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국제학석사학위논문

EU Economic Statecraft:  
A Case Study of the Trade-Social Policy Nexus in  
EU-ASEAN Trade Relations

February 2017

서울대학교 국제대학원

국제학과 국제통상전공

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## **Abstract**

# **EU Economic Statecraft: A Case Study of the Trade-Social Policy Nexus in EU-ASEAN Trade Relations**

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Free trade, while opening world markets and providing opportunities for growth, is feared by many as degrading social standards. Indeed, during the last decades, there has been a growing debate about the compatibility between the international trading regime and respect for core human rights. Since the signing of the Lisbon Treaty in 2007, the European Union's (EU) trade policy has become an integrated part of its external relations which are guided by a set of quasi-constitutional values. Consequently, the EU has aimed to be a key player in the trade-social policy debate, by focusing on the promotion of labor standards through its trade instruments. However, the EU's supposed normative policies, where trade access is made conditional upon the protection of labor standards, go far from uncontested. Opponents of the approach insist that fair trade linkage is merely a 'Trojan horse' for protectionism against competition from low-wage countries. The lack of general agreement on the issue complicates EU policymaking,

thereby slowing down progress in multilateral and bilateral trade negotiations. At the same time, trade is a key foreign policy tool for the EU in its assertion of power on the global stage. After all, the EU's self-proclaimed normative identity implies that its 'actorness' on the international scene relies on primarily non-military means. Therefore, the current tensions between the trade regime and the human rights regime are felt nowhere as intense as within the Union.

Many scholars have extensively researched the issue of a so-called social clause in trade relations. Nevertheless, current literature focuses primarily on the debate in abstract, theoretical terms and in the multinational context of the World Trade Organization (WTO). Surprisingly, despite the explicit political commitment on the part of the EU, academic literature barely contains in-depth case studies of the social dimensions of the EU's commercial policy. A thorough understanding of the EU's behavior and strategy is nonetheless indispensable to illuminate the nature of power in international relations and to derive policy recommendations for the future.

In this master thesis, a case study is presented of the EU's fair trade linkage policies in its relations with the Association of Southeast Asian Nations (ASEAN). More particularly, light is shed on the EU's balancing exercise between managing globalization on the one hand, and fully engaging in global competition on the other hand. By framing the EU's position within the literature on economic statecraft, a theoretical bridging of the EU as formidable trading power and as a normative power becomes possible. Moreover, the adoption of a tripartite, longitudinal approach allows for an understanding of the origins of the EU's principled approach (commitment), the

translation of principles into action (capacity) and the impact of the policy (consequences). More precisely, in the first part of this thesis, an overview of the EU's commitment to the promotion of social standards through its trade relations with ASEAN is presented. In the second part of this master thesis, the capacity of the EU to deliver this normative aspect is analyzed. Future research is necessary to adequately assess the impact or consequences of the EU's approach.

The study revealed the following key findings. With regards to the origin of the EU's principled approach, the analysis shows that European trade policy outcomes reflect a combination of purely normative preferences, but also bureaucratic interests and responses to concerns of the public. Against this background, it comes as no surprise that European trade instruments primarily focus on informational and overt diffusion of norms. Stated differently, norms are mostly spread through declaratory and strategic communications and by means of the EU's physical presence in ASEAN countries. Additionally, yet to a lesser extent, the EU also aims to promote social policy through the institutionalization of its relationship with ASEAN and through various agreements and their respective memberships of international organizations. At the same time, the exchange of goods and assistance between the EU and ASEAN present another avenue for norm diffusion on the part of the former. Finally, contagion, or the unintentional diffusion of norms can happen continuously and everywhere.

Overall, the analysis has shown how limitations for the EU to act as a norms exporter in the multilateral trading regime severely shape its policies. The EU is certainly active in bilateral and unilateral contexts. At this point, however, the EU faces a double challenge

as it has to balance its normative and commercial policies both horizontally and vertically. The outcome of the analysis therefore definitely provokes some new insights and questions. A first absolutely necessary step is to evaluate the effectiveness of the current approach. Future research is required to this purpose.

**Keywords: European Union, Association of Southeast Asian Nations, Economic Statecraft, Social policy, Trade policy, Normative Power Europe**  
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## Table of contents

<b>ABSTRACT</b> .....	<b>1</b>
<b>TABLE OF CONTENTS</b> .....	<b>5</b>
<b>LIST OF TABLES AND FIGURES</b> .....	<b>7</b>
<b>LIST OF ABBREVIATIONS</b> .....	<b>8</b>
<b>I. INTRODUCTION</b> .....	<b>10</b>
<b>II. THEORETICAL ASSUMPTIONS: ECONOMIC STATECRAFT</b> .....	<b>15</b>
1. LITERATURE REVIEW: DEFINING ECONOMIC STATECRAFT .....	15
2. BACKGROUND: THE EUROPEAN UNION AS A NORMATIVE TRADING POWER...	19
<b>III. RESEARCH METHODOLOGY</b> .....	<b>23</b>
1. COMMITMENT, CAPACITY AND CONSEQUENCES .....	23
2. CASE STUDY: EU-ASEAN TRADE RELATIONS.....	24
<b>IV. LINKING TRADE AND SOCIAL POLICY: RATIONALE</b> .....	<b>27</b>
1. ESSENCE OF THE DEBATE .....	27
2. MOVING BEYOND THE DISCREPANCY: APPLICATION TO THE EU.....	30
2.1. <i>Normative Power Europe?</i> .....	32
2.2. <i>Legitimacy and bureaucratic interests</i> .....	35
2.3. <i>Accountability and public opinion</i> .....	36
<b>V. OPERATIONALIZING NORMATIVE POWER EUROPE VIS-À-VIS ASEAN</b> .....	<b>40</b>
1. DIFFUSION OF EU NORMS THROUGH TRADE .....	40
1.1 <i>Context: the multilateral trading regime</i> .....	41
1.1.1 Diffusion of norms: the WTO and the GATT Enabling Clause .....	43

1.1.2	Trade instruments to address specific issues: Kimberley Process .....	45
1.2	<i>Bilateral instruments of linkage</i> .....	48
1.2.1	Failure of EU – ASEAN Free Trade Agreement negotiations.....	48
1.2.2	Bilateral FTA: essential elements clauses.....	52
1.2.3	Sustainability impact assessments .....	55
1.3	<i>Unilateral approach</i> .....	57
1.3.1	Sanctions: Myanmar .....	57
1.3.2	The Generalized Scheme of Preferences .....	63
1.3.3	Others: Torture, military equipment and dual use .....	67
2.	DELIVERING A CREDIBLE COMMITMENT .....	69
<b>VI.</b>	<b>CONCLUSION</b> .....	<b>74</b>
	<b>BIBLIOGRAPHY</b> .....	<b>79</b>

## **List of tables and figures**

Table 1: Power in trade and power through trade

Table 2: Progress in FTA negotiations (EU – ASEAN members)

Table 3: The EU's Generalized System of Preferences

Table 4: Overview of normative diffusion through EU trade instruments

## **List of abbreviations**

ASEAN	Association of Southeast Asian Nations
ASEM	Asia-Europe Meeting
BSPP	Burmese Socialist Program Party
CCP	Common Commercial Policy
CGSP	Common Foreign and Security Policy
DG	Directorate-General
DPRK	Democratic People's Republic of Korea
EBA	Everything But Arms Initiative
ECJ	European Court of Justice
ENP	European Neighborhood Policy
ETUC	European Trade Union Confederation
EU	European Union
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GSP	General Scheme of Preferences
ICFTU	International Confederation of Free Trade Unions
ILO	International Labor Organization
IOE	International Organization of Employers
ITO	International Trade Organization
KP	Kimberley Process
KPCS	Kimberley Process Certification Scheme
MFN	Most Favored Nation
MNC	Multinational Corporation

NGO	Nongovernmental Organization
NLD	National League for Democracy
NPE	Normative Power Europe
OECD	Organization for Economic Cooperation and Development
PCA	Partnership and Cooperation Agreement
SIA	Sustainability Impact Assessment
SOE	State-owned enterprise
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TREATI	Trans Regional EU-ASEAN Trade Initiative
TRIPS	Trade-related Aspects of Intellectual Property Rights
UK	United Kingdom
UN	United Nations
UNSC	United Nations Security Council
US	United States
USD	United States dollar
WTO	World Trade Organization

## **I. Introduction**

*“If Europe must have a stronger social dimension, so should its trade policy.” (Peter Mandelson, 2005)*

Fair globalization, or linking trade and social policy, is a hot topic these days. In the past decade, the European Union (EU) has aimed to be a key player in this regard, by focusing on the promotion of labor standards through its trade instruments (Kerremans & Orbie, 2009). Indeed, the Lisbon Treaty has placed the topic of advancing non-commercial interests through trade relations at the forefront of the EU’s international role (Tackas, Ott & Dimopoulos, 2013). For example, article 3(5) TEU calls on the Union to uphold and promote its values, including the contribution to sustainable development, and free and fair trade, in its relations with the wider world (European Union, 2007).<sup>1</sup> Articles 205 and 207 TFEU, in turn, more precisely prescribe the conduct of respectively the EU’s external policies and its Common Commercial Policy (CCP) to conform with the general principles and objectives of the Union (European Union, 2007).<sup>2</sup> Put differently, the EU’s trade relations have today become an integrated part of its external relations, guided by a set of ‘quasi-constitutional’ common European values and objectives (Woolcock, 2008; Tackas *et al.*, 2013).

