

# Human Rights Conditionality in European Union Trade Negotiations: the Case of the EU–Singapore FTA\*

LACHLAN MCKENZIE<sup>1</sup> and KATHARINA L. MEISSNER<sup>2</sup>

<sup>1</sup>School of Social and Political Sciences, The University of Melbourne Australia, Parkville, VIC 3010, Australia. <sup>2</sup>Institute for European Integration Research (EIF), University of Vienna, Strohgassee 45/DG, 1030 Vienna, Austria

## Abstract

Trade policy is among the EU's most significant capabilities in promoting values including human rights. Yet trade policy and the EU's values-based foreign policy are often in tension. Scholarship on the social dimension of trade policy has emphasized the tension between values and the EU's commercial interests. Human rights and conditionality clauses have not been the focus of analysis, yet conditionality is one of the EU's most visible links between the trade agenda and its values-based foreign policy. Analyzing the EU's decision-making in negotiating human rights conditionality, this paper employs the EU–Singapore free trade agreement and its negotiation as an in-depth single case study. The tension between commercial interests and values results in decision-makers promoting incoherent interests. We argue that organizationally defined preferences and issue salience circumscribed the Parliament's impact on decision-making, resulting in concessions on human rights conditionality with Singapore.

**Keywords:** Human rights conditionality; Southeast Asia; Singapore; EU trade policy; EU foreign policy

## Introduction

In October 2012, the European Union (EU) concluded negotiations for a free trade agreement (FTA) with Singapore, the first of its kind with a Southeast Asian state. The EU–Singapore FTA (EUSFTA) opens the door for Europe to the dynamic Southeast Asian market. At the time of writing (July 2016), the EUSFTA is awaiting an opinion by the European Court of Justice and ratification by the Council of the European Union (Council) and the European Parliament (EP). The EUSFTA is at the forefront of the EU's trade diplomacy with Southeast Asia. The agreement is not only significant in promoting commercial interests – including reducing tariffs, opening up public procurement, investment and protecting European geographical indicators – it is also intended to function as a continuation of the long-standing EU practice of linking political interests, including human rights promotion, with its trade agenda.

The EU's use of its market as a power resource is longstanding (Damro, 2012), promoting constitutive EU values including human rights through trade negotiations.

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Yet the relationship between commercial interests and values in EU trade policy is in tension. The EU's trade policy has often been conceptualized as in tension, between parochial and global priorities (Young and Peterson, 2014), cosmopolitan and communitarian divides (Parker and Rosamond, 2013), and between the EU's power *in* trade and power *through* trade (Meunier and Nicolaïdis, 2006). The initiation of new generation FTAs in 2006 with the *Global Europe* strategy (European Commission, 2006) re-oriented EU trade policy towards a bilateral focus on industrialized states that offer the greatest potential for economic growth and the advancement of the EU's commercial interests.

In the EU's new generation FTA negotiations, tensions between commercial interests and values that have become intertwined with the trade agenda are more pronounced than in negotiations of the past. In negotiations with Singapore, the EU did not take a strong position on democratic values, human rights, labour rights, or good governance; all core principals expressed in Article 1 of the Treaty of Lisbon and EU trade policy. Given that the deal with Singapore is the EU's first FTA with a Southeast Asian state and will serve as a precedent for further agreements, the retreat from a strong position on these values sets back the EU's foreign policy interests in the region. Given these tensions between values and commercial interests in negotiating the EUSFTA, we ask the question: how does bureaucratic competition between EU institutions shape decision-making outcomes on the advancement of human rights conditionality through FTA negotiations? Drawing on a governmental politics model of analysis (Allison and Zelikow, 1999) and organizational theory (Egeberg, 2012; Elgström and Larsén, 2010; Henökl, 2015; March & Olsen, 1983), we argue that competition between the organizationally defined preferences of EU institutions shapes decision-making outcomes. Specifically, the EP's calculations of 'issue salience' (Epstein and Segal, 2000, p. 66; Hartlapp *et al.*, 2014, p. 27) were definitive in shaping competition in this case, and the low level of foreign policy salience attached to the negotiation of the EUSFTA shaped the ultimate concessions made by the EU on human rights conditionality.

This article proceeds by setting out the governmental politics framework (Allison and Zelikow, 1999) to assess decision-making on promoting values. In the second section, we contend that the EU's position on human rights conditionality is a product of competition between institutions as key decision-makers. That competition is shaped by turf battles and organizationally defined preferences and is characterized by the tension between the commercial drivers and values-based foreign policy imperatives of EU trade policy. The third section employs this framework to examine the EU's promotion of human rights through conditionality in negotiating the EUSFTA with Singapore. We argue that in spite of a clear EU commitment to advance human rights in the region, the European External Action Service (EEAS) and the EP were passive because of the conflicting and predominant emphasis on commercial relations with Singapore and Southeast Asia.

