-à-vis its trade partner becomes stronger, nor is there any link between import-competing interests and the scope of the labour clause, which discards the MPE thesis. Rather, it seems that the Commission, as the sole Agent responsible for the negotiations on the trade agreements, has been able to stay relatively immune from the wishes of its Principles, the Council and the Parliament, and other societal and business interests and has largely succeeded in realizing its own preferences on the model of the labour clause.

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Nr.	Date	Position	Location
1	2 March, 2017	Policy advisor at DGBEB	MFA, the Hague
2	10 March, 2017	Policy advisor at DGBEB	MFA, the Hague
3	17 March, 2017	Policy advisor at Europe Department	Telephone interview
4	24 March, 2017	Policy advisor at DGBEB	Telephone interview

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