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<sup>1</sup> Note: Treaty on the European Union

<sup>2</sup> Note: Treaty on the Functioning of the European Union

The existence of an overall guiding leading framework, however, is never the end of the story. Trade is a composite policy with diverse ramifications for others domains, and is therefore an area with plentiful opportunities for political entrepreneurs (Holland & Doidge, 2002). The EU currently finds itself internally divided in the debate between a will to manage or harness globalization on the one hand, and the need for the EU to fully engage in global competition on the other hand (Kerremans & Orbie, 2009). Supporters of fair trade linkage, where trade access is made conditional upon the protection of labor standards, distinguish it from general protectionism on grounds that linkage involves reforming, rather than simply shutting down globalization. Yet, opponents insist that fair trade linkage is merely a ‘Trojan horse’ for protectionism against competition from low-wage developing countries. The resulting confrontation complicates EU policy-making thereby slowing down progress in bilateral and multilateral negotiations (Burgoon, 2009). In order to better grasp how this struggle plays out on the ground, in this thesis, an analysis will be presented of the commitment and the capacity of the EU to advance social standards in its trade relations with the Association of Southeast Asian Nations (ASEAN).<sup>3</sup> ASEAN is an interesting case because of its growing importance as a trading partner for the EU on the one hand, and its central position in the so-called Asian value debate on the other hand (European Commission, s.d.). Moreover, concluding a comprehensive free trade agreement (FTA) with the region remains a priority in EU-ASEAN relations (European Union, 2016). Put differently, the presented case study is

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<sup>3</sup> ASEAN currently comprises of ten member states: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar (Burma), the Philippines, Singapore, Thailand and Vietnam

likely to remain highly debated in the years to come and aims to provide the touchstones necessary to evaluate the EU's role and impact on the international trading regime.

Against the background discussed, two interesting research questions will be tackled in this thesis. The first research question – descriptive in nature – answered in this thesis is: Why is the EU pursuing conditionality on social standards in its trade relations with ASEAN? Building on this, the second analytical research question answered in this thesis is: How is the EU delivering this normative aspect in its trade policy towards ASEAN? In a further stage, it is necessary to shed light on the *impact* of the EU's conditionality clauses to complete the picture. However, given the complexity of the issue and the lack of similar academic case studies, the focus of this thesis will lie on the aspects of commitment and capacity (and not yet on the consequences). Theoretically, the two research questions are framed within the literature on Normative Power Europe (NPE) and fair globalization, and they are answered by applying insights from the economic statecraft literature on this interaction. Empirically, a case study on EU trade policy towards ASEAN is presented. Although a body of literature exists about the social dimension of EU trade policy in broad terms, further applying these insights to case studies remains work to be done. A better understanding of why and how the EU strives to improve social standards in ASEAN countries by means of its commercial leverage over the latter is necessary for two key reasons. The case study will help illuminate the nature of power in international relations on the one hand and it will allow policymakers to design more deliberate linkage policies for the future on the other hand.

The analysis presented starts from the following puzzle: it is rather alarming that despite the EU's commitment to the promotion of social standards in its external policies, several ASEAN countries score relatively bad on a series of human rights assessments, especially those related to labor rights. Labor inspections – conducted by for example the International Labor Organization (ILO) – show the general disregard for the law and for labor rights in for example Cambodia, Myanmar and Thailand. Multiple reports and press releases have raised concern on the working conditions in the large-foreign owned factories in Phnom Penh and Hanoi. This is especially striking for ASEAN countries that are highly dependent on the EU's market, as the latter's leverage can be expected to be bigger in those cases (International Labor Organization, 2014; United States Department of State, 2013/2015a/2015b; Human Rights Watch, 2015/2016).<sup>4</sup> It thus seems that when it comes to fair globalization beneficial for all, the international trading regime has a long way to go.

The empirical data that is used in this thesis mainly originates from academic literature on the social dimension of EU trade policy. Furthermore, EU legal documents and policy prescriptions concerning its trade relations with ASEAN countries were analyzed to paint a more complete picture of the EU's capacities in this specific case. Also, more general accounts of the fair trade linkage debate were taken into account.

In the first section, a brief overview of some key insights on economic statecraft in relation to the promotion of social standards is presented. In the following section, a

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<sup>4</sup> More reports can be found on the website of Human Rights Watch and the International Labor Organization.

justification for the choice of methodology and case study is given. The third section of this thesis consists of an elaborate discussion of the commitment of the EU to the promotion of social standards through its commercial policies. Afterwards, the question of how these principles are translated into action in the case of ASEAN is tackled. Finally, an answer to the two research questions is presented in the conclusion.

## **II. Theoretical assumptions: economic statecraft**

### **1. Literature review: defining economic statecraft**

*"We can do without butter, but, despite all our love of peace, not without arms. One cannot shoot with butter, but with guns." (Hermann Göring, 1936 p. 178)<sup>5</sup>*

For many years, international discussions about national economic policies were held in different configurations of experts depending on the specific policy aspects at stake. Trade was discussed within the framework of the General Agreement on Tariffs and Trade (GATT), while policies involving labor markets were handled by labor specialists under auspices of the ILO. Intellectual property issues were the province of the World Intellectual Property Organization, and environmental challenges were tackled by specialists spread among several international bodies (Brown, Deardorff & Stern, 2002). When looking back at this, such compartmentalization seems somewhat artificial as the use of economic measures to attain non-economic ends has a long history in international relations (Drezner, 1999 p. 6). In his book on *Politics, Markets and Grand Strategy: Foreign Economic Policies as Strategic Instruments*, Lars Skålnes demonstrates the close integration of military and economic considerations in American, German, Russian, French and Italian national strategy over the past two centuries (Skålnes, 2000 p. 2). Paul

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<sup>5</sup> Radio broadcast (1936) as quoted in William Safire (1986)

Papayoanou as well, suggests the important role of economic inducement in bolstering the credibility of alliance commitments in nineteenth century Europe (Papayoanou, 1999). Patricia David shows how economic relations were crucial in Germany's efforts to reassure Poland of its peaceful intentions in postwar years and William Long focuses on the role of economic engagement in US – China relations (Long, 1996; Davis, 1999). Although an extensive literature review about the use of economic measures as a tool of statecraft lies outside the scope of this thesis, the aforementioned examples clearly demonstrate that trade has always been a multidimensional domain of policy with implications far beyond the economic sphere.

Despite the practice of using economic incentives to obtain foreign policy goals being widespread for many centuries, most scholarly works date only from the 1990s onwards. Indeed, when it comes the concept of economic engagement, it seems that practice has preceded theory. Up until the end of the Cold War, only one groundbreaking scholarly contribution was produced on the topic. Today, Albert Hirschman's 1945 book on *National Power and the Structure of Foreign Trade* is widely acknowledged to be the starting point for theoretical analysis. Hirschman coins the term of 'economic statecraft' to refer to the use of economic inducements and or sanctions by one state to achieve certain policy objectives in relation to another state (Hirschman, 1980; Drezner, 1999 p. 3; Reeves, 2015). More precisely, economic statecraft is a political act in which a stronger states uses economic power to influence a weaker state's behavior to the former's advantage (Baldwin, 1985 p. 9). Therefore, the power to interrupt commercial relations with other countries is an important determinant of a country's power position.

In other words, with the notion of economic statecraft, Hirschman for the first time explicitly clarified the relationship between guns and butter, by shedding light on how relationships of dependence, influence and even domination can arise out of trade relations (Hirschman, 1980 p. 105). While a number of instruments can be employed within the economic sphere, the three most common tools of economic statecraft are trade, investment and finance. States engaged in economic statecraft can, among other, promise increased trade, greater investment and more financial assistance to other countries in exchange for certain changes in the latter's behavior (Blanchard, Mansfield & Ripsman, 2014 p. 3; Reeves, 2015). Baldwin later specified that policy instruments of economic statecraft can be used for both positive or negative sanctions. Instruments like embargos, boycotts, tariff increases and quotas are usually associated with attempts to threaten or punish, whereas aid, subsidies and tariff reductions are normally associated with attempts to promise or provide rewards. Finally, it is important to note that the notion of economic statecraft refers to means – i.e. economic measures – rather than ends (Baldwin, 1985 p. 39-41).