This qualitative analysis employs official documents and data from 19 semi-structured elite interviews with EU officials carried out in Brussels, Belgium, in 2014 and 2015. These officials included representatives from the Commission's Directorate General (DG) for Trade, the EP and the Council Secretariat, as well as officials from the Singaporean representation to the EU and Southeast Asian representations to the EU.

## **I. The Social Dimension of EU Trade Policy – The Role of Human Rights Conditionality**

The promotion of values plays an important role in the EU's trade policy. Extensive scholarship has analyzed the relationship between values and trade policy, identifying tensions between the EU's trade policy and values such as human rights (Kerremans and Orbie, 2009; Manners, 2009; Orbie and Kerremans, 2013; Orbie and Khorana, 2015). Bossuyt (2009) and Leeg (2014), as well as Young (2007) and Peterson (Young and Peterson, 2006) have analyzed values promotion in the EU's trade negotiations, emphasizing that the EU often fails to meet its benchmarks in balancing commercial interests with political values. The focus in this literature has often been on coherence between the EU's ambitions for values promotion and the commercial objectives of trade policy (Orbie *et al.*, 2009; Orbie and Tortell, 2009). Scholars have also taken a focus on coherence (Sicurelli, 2015a) between the EU's values promotion and commercial interests in its trade negotiations with ASEAN Member States (see Wong, 2012; Orbie and Khorana, 2015 on India; Maass, 2012; and Sicurelli, 2015b on Vietnam).

Human rights are an important component of the EU's values promotion, and conditionality is amongst the primary policy instrument used to link human rights values with the EU's trade agenda. Conditionality has been analyzed as an important part of the EU's efforts to maintain policy coherence (Orbie *et al.*, 2005; Szymanski and Smith, 2005), and an important instrument of the EU's external policies (Smith, 1998). In the 1990s conditionality became an 'essential element' of international agreements (Bartels, 2005; Santer, 1996, p. 3) so that, by 2005, the EU has included human rights conditionality in agreements with 150 countries (Bartels, 2005).

However, there remains a gap in our understanding of the EU's approach to applying conditionality, and in understanding what determines decision-making outcomes in promoting human rights through conditionality. In the context of the EU's new generation FTA negotiations, the EU's efforts to link trade negotiations with human rights is often contested, as industrialized states are less willing to negotiate on non-commercial issues in FTAs. Principal-agent scholarship has tended to emphasize that the EU's values are systematically marginalized in these instances of values contestation (Leeg, 2014, p. 336; Zimmermann, 2008, p. 256). However, these approaches cannot fully account for variation in the EU's approach to human rights conditionality. Conditionality represents key EU foreign policy interests – human rights promotion – but does not always sit comfortably alongside the commercial aspects of trade agreement negotiations. Tensions between the EU's values-based foreign policy interests and commercial interests play out in EU decision-making as competition between actors to expanding policy turf. By looking inside EU decision-making we examine the preferences of the relevant actors in trade policy, and demonstrate their impact on the extent to which values are promoted in FTA negotiations. Through an identification of EU institutions as highly autonomous decision-makers that are active or passive in advancing their interests, we aim to fill the gap in scholarly understanding of the role of conditionality and human rights in the EU's new generation FTAs. In doing so, the article employs the EUSFTA as a case study by focusing on conditionality and the promotion of human rights as one aspect of the EU's values-based foreign policy. As the first FTA

concluded with a Southeast Asian partner, the agreement serves as a precedent for other FTAs with ASEAN and represents an important test for the EU's approach to human rights promotion in the region.

## II. Values and Commercial Interests in Tension

Two principles explain why the EU promotes values in its trade policy: coherence and conditionality (Szymanski and Smith, 2005, p. 175). According to its treaties, the EU is supposed to ensure coherence of its activities, and its external agreements should be coherent with political values (European Union, 2007, Article 10). From the imperative of maintaining coherence between external relations, trade policy has developed not only in the service of the Common Commercial Policy (CCP) but as an instrument of foreign policy by promoting the EU's values externally. The purpose of the EU's conditionality clause is the inclusion of a clear instrument through which the EU can influence third countries, as the EU's foreign policy commitment to promote human rights 'finds practical expression in the human rights [conditionality] clauses that are now part and parcel of any agreement between Community and a non-member country' (Santer, 1996, p. 3). Thus, conditionality links the EU's foreign policy priorities with the trade agenda through FTAs. These links between values and trade policy are currently at a crossroads. The EU's diminishing position in the global economy relative to other markets including China, India, Brazil and Southeast Asia as a region has driven a more commercial focus in EU trade policy, culminating in the *Global Europe* strategy (Garcia, 2012). This reorientation of trade policy is in conflict with the continued link between trade policy and human rights promotion.

The EU's diminished role in the global economy has led to more bargaining leverage for third countries and, consequently, less efficacy in values promotion (da Conceição-Heldt, 2014). This decreasing effectiveness has resulted in situations where the EU cannot impose conditionality on its negotiation partners. Instead, the EU's values promotion, when contested, is subject to opposition in negotiations of relative power symmetry. It is in these instances that EU values and commercial interests are in conflict with each other. Zimmermann's (2008, p. 266) 'benchmark' is useful in analyzing the degree to which the EU promotes values in its foreign trade policy. In situations where human rights and commercial interests are at odds, the degree of values promotion is high when the EU insists on conditionality. The degree of values promotion is low when the EU chooses commercial interests over human rights in FTA negotiations. Where both human rights and commercial interests are not controversial, the EU tries to achieve both (Zimmermann, 2008, p. 266).

In instances where the EU's promotion of values such as human rights is contested, the tension between values and commercial interests plays out through turf battles between EU decision-makers. These turf battles can diminish cohesion in the EU's trade negotiations or the extent to which the EU presents a 'single voice' (da Conceição-Heldt and Meunier, 2014), and can undermine the coherence between commercial objectives and foreign policy goals advanced through the EU's trade policy. Thus, variation in the degree of value promotion can be explained through an analysis of the black box of EU decision-making, as different institutional actors promote different foreign policy interests – values or commercial interests – throughout the negotiation of FTAs. In their analysis of

bureaucratic competition in decision-making, Allison and Zelikow (1999, p. 255) argue that ‘outcomes are formed and deformed by the interactions of competing preferences’. The players in the EU’s negotiation of FTAs are institutions, including the Commission and DG Trade, in particular, the Council with the EU Member States operating through the Trade Policy Committee (TPC), the EP and the EEAS. Although the EU’s constitution requires the promotion of certain norms such as human rights, it also mandates through the CCP that commercial interests should be promoted. Thus, with the EU’s FTA negotiations serving both commercial and foreign policy (values-based) interests, the ultimate ‘EU’ position in FTA negotiations is a result of competition between institutions for the advancement of their preferences.

The bargaining context of negotiations, and the extent to which human rights conditionality is contested is also significant in shaping decision-making outcomes. Here we draw on bargaining theory and build upon da Conceição-Heldt and Meunier’s (2014, p. 974) and Meunier’s (2000, p. 104) conceptualization of ‘reformist’ or ‘conservative’ bargaining positions. A ‘conservative’ bargaining position aims at maintaining the status quo, where a ‘reformist’ position seeks to secure a policy shift from the negotiation partner. In the context of negotiating conditionality, this can be better understood as the extent to which the EU is active and willing to make concessions on commercial interests to advance human rights values, or passive and unwilling to make concessions to advancing human rights.

As Figure 1 below illustrates, in cases where values are not contested by the negotiation partner, competition between players is diminished, and a ‘reformist’ or active position on human rights conditionality is likely. For example, the EU’s negotiations on an Association Agreement with the Mercado Común del Sur, including Argentina, Brazil, Paraguay and Uruguay comprised a political dialogue and institutional co-operation next to FTA talks. This political dialogue and institutional co-operation have been concluded ahead of the FTA negotiations because European values are not contested in South America (Interview 19). Similarly, conditionality in parallel negotiations of the EU–South Korea Framework Agreement and the EU–South Korea FTA was not a significant obstacle to negotiations because of Korean support for the inclusion of conditionality (Interview 14).

In cases where values are contested, but where there is an active player with values-based foreign policy interests, competition between players is more likely to occur. While a ‘reformist’ bargaining position actively advancing conditionality is possible in

Figure 1: Impact of Norm Conflict and Horizontal Incoherence on the Degree of EU Values Promotion.

Contested values	Player with values-based interests	EU values promotion
Non-contested	N/A	Reformist
Contested	Active	Reformist
Contested	Passive	Conservative

*Source:* Authors’ own illustration.



this context, competition between the preferences of EU institutions can diminish the EU's cohesion in negotiations. For example, in the EU's FTA negotiations with Colombia and Peru, the EP insisted on addressing human rights issues by releasing a resolution. In this resolution, the EP asked for improvements of the human rights, labour and environmental standards, and threatened to withhold its consent to the eventual agreement. Addressing these demands, Colombia and Peru presented plans to improve their domestic standards and committed themselves to an annual human rights dialogue with the EEAS. In the negotiation of the Comprehensive Economic and Trade Agreement (CETA), the EP insisted on the inclusion of conditionality, which the Canadians strongly opposed. This led to delays in the negotiation of both CETA and the Strategic Partnership Agreement, presented an obstacle to the conclusion of CETA negotiations, and undermined the EU's cohesion in negotiations. However, the EU maintained its commitment to advancing values-based interests in negotiating CETA (Interview 15).