The end of the Cold War has triggered a sharp increase in the use of economic statecraft, paralleled by a growing academic body of knowledge (Drezner, 1999; Mastanduno, 2003).<sup>6</sup> Moreover, the establishment of the World Trade Organization (WTO) in 1993

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<sup>6</sup> Mastanduno gives two reasons for this increase in academic literature on economic statecraft. On the one hand, the period after the Cold War is characterized by a sharp increase in economic interdependence, rather than independence, among major powers. Consequently, economic interactions have (once again) become an important part of power politics. On the other hand, economic engagement on the part of the German government to a large extent shaped *how* the Cold War ended. Indeed, the West German government spent two decades using economic incentives to build trust and confidence in its relations with the Soviet Union, which it enabled to

partly overcame the artificial compartmentalization mentioned above as it covers a much broader purview as its predecessor. Indeed, the WTO has competences in the fields of subsidies, intellectual property, food safety and many more and thus more accurately acknowledges the multi-dimensional ramifications of national trade policies (Aaronson, 2001). Today, the United States (US) is probably the most prominent actor to employ tactics of economic engagement. Nevertheless, it would be unfair to say that the US is the only one to resort to such practices. For example, the United Nations Security Council (UNSC) has established 26 sanctions regimes since 1966 in among others Iraq, the Democratic People's Republic of Korea (DPRK), Iran and Libya (United Nations, 2016). Literature on Chinese economic statecraft is increasing at a fast pace as well (Bräutigam & Xiaoyang, 2012; Norris, 2016). Besides this, the EU is also very active in the field, as it has levied sanctions more than thirty times (in addition to those mandated by the United Nations (UN)) (Masters, 2015; European Commission, 2016b). What distinguishes the EU from other players mentioned, however, is that trade is far more important than many other foreign policy tools for its actions on the international scene (Kerremans & Orbie, 2009). The EU's self-proclaimed normative identity implies that its 'actorness' on the international scene relies primarily on non-military means. The statement that trade plays a more important role for the EU than for the US in their respective assertions of power therefore does not come as a surprise (Meunier &

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buy Soviet acquiescence to German unification. The importance of strategies of economic engagement in triggering the end of the Cold War can thus not be underestimated. It is no surprise that academic curiosity rose accordingly.

Nicolaidis, 2006). Consequently, a good understanding of why, how and with what impact the EU pursues economic engagement is of utmost importance from both an academic and practical point of view. A better understanding of economic statecraft by academia can illuminate the nature of power in international relations (Drezner, 1999). The practical reason for caring about economic statecraft is that although the use of it has multiplied, policy analyses have not yet kept up with the pace. Put differently, (European) policymakers should get the opportunity to learn from their predecessors and to properly prepare and inform their successors.

## **2. Background: The European Union as a normative trading power**

*'From my perspective, trade has the potential to contribute to the overall objective of sustainable development in all its dimensions - economic, social, and environmental. Multilateral trade liberalization can be a sound social policy. It can foster long-term economic growth, stimulate trade and investment and assist developing countries' integration into the world trade system. And it can do this in a way that will help combat poverty and raise living and working standards for all members of society.'* (Peter Mandelson, 2005)

When taking a closer look at the academic literature on the EU's economic statecraft, it seems that a scholarly consensus exists in considering the EU a 'principled' or

'normative' actor in foreign policy (Lucarelli & Manners, 2006; Kerremans & Orbie, 2009). Ian Manners coined the notion of 'Normative Power Europe' in 2002 to refer to the EU as a so-called 'ideational' actor characterized by common principles and aiming to diffuse norm through its external relations (Manners, 2002; Whitman, 2011). Put differently, the conception of a normative power suggests that the EU is built on a normative basis which consequently predisposes it to act in a normative way in world politics. The EU's principles or norms are enshrined in the *acquis communautaire* and include peace, liberty, democracy, rule of law and respect for human rights and fundamental freedoms (Manners, 2002; European Union, 2007). Today, many scholars have embraced this normative aspect of European foreign policy in their assessment of the EU's practices of economic engagement, albeit they have not always phrased it in such a direct way. Vachudova, for example, describes how the EU presided over an impressively successful democracy-promotion program through its enlargement to Central and Eastern Europe. For the EU's neighbors, market access for agricultural and several other sensitive goods is restricted, while other products run the risk of becoming subject to different types of market protectionism. Economic integration can cause three kinds of negative externalities for states excluded from the regional bloc: trade diversion, aid diversion and investment diversion. The sheer market size of the EU thus proved great leverage in its accession negotiations with membership-seeking countries (Mattli, 1999; Meunier & Nicolaidis, 2006; Vachudova, 2007). Meunier and Nicolaidis come to a similar conclusion, describing how the EU uses trade conditionality in the form of sanctions or unilateral tariff disarmament to promote democratization, the rule of law,

good governance and conflict resolution in target countries (Meunier & Nicolaidis, 2006). Policy documents about the Euro-Mediterranean program and the European Neighborhood Policy (ENP) moreover explicitly mention the EU's goals of obtaining changes in the domestic arena of its trading partners with a focus on human rights, democratic practices and the environment (Hafner-Burton, 2005; European External Action Service, 2016a/2016b). Finally, former European Commissioner for trade Mandelson on several occasions explicitly argued that EU trade policy must have a social dimension, and that the EU uses trade policy to incentivize good governance and good social practice (Mandelson, 2005).

An interesting brief overview of the EU's normative economic statecraft in the field of trade is presented by Meunier and Nicolaidis who make a distinction between power *in* trade, where access to the European market is traded for increased exports of the EU's own goods, services and capital, and power *through* trade where the EU aims to deliver its normative ambitions (see **table 1**). In the case of power through trade access to the EU's market is exchanged for the export of the EU's laws and standards, and ultimately its norms and ideas. Of course, the two dimensions are not neatly separable, as the adoption of EU standards often constitute a prerequisite for gaining market access (Meunier & Nicolaidis, 2006).

**Table 1: Power in trade and power through trade**

<b>Nature of trading relations</b>	<b>Power in trade (goods, services and capital)</b>	<b>Power through trade (norms and standards)</b>
<b>Bilateral</b>	Symmetric and asymmetric bargaining power over market access	Democratization, development, governance and adoption of standards
<b>Regional</b>	Reciprocal market access	Exporting EU single market rules and broader governance tools to other regions
<b>Global</b>	Multilateral bargaining, specific and diffuse reciprocity	Shaping the multilateral system through deep trade agenda

*Source:* table based on Meunier & Nicolaidis (2006)

The theory of economic statecraft thus allows for a theoretical bridging of the EU as a normative power on the one hand, and as a trading power on the other hand. Building further on this, in the following subsections, an analysis will be presented of the EU's commitment and capacity to deliver its normative ambitions in its trade relations on the ground. More precisely, a case study of the EU's linking of trade and social policy in its relations with ASEAN will be presented.

### **III. Research Methodology**

#### **1. Commitment, capacity and consequences**

Ian Manners recommends the practice of a longitudinal, tripartite (qualitative) analysis when reflecting on the social dimension of EU trade policies to ensure that the study captures generational changes rather than momentary fluctuations. More precisely, Manners describes the need to include an analysis of the origins of the EU's principled approach (*commitment*), the translation of principles into action (*capacity*), and the impact of the policy (*consequences*) (Manners, 2009). The first research question of this master thesis about the reasons for the EU to pursue conditionality on human rights in its trade relations with ASEAN reflects Manners' issue of commitment. The research question on how the EU delivers its normative ambitions in its trade relations with ASEAN aims to shed light on the EU's capacities. The question on the impact or consequences of the EU's fair trade policies lies outside the scope of this master thesis and remains to be tackled in future research.

The concise literature review presented above clarified what is meant by economic statecraft. Keeping the research questions of this master thesis in mind, it is necessary to illuminate what is meant by 'social policy' as well. The definition adopted is derived from the Malcolm Wiener Center for Social Policy at Harvard University and considers social policy as "*public policy and practice in the areas of health care, human services,*

*criminal justice, inequality, education and labor*” (Malcolm Wiener Center, s.d.). This definition is rather broad and allows for a comprehensive assessment of the EU’s behavior as a normative power in its trade relations with ASEAN.