In cases where values are contested and where the player(s) with values-based foreign policy interests is(are) passive, the EU can be expected to take a conservative bargaining position on human rights conditionality, even circumscribing its foreign policy goals in the interest of advancing the commercial aspects of FTA negotiations. Negotiating conditionality in the case of the EUSFTA fits within this third category of values promotion. In defining players' orientation toward either values or commerce interests, the article induces preferences (Frieden, 1999) from the academic literature.

### *The Institutions and their Preferences.*

DG Trade is the central player in the EU's trade policy-making and has specific sets of interests.<sup>1</sup> Young (2007, p. 799) notes that the 'Commission's Directorate General for Trade ... which leads most trade negotiations on behalf of the EU, has embraced liberal economic ideas'. In addition to the liberal economic preferences of DG Trade, 'the Commission has ... an apolitical and technocratic approach to trade policy' (Leeg, 2014, p. 344). By virtue of access to information and expertise, DG Trade is in a strong position to control the direction of Commission policy, not just in trade but in the overall strategic thinking of the Commission. In recent years the shift from what has been termed the trade-development nexus (Carbone and Orbie, 2014) towards the growth agenda that prioritizes commercial interests (European Commission, 2006) is aligned with DG Trade's interests.

The TPC is a working group made up of EU Member States, whose chief task is to co-ordinate their interests and to meet with the Commission to co-ordinate on trade negotiations. EU Member States often have heterogeneous preferences themselves, making it hard for them to come to a consensus in the TPC (Meunier and Nicolaïdis, 2006, p. 909). However, in situations where values clash with commercial interests, Member States operating through the TPC tend to prioritize the commercial aspect of the negotiating agenda (Woolcock, 2012, p. 54–55). Relying on its technical expertise and authority in the CCP, the TPC is concerned primarily with promoting commercial interests. Even if

<sup>1</sup> We are aware that the Commission, too, may be fragmented corresponding to the administrative organization into DGs. For example, DG Trade prefers liberal market opening, while DG Agri has tended to favour market protections for agriculture (Elgström and Larsén, 2010, p. 210).

some Member States favour values in trade policy, research has shown that due to the informal rule of making decisions by consensus, the TPC favours commercial interests (Adriaensen and González-Garibay, 2013, p. 551; Carbone, 2008, pp. 334–335). Thus, although not unitary in their preferences, EU Member States, when operating through the TPC, can be characterized as commercially oriented in relation to FTAs. In relation to the promotion of human right through FTAs, the TPC tends to align with DG Trade (Leeg, 2014).

Although the EP formally provides no input into setting the negotiation mandate or shaping the negotiation rounds, its interests are made relevant through informal contacts with the Commission, and its right to ratify agreements (Van den Putte *et al.*, 2015). The EP has become a leading institution in advocating European interests in external relations (Van den Putte *et al.*, 2015). This means that the EP often advocates for tough positions on political values where other institutions may prioritize commercial interests. Having no other capabilities than the *ex-post* control through the veto on trade agreements, the EP is free to take a hard line on the values it considers important (Leeg, 2014, p. 337). Thus, the EP has positioned itself in opposition to the national interests of EU Member States in pursuing normative goals (Szymanski and Smith, 2005, p. 184; Zimmermann, 2008, p. 261).

The EEAS has taken the comprehensive approach as the central strategic concept that has guided its decision-making (Duke, 2014, p. 29). Thus the maintenance of coherence and complementarity between external policies is a major function of the EEAS. Within this remit, the promotion of values is emerging as a core principle that is guiding the EEAS's operational logic, and its staff are 'keen to succeed in ensuring that Commission methods and normative commitments remain the kernel of the EU's diplomatic culture in the EEAS' (Spence, 2012, p. 127). This is reinforced by the commitment of the former HR/VP Ashton that human rights should be the 'silver thread' running through all EU foreign policy (Ashton, 2011). Having the responsibility to negotiate conditionality, the imperative to maintain links and coherence between external policies, and the preference for the advancement of human rights, the EEAS is an important player in advancing values-based foreign policy interests through FTA negotiations. Figure 2 sets out the preferences of players in EU trade policy decision-making.

There is a spectrum of interests advanced by players in EU decision-making during the negotiation of FTAs. The governmental politics model of foreign policy-making suggests

Figure 2: Preferences for Material Interests versus Values of EU Institutions.

Player	Preference
Commission (DG Trade)	Material interests
Council	Material interests
EP	Values
EEAS	Values (mixed tendency)

*Source:* Authors' own illustration.

that these players will compete to advance their interests and expand policy turf. Importantly, we argue that the ‘winners’ in this competition are not constant or fixed. Instead, the players’ stand in advancing their interests is informed by the expected gains in policy turf (Hartlapp *et al.*, 2014, p. 14).

The anticipated consolidation or expansion of policy turf (Franklin and Wlezien, 1997; Hartlapp *et al.*, 2014, p. 27) helps actors calculate the utility of their actions. Such calculations about the expected utility in terms of policy turf are particularly necessary when decision-makers face limited institutional capacity in terms of staff or resources (Roederer-Rynning and Greenwood, 2016). Such limitations require players to make calculations about a negotiations utility as a forum for the expansion of policy turf, requiring them to focus their available resources. The governmental politics model expects that salience informs the extent to which players ‘care’ about an issue in these calculations, particularly in the sense of the significance of issues for expansion of policy turf (Franklin and Wlezien, 1997; Hartlapp *et al.*, 2014, p. 27). As Allison and Zelikow (1999, p. 280) state, ‘[h]ow a group responds to a problem, or indeed, whether it responds at all, often depends on the way the problem is framed and reaches the group’s agenda’. Thus, issue salience is fundamental in understanding how organizations conceptualize the utility of a negotiation for expanding or consolidating policy turf. The more salience negotiations have, the more active a player will be in advancing its interests in order to expand policy turf. We expect this to be even more intense in situations where players face several external challenges and limited institutional capacity. In these contexts, players have to target their available resources which means that they have to prioritize certain issues. In the context of trade talks, their activities will therefore focus on a selective range of negotiation partners.

### III. The EU–Singapore FTA

The EUSFTA is the first FTA concluded by the EU with an ASEAN Member State. The EUSFTA sets a benchmark for the EU’s economic diplomacy in the region, and ongoing FTA negotiations with Malaysia and Thailand. Singapore is an important country for the EU as it is a leading ASEAN Member State, both in terms of market size and trade, and in terms of its role in the politics of the region. Thus, the EUSFTA is commercially significant for the EU because it represents a stepping-stone into the Southeast Asian market and is important for EU–ASEAN interregionalism.

The EU pursued parallel negotiations of the EUSFTA and the EU–Singapore Partnership and Cooperation Agreement (ESPCA), which advances values – chiefly through the mechanism of conditionality – including human rights, democracy and institutionalized co-operation. The parallel negotiations of the EUSFTA and the EUSPCA link the two agreements and are intended to enhance the EU’s negotiation position in the political deal. Article 17.17 regulates conditionality in the EUSFTA by linking the agreement to the ESPCA, which ‘shall form part of a common institutional framework’.

Commercial interests are dominant in the EU’s relations with Singapore (Christiansen *et al.*, 2013; Garcia and Masselot, 2015). In negotiating the EUSFTA, this dominance affected the balance between advancing the trade agenda while maintaining commitments to values-based foreign policy objectives such as human rights promotion and conditionality. The emphasis on commercial interests in the EU’s approach to Singapore is



problematic in that it undermines core principles of the EU's foreign policy agenda with the region, which states that 'protecting and promoting human rights and fundamental freedoms ... [is] an essential element of EU-ASEAN relations' and outlines 'the necessity to deepen tangible cooperation with relevant ASEAN actors promoting human rights' (Council of the European Union, 2015a). In this context, the EU notes that 'the abolition of the death penalty, the situation of vulnerable minorities and the rights of women and girls need special attention' (Council of the European Union, 2015a). The extent to which EU foreign policy decision-makers did not promote their interests in negotiations with Singapore resulted in minimal conflict between EU values and commercial interests, in spite of EU values being contested in this context.

### *Contested Values and EU Concessions.*

For Singapore, conditionality on human rights was problematic in the ESPCA negotiations. The Singaporean government and the EU have widely divergent views on Singapore's human rights standards, especially regarding Singapore's use of capital punishment. The EEAS (2014) states that '[t]he European Union holds a strong and principled position against the death penalty'; its abolition is a key objective for the Union's human rights policy, and the EU has actively campaigned against the use of the death penalty in its external relations. The EU's Guidelines on the Death Penalty (Council of the European Union, 2013, p. 5) state that '[t]he EU considers that the death penalty constitutes a serious violation of human rights and human dignity'. In contrast, Singapore has a mandatory death penalty for murder and non-lethal crimes such as drug trafficking. In addition to the use of the death penalty, the Singaporean government also employs corporal punishment in the form of caning. Given these divergent interests, it would be expected that conditionality and the human rights clause, which are key features of the EU's human rights promotion, would be a major obstacle to successful negotiations.