## **2. Case study: EU-ASEAN trade relations**

The EU’s trade relations with ASEAN provide an interesting case study for two main reasons. Overall, during the last decades, the EU has shifted its external commercial relations from being westbound to being eastbound. Of course, the soaring trade with China plays an important role in this, but it is equally important to point at the growing political and commercial linkages with ASEAN countries (Lindberg & Alvstam, 2008). Following the US and China, ASEAN ranks as the EU’s third largest trading partner outside of Europe. The EU, in turn, is ASEAN third largest trading partner after China and Japan, accounting for approximately 13 percent of ASEAN trade. Moreover, the EU is by far the largest investor in the region, with an average annual investment worth €14.8 billion. Also, both imports to the EU and exports from the EU are steadily growing, with an annual average growth rate of respectively 5,9 percent and 4,7 percent. The above statistics, against the background of a decline in growth of the American economy since the global economic crisis of 2008, clearly demonstrate the economic importance of the ASEAN region in the present and for the future (European Commission, s.d.). The EU is also a major development parent of ASEAN and the biggest donor to the latter’s

secretariat (European Commission, 2015b).

When it comes the trade policy preferences, both regions are featured by an ambivalence between support for the multilateral process within the WTO on the one hand and a focus on intraregional and interregional trade liberalization on the other hand. ASEAN is furthermore mentioned as a priority region for the EU in Federica Mogherini's Global Strategy which sets out the EU's core interests and principles for engaging in the world. Concluding a comprehensive free trade agreement with the region remains a priority in EU – ASEAN relations (European Union, 2016). A 2015 Joint Communication of Mogherini and the European Commission puts forward concrete ideas for the EU – ASEAN partnership and states the following: *“The partnership between the EU and ASEAN is crucial and we are determined to build on it and strengthen our political and economic cooperation. From trade to security, from climate change to the rule of law, we have a deep cooperation and as the EU we are supporting ASEAN integration. Deepening and broadening our relation with ASEAN is key for the EU's Asia strategy”* (European Commission, 2015b).

Besides the importance of ASEAN as a trading partner for the EU, the region is also particularly interesting for this case study because of its central position in the so-called ‘Asian values’ debate. In broad terms, this debate can be viewed as a contest between the West, advocating values of liberal democracy, and the East, focusing more on values of tradition and conservatism (Mauzy, 1997). There are several issues of contention, but the most important can be summarized as: the preference for cultural relativism or universalism, the choice for individual rights as opposed to communitarianism and the

balance between economic development on the one hand and civil and political rights on the other hand (Kraft, 2001). Asian elites, primarily from Singapore and Malaysia have stressed on several occasions that international pressure on human rights comes primarily from the industrialized West and that they cannot be applied in an identical way to Southeast Asian societies. For example, prominent figures like former Singaporean Prime Minister Lee Kyan Yew and former Prime Minister Mahatir from Malaysia emphasize the need for Asian societies to give greater priority to economic growth which will eventually lead to democratic developments. Western arguments, however, stress the importance of democracy as the base for economic growth and discharge counterarguments as a justification for suppressive behavior (Kraft, 2001; Petersson, 2006). This master thesis is not the place to elaborate on the various arguments and counterarguments of this debate. Yet, the Asian values discourse has forced human rights advocates to reflect on the meaning of ‘universal rights’ (Kraft, 2001). The concept of NPE also plays a key role in the debate, and the meaning and operationalization of this concept in a Southeast Asian context will undoubtedly provide interesting insights in this regard.

## **IV. Linking trade and social policy: rationale**

### **1. Essence of the debate**

The practice of linking trade and social policy is not new, nor unique to the EU. Discussions on linkage have a long cyclical history, whose phases correspond to the globalization of the world economy. As far back as the nineteenth century, the industrialization of Western society, with its correlated social excesses, led to proposals for harmonization of national labor legislation. After WWI, fears that the combination of social injustice and international competition would create international conflict were instrumental in the establishment of the ILO. The issue of linking trade and social policy later resurfaced in the context of the WTO and concerns of ‘unfair competition’ and ‘social dumping’ remain high on the agenda today (Sapir, 1995; Vandenberghe, 2008). More than 70 percent of the world’s countries now participate in FTA with requirements for social standards. FTA have become more than mere trade agreements, and often contain thousands of pages with obligations related to wide-ranging topics (Chauffour & Maur, 2011). Mature economies in Europe and North America are key players in advocating conditionality clauses in trade agreements (Vandenberghe, 2008). In 1995 and 2002, respectively the EU and the US decided to include social rights clauses in all of their agreements (Aaronson & Zimmerman, 2007 p. 133,167). Views on their reasons and motivations behind fair trade linkage, however, remain divided.

In very broad terms, two main positions are discernable in the literature on reasons for the EU to pursue conditionality on social standards in its trade relations with the world (Brown, 2000). Proponents of fair trade linkage refer to a moral obligation of developed countries vis-à-vis developing countries to support conditionality on social standards. For them, trade is a means to lift countries out of poverty. Therefore, developed countries have a responsibility to support development and to help ensure high standards of health and safety in developing countries. Various arguments are cited in the literature to support the benefits of using trade policy to achieve social goals. For example, the Organization for Economic Cooperation and Development (OECD) describes how respect for core labor standards such as child labor and freedom of association have a potential positive impact on a country's economy. Higher social standards help guarantee the socio-economic stability of a country needed to attract foreign investment and raise the skill levels of the workforce (Deléchat, 1996; Vandenberghe, 2008). Thomas Palley makes the economic case for international labor standards and explains how they provide an institutional mechanism for raising the quality of economic growth by generating static and dynamic efficiencies (Palley, 2004). Morris Altman, in turn, adopts a behavioral approach to the matter and presents a revisionist view of the economic implications of child labor regulations. Contrary to conventional wisdom, Altman explains that improving working conditions for children does not increase production costs when a productivity differential favoring adult labor exists which compensates for the pay differential between child and adult labor, and when the increased cost of child labor is compensated for by increased productivity (Altman,

2001). Finally, proponents of fair trade linkage often point to the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) as setting a precedent for incorporating standards for protecting the rights of resource holders within trade agreements. After all, if the WTO is the appropriate venue for setting legally binding standards to protect intellectual property rights, it is an adequate venue for the protection of social standards as well (Wells, 2001; Palley, 2004).

Opponents of fair trade linkage, however, insist that conditionality merely aims to disguise protectionism and refer to fears of developed countries for a ‘race to the bottom’ (Burgoon, 2009). In other words, by linking trade to social policy, developed countries seek to deny developing countries the opportunity to realize their competitive and comparative advantages. Also, the International Organization of Employers (IOE) emphasizes that market-based policies, including openness to trade and investment, are the best means to spur economic development and to enhance labor practices in developing countries (International Organization of Employers, 2006). Indeed, standard economic theory prescribes that the first-best method to deal with labor market imperfections is to adopt domestic policies, rather than trade policy (Arvind, 2001; Krugman, Obstfeld & Melitz, 2012 p. 228; Cuyvers, 2014). Hofmann points out that fair preferential trade regulations protecting social rights are moreover bad diplomacy. Governments charged with human rights violations are quick to view accusations as meddling in their domestic affairs (Hoffmann, 1981). Overall, however, the ‘race to the bottom’ argument remains controversial on both sides. Freeman, for example, argues that global labor standards do not threaten the competitive advantage of developing

countries, nor create a so-called race to the bottom (Freeman, 2004). Chau and Kanbur come to a similar conclusion and suggest that although a race to the bottom is certainly possible, it is not inevitable (Chau & Kanbur, 2006).

On the whole, it seems fair to conclude that when it comes to liberalization and social standards, countervailing pressures are at work. Especially when it comes to the question of whether international trade creates or destroys jobs, tempers flare. On the one hand, it is claimed that in the absence of a social level playing field, jobs in the EU are destroyed as trade liberalization puts European workers in direct competition with lowly paid and lowly regulated jobs elsewhere. On the other hand, liberalization may create export opportunities and can thus entail the creation of new jobs in the EU (Kerremans & Orbie, 2009). In the following paragraph, an overview is presented of specific reasons for the EU to opt for linkage policies in its trade relations with ASEAN countries.