Indeed, the Singaporean government was opposed to the symbolic gesture of signing an agreement that would imply a change in position on the death penalty, human rights, or governance. As one Singaporean negotiator stated, 'the human rights clause was a problem [in the negotiations]', and that 'the EU has this idea that their way [in regards to human rights] is the best way, but this is not always the case' (Interview 2). The Singaporean government was unwilling to agree to any deal that compromised its domestic position on human rights, thus conditionality was potentially a source of conflict in the negotiations. In addition to concerns that conditionality would compromise domestic policy on human rights, Singapore's opposition was also based on the concern that parallel negotiations of the EUSPCA could detract from the trade agenda. Thus, Singapore's position was that any political agreement should not infringe on the EUSFTA or Singaporean sovereignty.

In spite of the potential for intransigence, conditionality did not present a significant obstacle to the negotiation of either the EUSFTA or the ESPCA. This was a product of concessions made by EU decision-makers responsible for advancing the EU's foreign policy and human rights agenda and the conservative bargaining position taken on values promotion by the EU.

In response to Singaporean opposition, the EU made a major concession on conditionality. Conditionality in the ESPCA was accompanied by 'a side-letter on the non-execution mechanism [conditionality clause] which sets out that, at the time of signature,

neither party are aware (...) of any of each other's domestic laws, or their application, which could lead to the invocation of the non-execution mechanism' (UK Parliament, 2014). This side letter in effect recognizes Singapore's human rights practices and assures that these practices would not be challenged by the EU through the mechanism of conditionality. The language of the side letter undermines the very purpose of the inclusion of conditionality in the EU's FTAs and is a considerable setback for the EU's promotion of human rights in Southeast Asia. How can this policy outcome, which weakens conditionality with Singapore, be explained?

Although initially opposed to conditionality, Singapore accepted the institutional link between the EUSFTA and the ESPCA under the condition that a 'positive, explicit statement' (UK Parliament, 2014) would affirm Singapore's compliance with the conditionality clause, resulting in the side-letter accompanying the ESPCA. For Singapore, it was not controversial to link political and commercial interests in this way. However, the Singaporean government was strongly opposed to any agreement such as conditionality which requires evaluating the domestic human rights situation, and it did not agree with Europe's universal claim to Western human rights standards.

Human rights conditionality was contested by Singapore. Thus Singaporean opposition to conditionality threatened the negotiations. In this context where values are contested and the EU faces opposition from its negotiation partner, decision-makers must choose whether to trade off parts of the (commercial) negotiation agenda in order to advance conditionality or whether to trade off conditionality to advance the wider trade agenda. In this way, Singaporean opposition brought the tension between the EU's values and commercial interests to the surface in the negotiations. The EU's eventual policy position – to water down conditionality through the side letter – was a result of the failure of players oriented towards promoting values to advance their interests.

#### **IV. Explaining Concessions on Conditionality – Foreign Policy Decision-makers are Silent**

DG Trade along with EU Member States acting through the TPC were the main decision-makers on the EUSFTA, and both prioritized commercial interests in the negotiations. DG Trade's interest in entering negotiations with Singapore was in maintaining the competitiveness of EU trade in Southeast Asia, with the United States and China having concluded agreements with either Singapore or the region as a whole (Interview 5). Furthermore, there were strong economic interests to enter negotiations with Singapore (including the more than 9,000 European companies based in the country) in areas such as public procurement or services. The EUSFTA was also one of the first negotiations in which investment was an EU competence. Therefore, the Commission was aiming for a model text on investment and on Investor-State Dispute Settlement (ISDS). In the words of one Singaporean negotiator, 'the Commission was looking to make a model text for ISDS; member states were still trying to pull back as much as they could [on investment]' (Interview 3). Singapore was perceived as the ideal partner for setting such a precedent, as it had negotiated ISDS clauses in other agreements (Interview 1; Interview 3). In contrast, DG Trade did not perceive the negotiation of conditionality as an important part of negotiations with Singapore (Interview 1). Indeed, DG Trade tried to keep the EUSFTA negotiations separate from foreign policy interests such as conditionality.

EU Member States, acting through the TPC, aligned with DG Trade in prioritizing commercial interests in negotiations with Singapore. Germany, for instance, has encouraged active trade diplomacy and the negotiation of bilateral trade agreements with South-east Asian states, partly because German firms have been active in the region (Interview 6). The UK had strong commercial interests in the region and aligned with Germany in promoting a trade deal (Interview 17). Other Member States had no concerns about the EUSFTA negotiations, and were supportive of DG Trade's policy towards Singapore (Interview 18). The vital business ties between Europe and Singapore made EU Member States favourable towards the EUSFTA, and this compounded the fact that they were already oriented towards prioritizing commercial interests through decision-making in the TPC.