## **2. Moving beyond the discrepancy: application to the EU**

*“Europe’s attainment is normative rather than empirical... It is perhaps a paradox to note that the continent which once rules the world through the physical imposition of imperialism is now coming to set world standards in normative terms.” (Rosescrane, 1988 p. 21)<sup>7</sup>*

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<sup>7</sup> As cited in Zielonka (1998)

Whenever one aims to discuss policy-making processes within the EU, one gets easily confused by the multiplicity and diversity of the players involved. For the purpose of this thesis, the focus will lie on the intentions of the European Commission as it is the key player in EU trade policy vis-à-vis ASEAN (European Commission, s.d.). Trade is an exclusive power of the EU, and therefore the individual member states do not have the competence to legislate on the matter (European Commission, s.d.). Of course, the Commission works closely with national governments in the Council and the European Parliament to negotiate new trade agreements and to initiate reforms (European Union, 2007/2016). Nevertheless, when the Council mandated the Commission in 1997 to negotiate a customs cooperation agreements with ASEAN, the Commission was put in the driving seat (European Commission, s.d.). Of the different EU institutions, the Commission has always been the most ambitious in promoting social goals beyond Europe and has proven an impressive entrepreneurial ability in rallying the member states behind its proposals (Orbie & Babarinde, 2008). It is essential to acknowledge that there might be a discrepancy between the Commission's motivations and ASEAN countries' perceptions of the matter. A potential mismatch between the former and the latter will undoubtedly have a large influence on the success of the EU's endeavors in linking trade and social policy. This question, however, falls outside the scope of this master thesis.

The argument made in the following paragraphs is that European trade policy outcomes reflect a combination of normative preferences, but also institutions, struggles for powers and issues of accountability. In general, policy makers are expected to be most

apt to linking trade and social standards when they expect large personal political gains from it. For example, the adoption of the social regulation might pay direct dividends to core constituencies that support the policymaker, or it may serve some vital national security or economic purposes. Nonetheless, it helps when the regulation can be justified through popular appeal to widely accepted social values. Although normative appeals for fair trade deals rarely do the job alone, interest-driven motivations certainly benefit from morally persuasive undertones (Hafner-Burton, 2013 p. 24).

## **2.1. Normative Power Europe?**

The first and foremost reason for the EU's policy of linking trade and social standards can be derived from its self-proclaimed normative identity. The anchoring of EU external relations into a normative agenda was made official in the Treaty of Lisbon, notably in article 21(1), which states:

*“The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law” (European Union, 2007).*

References to questions of morality, sustainable development, fairness and social justice are abundant in EU communications on the topic of trade (Mandelson, 2005; European Commission, 2014a). In the past couple of years, EU bodies and institutions have designed several strategies to ensure that EU trade relations could effectively realize the ‘trade-human rights nexus’ (Hachez, 2015). Under EU Trade Commissioner, Cecilia Malmström, a new trade strategy ‘Trade for All’ was adopted that aims to promote values like sustainable development, human rights, fair and ethical trade and the fight against corruption. Moreover, Malmström wants to use EU trade agreements to improve the responsibility of supply chains (European Commission, 2014c). The Directorate-General Trade (DG Trade) of the Commission is committed to helping developing countries build the capacity to take advantage of trade. Striving to improve working conditions for workers in developing countries is one of the key pillars in this regard (European Commission, s.d.).

Moral concerns on the part of the EU are also frequently cited in its policy communication vis-à-vis ASEAN countries (European Commission, 2010/2011/2013a). For example, respect for human rights and sustainable development was one of the key stumbling blocks in EU-ASEAN FTA negotiations (Lim, 2012). The case of Myanmar in particular, seems to offer support for the EU’s dedication to the promotion of its norms and values through its trade policy. For several decades, the EU’s so-called ‘Generalized Scheme of Preferences’ (GSP) has allowed developing countries to pay less or no duties on exports to the European market, hereby giving them vital access to a huge market and

thus contributing to their economic growth (European Commission, s.d.).<sup>8</sup> The EU withdrew Myanmar from its GSP scheme in 1997, because of concerns about forced labor and violations of ILO convention no. 29. Myanmar collapsed into a military regime under the Burmese Socialist Program Party (BSPP) in 1962 and was frequently listed as one of the most repressive countries in the world at that time. Violations of civil and political rights, as well as economic, social and cultural rights were known to be widespread in the country. Only in 2013, the EU reintegrated Myanmar in its GSP scheme, when the latter made significant improvements in the aforementioned fields (Lim, 2012). Once again, references to a moral obligation on the part of the EU in its relations with the wider world were abundant in EU communications on the topic (European Commission, 2012b; European Parliament & Council of the European Union, 2013).

Manners describes how this normative dedication of the EU finds its roots in its historical context, hybrid polity and legal constitution (Manners, 2002). The EU has gone further towards making its external relations informed on norms and values than most other actors in world politics. It is founded on and has as its foreign policy goals the rule of law, the consolidation of democracy and respect for human rights and fundamental freedoms (Manners, 2002; European Union, 2007). When applying these insights to the case of linking trade and social policy, it becomes clear that one of the key reasons for

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<sup>8</sup> An elaborate discussion of the EU's GSP policy is presented further in this master thesis.

the EU to pursue fair trade conditionality seems to be a dedication to making its self-proclaimed normative identity true.

## **2.2. Legitimacy and bureaucratic interests**

*“Protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her legitimacy.” (Cologne European Council, 1999)*

The EU clearly uses its trade relations to advance its social model throughout the world. Yet the debate on the social impact of trade policies has ramifications far beyond the purely normative sphere. Through time, the trade-labor debate has created opportunities for the Commission to expand the EU’s international presence, and in doing so, its own role. Concerns about the impact of globalization have eroded the legitimacy of the EU’s external relations, particularly in the field of multilateral trade. Relatively new actors in the trade policy field, such as nongovernmental organizations (NGO) and ministries whose responsibilities are nowadays also affected by comprehensive trade policies, have triggered the politicization of the field (Kerremans & Orbie, 2009). In this context, Young and Peterson note that the aforementioned new actors often see trade rules not only as a threat to their policy objectives, but also as a possible tool for realizing them (Young & Peterson, 2006). In other words, new actors have contributed to the politicization of trade policy and de legitimization of traditional actors. Today, the

Commission tries to counter this dynamic and is aiming to restore the legitimacy of the EU's external trade policy. Paying attention to the social dimensions of globalization, and linking trade and social policy, has been one of the key strategies of the Commission in this regard (Kerremans & Orbie, 2009). Dür and Zimmerman make a similar argument and describe how the EU's trade preferences may be shaped by the Commission's bureaucratic interests. Indeed, as the successful conclusion of international trade agreements tends to enhance the Commission's standing within the EU, it is expected that the former will proactively push for this to happen (Dür & Zimmerman, 2007). After all, if negotiations are successful, then the comprehensive scope of the agreed social provisions tends to imply an enhanced role for DG Trade in the field of social policy (Bossuyt, 2009). The combination of this interest-driven motivation on the part of the Commission with a normatively persuasive undertone are key in better understanding the EU's fair trade linkage policies (Hafner-Burton, 2013 p. 24).

### **2.3. Accountability and public opinion**

As already mentioned, the ramifications of trade policy are multifold. Consequently, trade policy is subject to intense public scrutiny and debate. When the degree of liberalization rises, public concern tends to increase accordingly, and hence, so does the pressure on the negotiating governments. The inclusion of social clauses in FTA can therefore also be seen as a political response to the concerns of the public, especially in

democracies. Although deep trade agreements are favorable to exports and multinational corporations (MNC), the opposite holds true for import-competing firms, labor unions and civil society. When politicians link trade liberalization with social rights, they can broaden their base of support irrespective of ideological differences. On the one hand, liberalizing trade and investment will rally support among exporters and MNC. On the other hand, when including labor rights clauses in these agreements, labor unions, import-competing firms and the public are likely to jump on board as well (Lechner, 2014). Put differently, to the extent that a developed trade bloc such as the EU believes that it is exposed to unethical competition from producers in developing countries, punishing exploitative practices will serve to support the free trade coalition within the EU. The inclusion of sustainability chapters in FTA therefore undoubtedly increases civil society support for trade liberalization with developing countries (Cuyvers, 2014). According to this logic, linking trade and social policy serves a double purpose as it increases both public support for policymakers and serves economic purposes at the same time (Hafner-Burton, 2013 p. 24). The Commission's growing susceptibility to public concern is visible through several of its recent initiatives. For example, DG Trade has organized civil society meetings about EU – ASEAN trade relations (European Commission, 2013b). Also, recently, a public online consultation survey was organized on investor protection in TTIP (European Commission, s.d.). Although the Commission has the full competence to negotiate with trading partners on behalf of the EU, it remains dependent of the Council and the European Parliament to formally agree on the outcome (European Commission, s.d.). The EU's so-called democratic deficit has become a hot

topic over the years (Cheneval & Schimmelfennig, 2013; Follesdal & Koslowski, 2013; Bellamy & Kröger, 2014). Consequently, appeasing the public and forming broad coalitions in the field of trade policy are truly indispensable.