The EP is typically an advocate for the inclusion of values in the EU's FTA negotiations and has demonstrated its willingness to take a stand in promoting those values through its right to decline consent to international agreements. This occurred in the cases of the Anti-Counterfeiting Trade Agreement (ACTA) and the so-called Society for Worldwide Interbank Financial Telecommunication Agreement (SWIFT). Having learned from these experiences, DG Trade negotiators have since been careful to maintain dialogue with the EP through the European Parliament Committee on International Trade (INTA), which leads EP decision-making on trade negotiations. DG Trade informs INTA on developments in negotiations, and must anticipate the EP's interests. During the EUSFTA negotiation process, Singapore was also sensitive to the EP's interests, understanding that the EP represented a potential stumbling block for the negotiations. As one DG Trade negotiator stated, 'a number of issues are very sensitive to Parliament, so negotiating partners follow the debate' (Interview 1). This sentiment was supported by a Singaporean official who stated that the 'European Parliament is definitely having an effect on the relationship' (Interview 3). However, in the case of the EUSFTA, the EP did not take a stand in the promotion of human rights values and conditionality.

While in some other negotiations the EP has taken a stand on conditionality, INTA and the EP have not been active in advancing human rights linkages or resisting concessions on conditionality in the EUSFTA negotiations. The EP has demonstrated little interest in promoting conditionality in negotiations with Singapore, despite the divergence between European and Singaporean interests on human rights. Whereas the EP actively debated the issue of conditionality in, for example, the case of CETA (European Parliament, 2013), there was no debate on concessions to conditionality during the negotiation of the EUSFTA or the ESPCA. This reluctance on the part of the EP to campaign for values promotion is also reflected in the limited raising of the EUSFTA during parliamentary debates and questions. Of the total ten questions by MEPs to the Commission regarding the EUSFTA, none concerned the human rights situation in Singapore (European Parliament, 2016). Five questions were on trade-related issues and the remaining five concerned the state of negotiations or EU–Singapore relations more broadly. This absence of an EP-driven discussion of conditionality is also striking in relation to parliamentary debates. Rather than pushing the Commission to present human rights as a red line, MEPs enthusiastically supported the EUSFTA. One MEP expounded that 'the countries of the Association of South East Asian Nations – Singapore, Malaysia, Vietnam, Indonesia – will be capable of generating incredible economic output. Under these circumstances we have to do everything we can to ensure that the EU continues to develop its trade links with the

region, principally with the countries that already have functioning market economies' (European Parliament, 2012).

The EP's decision-making during the negotiation of the EUSFTA related primarily to the commercial aspects of the negotiations. On 28 May 2013 the INTA Committee invited the Ambassador of Singapore to the EU to exchange views on the agreement (INTA, 2013; Interview 8). Unlike in the ACTA negotiations, where the EP used workshops and collaborated with NGOs to establish a position in contrast to the Commission, MEPs were much more supportive of the EUSFTA talks. Simple interaction and open discussions between the Commission and the EP were sufficient in this case, and the EP did not use any particular strategies to influence the substance of the agreement (Interview 11). Political core groups of the EP were generally supportive of the EUSFTA, which the rapporteur transmitted to DG Trade (Interview 11).

With the exception of the ISDS mechanism, on which the EP became active to ensure more transparency (Interview 11; Interview 8), the EP was notably passive on the EUSFTA negotiations. The EP had few meetings with the Commission, it collaborated with the Singaporean Ambassador only for information gathering, and it did not address third-party dispute settlement mechanisms. Furthermore, the EP did not make use of its formal rights, which include the possibility to launch a study, issue an opinion, or release a resolution on the agreement.<sup>2</sup> Although a resolution is the EP's strongest instrument to influence the content of ongoing negotiations, it did not make use of it, and neither did the EP create any publications on the negotiations. In contrast to advocating for human rights issues, the EP conceptualized its biggest success in the EUSFTA negotiations as simply concluding the agreement (Interview 13). A report commissioned by the INTA committee, reflecting on the role of the ESPCA and human rights conditionality in the EUSFTA negotiations, stated that '[t]he [EUSFTA], has so far not provoked any clash within the European Parliament', and that '[t]he need to gain access to new growing markets may require [the Parliament] turning off its usual criticisms [to the death penalty]' (Pelkmans *et al.*, 2013, pp. 70–71).