Orbie, Vos and Taverniers moreover see a link between the search for civil society support and allegations of hidden protectionism. When looking at debates within the EU about the establishment of the fundamental social rights of citizens as a constitutional element of the Union, it seems that the issue is considered especially problematic during times of economic recession. Therefore, one could argue that as unemployment within the EU increases, policymakers will invoke social clauses as measures of protectionism to appease the public. European unemployment figures in labor-intensive sectors and the rise of debates about the aforementioned social clause indeed evolve noticeably analogously. The late 1970s and the early 1990s are both characterized by increased unemployment in Europe. Strikingly, during both periods, the European social clause debate emerged. Moreover, the timing corresponds with the end of large scale liberalization rounds within the WTO framework (the Tokyo Round and the Uruguay Round). An increased call for alternative means of protectionism does not appear as a surprise in this context. However, the link between unemployment and protectionism is not sufficient to explain the EU's stance towards fair trade linkage. In the beginning of the 1980s, Europe suffered increases in employment as well, while the social clause issue remained largely in the background. Also, the unemployment perspective fails to explain why intra-European differences of opinion exist between countries with similar unemployment rates, even during the 1970s and 1990s (Orbie, Vos & Taverniers, 2005).

On a similar note, Burgoon's public opinion analysis shows that 70 percent of respondents supports EU measures to prevent imports from countries with deplorable working conditions, while only 60 percent is favorable of action to protect EU products against non-EU products (Burgoon, 2009). Appeasing the public is a necessary variable to take into account in the assessment of the EU's fair trade linkage. However, it is incorrect to equalize accountability towards EU citizens with self-interested protectionism.

## V. Operationalizing Normative Power Europe vis-à-vis ASEAN

### 1. Diffusion of EU norms through trade

Manners suggests that the EU's normative power stems from six factors that shape the diffusion of norms through its external relations: contagion, informational diffusion, procedural diffusion, transference, overt diffusion, and cultural filter. *Contagion* occurs when the EU unintentionally influences the behavior and policy-making of other political actors (Manners, 2002). Coombes' discussion of how the EU leads 'by virtuous example' in triggering experiments of regionalism is often cited in this context (Coombes, 1998 p. 237-138). *Informational diffusion* refers to the impact of the EU's strategic communications and declaratory communications. Speeches and announcements on the part of prominent figures of the EU also fall under this category. *Procedural diffusion* occurs when the EU institutionalizes its relationship with a third party through enlargement, cooperation agreements and membership of international organizations (Manners, 2002). Procedural diffusion is closely related to *transference*, which encompasses the process of norm diffusion when the EU exchanges goods, trade, aid or technical assistance with third parties. Examples of transference are the EU's 'carrot and stick' approach of financial rewards and sanctions. The use of conditionality clauses facilitates procedural diffusion and transference and is legally required in all

EU's agreements with third countries. Another factor is *overt diffusion*, which results from the physical presence of the EU in third countries and international organizations. More precisely, diffusion of norms occurs following actions of EU delegations and embassies abroad, or through visits of prominent figures and missions. Finally, the last factor described by Manners is a *cultural filter*. The cultural filter is based on an interplay between the creation of knowledge and the creation of political identities by the subjects of norms diffusion (Manners, 2002). The latter is less relevant within the framework of economic statecraft.

A closer look at the EU's tools of economic statecraft towards ASEAN reveals that the EU indeed combines several of the aforementioned factors in its trade relations with ASEAN. Especially, informational diffusion, overt diffusion, procedural diffusion and to a lesser extent transference and contagion are prevalent. For the purpose of the second research question, it is necessary to analyze the link between the EU as a norm diffuser and the EU as a trading partner. In the following subsections, an overview is presented of the EU's capacity to deliver its normative ambitions in its trade relations with ASEAN.

### **1.1. Context: the multilateral trading regime**

In broadest terms, trade between the EU and ASEAN is embedded in the multinational trading regime administered by the WTO. For more than two decades, the issue of linking trade and social policy has been subject to intense debate in the WTO. Several

member governments in Europe and North America believe that labor standards should be somehow included in the WTO rules to strengthen the multilateral trade system and to increase public confidence in the institution. Other nations, however, oppose this idea and consider fair trade linkage merely protectionism in disguise (World Trade Organization, s.d.). The discussion between the aforementioned groups is nothing new, and goes back to the UN Conference on Trade and Employment and the Havana Charter (1948) in the post-WWII period. The Havana Charter created the International Trade Organization (ITO) which was presumed a key pillar in the new international economic order created at the time. The ITO established an institutional linkage between trade and labor standards in its article 7, which foresaw that complaints about unfair labor practices could be brought before dispute settlement procedures (Palmer & Wilcox, 1949; Wilkinson, 1999; Aaronson & Zimmerman; 2007 p. 15-16; Orbie, Gistelinck & Kerremans, 2008). In the period before the ratification of the charter, an interim agreement known as the GATT was followed to shape the new multilateral regime. When the requisite number of states eventually failed to ratify the ITO, the GATT became the basis for the current system (Wilkinson, 1999; Orbie *et al.*, 2008). Subsequently, labor standards became disconnected from the world trade regime, with the exception of GATT article XX which permits a ban on imports of goods produced using prison labor (World Trade Organization, 1986). The failure of the ITO created a path-dependent process, whereby labor standards are still today often viewed as incompatible with the multilateral trade regime (Orbie *et al.*, 2008). In 1995, the WTO was formed from the GATT and the Marrakesh Agreement, but none of them include

any labor rights obligations (Aaronson & Zimmerman, 2007). Still today, labor standards only play an implicit, but no overt role within the WTO (World Trade Organization, s.d.). Obviously, the membership of the EU and all ASEAN member countries of the WTO as such does create a possibility of *overt diffusion* of norms on the part of the EU.

### **1.1.1. Diffusion of norms: the WTO and the GATT Enabling Clause**

The lack of social clause in the WTO agreements has triggered the Commission on several occasions to urge for change. The efforts of Commission and member states like France and Belgium in this regard have created avenues for *informational diffusion* of norms, albeit with limited persuasiveness. For example, in Singapore (1996), the Commission pushed for the establishment of a WTO working group on labor standards and in Seattle (1999) and Doha (2001), the Commission proposed a Joint WTO-ILO Standing Forum. At the same time though, governments in the United Kingdom (UK) and Germany have appeared more reluctant to strive for fair trade linkage in the WTO, thereby undermining the credibility of the EU as a whole (Waer, 1996; Orbie *et al.*, 2008). In 1996, at the WTO Ministerial Meeting in Singapore, the official WTO position on the matter was shared and the promotion of labor standards was de facto delegated to the ILO (World Trade Organization, s.d.). The Ministerial Declaration officially stated that “*we renew our commitment to the observance of internationally recognized labor*

*standards. The International Labor Organization is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them*” (World Trade Organization, s.d.). The reference to the ILO as the main body for the global promotion of social policy severely limits the EU’s avenues for multilateral economic statecraft in this context, as the direct link between trade and social policy is not clearly recognized. Consequently, *procedural diffusion* or *transference* of social norms within the WTO exists only to the extent that the EU works through article XX of the GATT. Despite the fact that labor standards are not explicitly subject to WTO rules, in theory, it is possible to use existing measures to protect certain human and social rights (World Trade Organization, 1999/s.d.). GATT article XX paragraph (a), (b) and (d) can be used to invoke unilateral trade restrictions for deplorable labor standards. Yet the exceptions mentioned in article XX are described in such a way as to make it extremely difficult for those trying to resort to unilateral action. One of the key stumbling blocks here is the interplay between the restrictions of article XX and the famous Most Favored Nation (MFN) principle of article I. According to the latter, any country that treats a nation in a particular way has to grant the same treatment to all other WTO members. Consequently, if the EU were to adopt sanctions to one country on the basis of human rights violations, it has to apply the same measures to all countries that infringe on the same rights. This may entail huge potential economic and political ramifications for the EU (World Trade Organization, 1986; Eres, 2003; Aaronson & Zimmerman, 2006). Besides, the MFN principle does not match with the EU’s habit of adopting a tailored approach in accordance with its trade partners for the promotion of norms and values through trade

(Orbie *et al*, 2008; Bossuyt, 2009). The EU currently invoked article XX on five fronts for the diffusion of norms: in its GSP (*transference*), the Torture Instruments Regulation (*transference*), the code of conduct for the export of military equipment (*transference*), the Dual Use Regulation (*transference*) and the Kimberley Process (KP) (*procedural diffusion*). Given the divergent (multilateral, bilateral and unilateral) nature of these instruments, their significance for EU-ASEAN trade will be discussed in the following sections.

### **1.1.2. Trade instruments to address specific issues: Kimberley Process**

In accordance with article XX of the GATT, the EU recognizes that in some case a specific tailored trade instrument can be effective in supporting fundamental human rights (World Trade Organization, 1986/1994; European Commission, 2012a). In the context of EU-ASEAN trade, it is interesting to mention the EU's active role in the KP, a regulatory framework that aims to end the trade in conflict diamonds. Europe is one of the largest importers of diamond in the world, with 80% of the world's diamonds passing through Antwerp (Belgium) (Grant & Taylor, 2004). In 2015, Thailand was the largest diamond exporter among ASEAN countries, accounting for 1,4% of total world exports worth \$1.8 billion. Singapore accounted for 1,1% (\$1.4 billion) and Vietnam for 0.1% (\$124.4 million) of total global diamond exports (Workman, 2016). Although trade in diamonds between the EU and ASEAN is fairly limited, the participation of the EU and

Cambodia, Indonesia, Laos, Malaysia, Singapore, Thailand and Vietnam in the KP opens the door for the EU to share and export its norms to those countries (*overt diffusion*) (Kimberley Process, s.d.).

The KP started in 2000 in Kimberley, South Africa, when Southern African diamond-producing states met to discuss different avenues to stop the trade in so-called blood diamonds (Kimberley Process, s.d.). The term ‘blood diamonds’ was coined by two international NGO to raise awareness about the traffic of rough diamonds in some African countries and the use of those funds to fuel armed conflicts. Moreover, income generated by diamond trafficking has allowed dictators and corrupt autocrats to remain in power and to provide funding to terrorist organizations (Arribas, 2014). In 2002, participants in the KP created the Kimberley Process Certification Scheme (KPCS) that sets out the requirements for controlling rough diamond production and trade (Kimberley Process, s.d.). Besides the KPCS, a series of declaration and resolutions have been adopted in collaboration with the UN and the WTO, to address the relationship between conflict diamonds, their impact on peace and security and the violation of human rights (Arribas, 2014). For example, the 2001 Antwerp Resolution explicitly calls on diamond organizations to “*adopt an ethical code of conduct as regards conflict diamonds, labor practices and good business practices in general*” (World Federation of Diamond Bourses, 2000). Consequently, the KP is an avenue for *informational diffusion* of norms of the EU to Singapore, Malaysia, Vietnam, Thailand, Indonesia, Cambodia and Laos.

Although the key purpose of the KP is to tackle security issues and to promote stability in export countries, the EU's first step was taken in the area of trade when the Council implemented the KPCS for international trade in rough diamonds based on article 207 of the TFEU. Article 207 is included in Title II on Common Commercial Policy and rules the areas of CCP, the legislative procedure for adopting regulation and the procedure for concluding international agreements (European Union, 2007). This explicit link between the KP and the EU's CCP rather than with the Common Foreign and Security Policy (CFSP) justifies the labelling of the KP as tool of economic statecraft. The content of the KPCS and related KP regulation focuses to a large extent on requirements for legal trade such as export, import and internal controls; transparency and the exchange of statistical data. The possibility of diffusion of norms about labor standards and social rights thus mainly occurs through the institutionalization of trade relations (*procedural diffusion*) and the physical presence of the EU during meetings and negotiations (*overt diffusion*).

## **1.2. Bilateral instruments of linkage**

### **1.2.1. Failure of EU – ASEAN Free Trade Agreement negotiations**

The EU recently reconfirmed its commitment and desire to conclude a regional FTA with ASEAN (European Union, 2016). For this reason, this paragraph will shed light on the role of the trade-social policy nexus in the failed negotiations. The possibility of a FTA between ASEAN and the EU was first put forward by ASEAN in 2003. However, the European Commission initially refused ASEAN's proposal for FTA negotiations as it feared a ballooning trade deficit with the latter if a FTA were set in place. To console ASEAN for its rejection, the Commission proposed the Trans Regional EU-ASEAN Trade Initiative (TREATI) instead, which would inform ASEAN and the EU about their respective regulatory systems. Eventually, TREATI was expected to become an exercise of 'convergence' and 'approximation' (European Commission, 2007; Robles, 2008). Important to clarify here is that approximation and convergence in practice entailed an adoption of EU-style regulation by ASEAN members. Only after sufficient convergence would the EU even consider a FTA with the region. If we consider FTA negotiations a 'reward' after policy convergence, the TREATI fits well into Manner's conceptualization of *diffusion through transference*. Nonetheless, in 2004, Singapore and later ASEAN renewed their request for a FTA. Once again, though, the then European trade commissioner, Pascal Lamy, opposed the idea (Robles, 2008). 2007 was a turning point, as the Council authorized the Commission to negotiate a FTA with

ASEAN after all (Council of the European Union, 2007, Lim, 2012). Obviously, no significant harmonization of regulation on the part of ASEAN occurred in the meantime. No convergence occurred that would justify a reversal of European policy, nor was a Partnership and Cooperation Agreement (PCA) signed. The crucial change that triggered the change in stance was the impasse in the WTO, which was partly caused by EU inflexibility and which had motivated individual ASEAN members to negotiate FTA with Japan. Moreover, political dialogue between ASEAN and EU under the Asia-Europe Meeting (ASEM) framework did not make any significant progress either (Robles, 2007 p. 75-92/2008).

FTA negotiations happened on a region-to-region approach, and were accompanied by a Sustainability Impact Assessment (SIA) (Lim, 2012). Scholarly opinions on the capacity of the EU to include linkage politics into the negotiation process vary. Robles describes how, in spite of many policy declarations, human rights considerations were purposely minimized from the start (Robles, 2008). The emphasis put on declarations point in the direction of *informational diffusion*. Robles also discusses how the participation of Myanmar in the talks appears as rather inconsistent with the EU's policies towards the former in different policy fields. The Myanmar issue had led to the cancellation of several ASEAN-EU and ASEM ministerial meetings in the preceding decade. In April 2006, approximately one month before agreeing in principle to start FTA negotiations, the EU renewed sanctions imposed on Myanmar for two more years. ASEAN had consistently insisted on region-to-region negotiations to enhance its bargaining power. And indeed, the EU's Trade Counselor in Thailand admitted that the

participation of Myanmar in the negotiations was one of the key variables considered in the EU's decision to launch talks (*transference*) (Robles, 2008). Nevertheless, in May 2007, the EU agreed to the ASEAN format and appeared willing to initiate negotiations, without excluding Myanmar. Notwithstanding a deterioration of the situation in Myanmar, the European Parliament was the only EU institution that demanded an exclusion from the former from the process. ASEAN members Malaysia and Singapore, in the meantime reiterated their wish to keep negotiations free of 'political meddling' and defended ASEAN's well-known position that constructive engagement was the best way to convince the authorities in Myanmar to undertake reform. Philippe Meyer, the then head of the Commission's Southeast Asian desk, responded and stated "*we will not try to fix all the problems in the negotiations because that could lead to a failure of the process*" and "*the EU does not want political difficulties to overshadow the negotiations*" (Agence-France-Presse, 2007; Robles, 2008). It thus appears that the start of the negotiations is characterized by a lack of policy coherence between trade and social rights policies.

Yet, despite the EU's seeming concession in 2007, FTA negotiations between the regions failed and were stalled in 2009. Contrary to the described minimization of linkage politics at the start of the negotiations, many authors point at the Myanmar issue as one of the key reasons for failure. Meissner concludes that two problems caused the talks to fail: a lack of unity within ASEAN and the ongoing problem of how to treat Myanmar (Meissner, 2016). The lack of unity within ASEAN emerged due to the growing divergence among member states on foreign trade, with some increasing

commercial exchanges with the EU and other decreasing economic ties. As a consequence, some members were more interested in an FTA than others and priorities among those wanting an FTA also differed (Lindberg & Alvstam, 2007; Camroux, 2010). Next to the EU's fear of a lowest common denominator, the search for policy coherence with regards to Myanmar further complicated the matter. Human rights concerns certainly played their role here (Meissner, 2016). Astuto also points at the EU's search for policy coherence as one of the key issues during the negotiations. When the negotiations started, the Commission saw how global economic integration created unprecedented opportunities for growth and development on the one hand, but also strained traditional European industries and workforce on the other hand. A rejection of protectionism therefore had to be accompanied by fair conditions for trade abroad (Astuto, 2010). Finally, Lim too refers to the Myanmar issue as a key reason for failure. Next to the former, the lack of unity with ASEAN and Singapore bank secrecy laws are cited (Lim, 2012). Taken together, it seems fair to conclude that although the EU conceded on linkage policies at the start of the negotiations, it later reversed its flexibility. Stated differently, once the talks started, *overt diffusion and procedural diffusion* could take place and the latter even seems to have been instrumental in the failure. By December 2009, the Commission received the mandate to negotiate bilateral FTA with ASEAN countries instead of an inter-regional FTA (Astuto, 2010). To derive compelling conclusions about the EU's capacity to include fair trade linkage provisions in FTA with ASEAN members, it is necessary to look at its approach vis-à-vis individual member countries since 2009. Moreover, the bilateral FTA are considered building blocks for an

inter-regional FTA in the future and can therefore be considered a good first measure of the EU's persuasiveness as a normative trading power (European Commission, 2016c).