The EUSFTA's lack of public salience and the parallel negotiation of ACTA, in combination with the EP's limited institutional capacity, were significant in shaping the parliamentary passivity in this context. In the Singaporean case, this lethargy was reflected in the near complete absence of parliamentary debates and use of available EP strategies. Although the Commission has identified the ESPCA as a 'stepping stone towards enhanced political and economic involvement of the EU in South-East Asia' (European Commission, 2014c, p. 2), and the EU has emphasized 'the abolition of the death penalty in the ASEAN region' as a foreign policy goal (European Commission, 2015, p. 13), the EP considered the EUSFTA as less relevant than the concurrent ACTA negotiations (Interview 8).<sup>3</sup> Due to the EUSFTA's lack of salience compared to ACTA, the EP considered it a limited opportunity for expansion of policy turf on human rights promotion in the context of EU trade policy. This perspective is also linked to the lack of foreign policy visibility of Southeast Asia in the European public, unlike transatlantic relations. As a

<sup>2</sup> The EP released one resolution on trade and economic relations with ASEAN in 2008, and one on the future EU–ASEAN relations in 2014.

<sup>3</sup> Measuring public salience in Google entries, the EUSFTA has 399,000 hits compared to 98,900,000 for ACTA.

result, the EP saw limited utility in the EUSFTA as an opportunity to enhance policy turf and instead focused its (limited) available resources on ACTA (Interview 8).

The absence of a strong position taken by either the Member States, DG Trade or the EP on promoting human rights through conditionality with Singapore informed the EEAS's approach to negotiating the ESPCA and facilitated the concession through a side letter on conditionality. The conditionality clause, accompanied by the side letter, was not seen as significant by EEAS negotiators. One EEAS interviewee reflected that 'the human rights clause is not as specific as the death penalty, and is used in the relationship to help make progress and bring up these issues' (Interview 16). The same interlocutor, an EEAS negotiator, made explicit that European values negotiated through clauses such as the human rights clause should not weaken the broader negotiations (Interview 16). Reinforcing this position, one Singaporean negotiator explained that the EEAS had 'stressed to us that [conditionality] was very theoretical' (Interview 3). The EEAS did not present conditionality as a red line for the EU, instead presenting the human rights clause as more symbolic than practically important to the EU's foreign policy interests. Their position was to compromise on conditionality to avoid potentially costly conflict that could endanger the EUSFTA negotiations. Rather than promoting values in the EU–Singapore agreement, the EEAS aimed at securing the EUSFTA as a platform for expanding trade relations in the Southeast Asian region (Interview 17).

## Conclusion

The EU's values of human rights – and practice of linking these values to FTAs through conditionality – were contested in negotiations with Singapore. Instead of leading to conflict between the EU and Singapore throughout the negotiations, or creating tension between EU decision-makers promoting incompatible sets of interests, the EU made a concession on conditionality. This concession occurred through a side letter that recognizes Singapore's human rights practices at the time of signing the agreement. This limited the EU's capability to use conditionality as an instrument for dialogue on issues such as Singapore's use of the death penalty and corporal punishment.

This concession was made possible because EU decision-makers such as the EP, which typically challenge the commercial orientation of players including the TPC and DG Trade, were not active in these negotiations. EP and EEAS passivity in this case – a product of the overarching orientation of the EU towards a prioritization of the trade agenda in relations with Southeast Asian states and of the EUSFTA's low salience – resulted in a weak (or conservative) position on values promotion. Concession-making is a necessary part of any trade negotiation. The conservative position on conditionality in this case, however, is problematic in that it undermines the EU's stated foreign policy position which is to: i) continue the link between its political agreement and trade policy through conditionality, and ii) to take a clear and active position on the promotion of human rights in relations with Southeast Asian states (Council of the European Union, 2015b). In the EU's current negotiation of new generation FTAs, its foreign policy and trade agenda are in tension as instruments such as conditionality can – instead of improving capability and visibility of EU foreign policy – force the EU to trade off foreign policy for the commercial agenda.



This contribution is a first attempt towards empirically understanding the dynamics of intersecting EU foreign policy interests – values promotion and commercial interests – and how these tensions play out in EU decision-making. Although this article is restricted to analyzing the EUSFTA, the scope of the theoretical approach is large and can be applied to all international agreements the EU has negotiated since the Lisbon Treaty entered into force. The EU's concessions on human rights conditionality in the EUSFTA differs remarkably from the FTA negotiations with Colombia, Peru or Canada, for example, where the EU stood by its insistence on conditionality, and from the negotiations with the Mercado Común del Sur or the Republic of Korea, where the negotiation of values was not problematic. This variation in the EU's approach to advancing values throughout its FTA negotiations requires explanation. Offering empirical evidence for divergent and incoherent foreign policy interests within the EU, and the role of organizationally defined preferences and foreign policy salience, the analysis provides a first test of this theoretical approach. In order to enhance the approach's external validity, research on further case studies with variation on the values of the explanatory factors is needed.

*Correspondence:*

Lachlan McKenzie  
 School of Social and Political Sciences  
 The University of Melbourne Australia.  
 Parkville VIC 3010, Australia  
 email: lachlan.mckenzie@unimelb.edu.au

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