### **1.2.2. Bilateral FTA: essential elements clauses**

When assessing fair trade linkage politics in EU FTA, it is above all necessary to look at the so-called essential elements clauses as they are the principal avenue for the realization of the trade-social rights nexus in the EU's external policies. The reasoning behind such clauses is the need to explicitly include in treaties respect for human rights as an 'essential element' on which the reciprocal obligations of the parties are premised. Consequently, human rights violations of a certain scale by one of the parties can amount to a breach of the treaty and result in the suspension of other countermeasures (Hachez, 2015).<sup>9</sup> Essential human rights considerations are generally included in the sustainable development chapters of FTA. (Hachez, 2015). Bilateral free trade negotiations were launched with Singapore, Malaysia and Vietnam in 2010, with Thailand in 2013, and with Indonesia and the Philippines in 2016 (*overt diffusion*). In the meantime, negotiations were concluded by Singapore and Vietnam (European Commission, 2016c).

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<sup>9</sup> See on the issue: CJEU, 3 December 1996, *Portugal v. Council*, C-268-94 and Vienna Convention on the Law of Treaties Article 60 which reads (1) "A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part" and (3) "A material breach of a treaty, for the purposes of this article, consists in ... (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty."

An overview of the progress made and the current state of affairs in EU FTA negotiations with ASEAN members is presented in **table 2**.

**Table 2: Progress in FTA negotiations (EU – ASEAN members)**

<b>Country</b>	<b>Current status</b>	<b>Next steps</b>
<b>Singapore</b>	Negotiations were completed on 17 October 2014.	The draft agreement is awaiting formal approval by the European Commission and the Council of Ministers. Afterwards, ratification by the European Parliament is required before entering into force. Meanwhile, on 15 July 2015, the European Commission requested a Court opinion from the European Court of Justice (EJC) on EU competence to sign and ratify this FTA.
<b>Malaysia</b>	The Council of Ministers approved the start of negotiations in September 2010. The negotiations were put on hold in April 2012, after seven rounds. The most difficult issues are still to be resolved.	A stock-taking exercise is currently underway to assess the prospects to resume talks.
<b>Vietnam</b>	Negotiations concluded on 2 December 2015.	A legal review of the agreement is a work in progress. Afterwards, the text will be translated into all EU languages and into and will be presented to the Council and European Parliament for ratification and consent in early 2017.
<b>Thailand</b>	The Council endorsed the start of negotiations in February 2013. Four rounds have taken place so far. The last meeting took place in April 2014.	No further negotiation rounds have been scheduled at this point.
<b>Indonesia</b>	The Council endorsed the start of negotiations on 18 July 2016.	A first round of negotiations took place on 10 and 21 September 2016.
<b>Philippines</b>	Negotiations were formally launched on 22 December 2015. The first talks took place in May 2016.	The second round of negotiations is planned for the fourth quarter of 2016.

*Source:* table based on European Union (2016)

The trade and sustainability chapters in the EU-Vietnam FTA and the EU-Singapore FTA are highly similar and are the key avenue for *procedural diffusion*. In both cases, the chapter starts with a mutual reaffirmed commitment to a series of key international conventions on sustainable development such as the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the ILO Decent Work Agenda and the outcome of the UN Summit on Sustainable Development of 2015 entitled ‘Transforming Our World: the 2030 Agenda for Sustainable Development’. The remaining part of the chapters consist of specifications regarding respect for multilateral labor standards, environmental standards, climate change and more. What is striking, it the highly cooperative nature of the clauses. The emphasis clearly lies on sharing information and experience and the chapters are very elaborate on the institutional set-up and overseeing mechanisms (European Commission 2013c/2016c). Overall, the clauses seem very declaratory and do not include any clear ‘sticks’ in case of infringement (*informational diffusion*).

### **1.2.3. Sustainability impact assessments**

SIA are carried out prior to the conclusion of all EU FTA since 1999 to identify the potential and expected impact of the FTA on various variables domestically and in the partner country or region. By assessing the potential impact on human rights, the

environment, social standards, etc. prior to the conclusion of a FTA, measures can be taken to mitigate negative effects. The Commission considers SIA a key tool for sound, evidence-based and transparent trade negotiations and has conducted 22 SIA in support of bilateral and multilateral EU trade negotiations. Six assessments remain ongoing (European Commission, s.d/2016c). Clearly, SIA are a key tool of *informational diffusion*.

A final report on the SIA for the EU-ASEAN FTA was published in June 2009. Keeping the research question of this master thesis in mind, it is important to look at the main expected social impacts and the EU's approach towards this. The social impact analyses for the EU-ASEAN FTA were largely based on combining direct economic and employment outcomes with existing data on geographic and social distribution patterns with regards to poverty, household incomes, etc. Moreover, the outcomes of the assessment were confronted with the views of stakeholders and experts. Finally, existing reports of organizations such as the ILO and the World Bank were taken into account. More specifically, the SIA discusses the effect of a FTA on health and education, employment and decent work and equality. It concludes by recommending the inclusion of a sustainability chapter in a future FTA and emphasizes the need to design and agree on adequate monitoring and evaluation systems to assess progress on, among others, issues of the chapter and the ratification of international agreements (ECORYS, 2009). After the inter-regional FTA negotiations failed and the EU switched to a bilateral approach, the initial SIA was updated and specified for the cases of Singapore, Vietnam and Malaysia. The overall content of the SIA remains the same, although different areas

are emphasized depending on the country's specific domestic situation (European Commission, 2010/2011/2013a). For example, for Singapore, the EU mostly stresses the need for more discussions on civil society and trade unions (European Commission, 2010). For Malaysia, respect for core labor standards and the importance of creating adequate monitoring and evaluation systems is highlighted. The importance of including civil society and trade unions in policy processes is also clearly mentioned (European Commission, 2011). For Vietnam, finally, the SIA focuses on the expected structural shift in the Vietnamese economy following the conclusion of a FTA and emphasizes the need to set in place social protection mechanisms to make the transition as smooth as possible. Furthermore, the need to effectively implement core labor standards and to promote and adhere to sustainable development is underlined (European Commission, 2013a).

### **1.3. Unilateral approach**

#### **1.3.1. Sanctions: Myanmar**

Hufbauer, Schott, Elliot and Oegg define economic sanctions as the “*deliberate, government inspired withdrawal, or threat of withdrawal, of customary trade or financial relations*” (Hufbauer, Schott & Elliot, 1990 p. 3). In this paragraph, the focus

lies on the introduction of sanctions as a part of the EU's CFSP. Restrictive measures as such are no part of the EU's CCP (European External Action Service, 2016). Nonetheless, the CFSP is a policy domain with various ramifications in the field of trade, especially in the case of sanctions. Moreover, the EU's Basic Principles on the Use of Restrictive Measures, adopted in 2004, specifically provide that, if necessary, the EU will impose sanctions to uphold respect for human rights, democracy, the rule of law and good governance (Council of the European Union, 2004). Consequently, the EU's use of sanctions is a clear instrument of economic statecraft and represents a typical application of Manners' diffusion through *transference*. Indeed, the explicit linkage between restrictive measures on the one hand, and respect for the EU's core values and principles on the other hand, make sanctions a key tool for the EU as a normative trading power (Manners, 2002). Obviously, the EU's conditionality and possibility of withdrawal in its GSP policy can also fall under the aforementioned definition of sanctions. However, given the complexity of the GSP as such, it will be touched upon in a separate section below (European Commission, 2015a).

Although sanctions are widely used in international relations and international politics, several characteristics make the EU rather unique in this respect. First of all, the Council emphasizes that sanctions are not to be considered a punitive measure, but are rather designed to bring about a change in policy by the target country, entities or individual. Sanctions are therefore always part of a wider, comprehensive policy approach involving complementary efforts and dialogue with the target country (Council of the European Union, 2014). The latter element makes sanctions a good example of Manner's

*informational diffusion* as well, through which the EU aims to spread its norms by means of communications and information exchanges (Manners, 2002). Secondly, the EU embraced the practice of ‘targeted sanctions’, meaning that it designs its measures in such a way as to put pressure on the leaders or specific elites who are deemed responsible for the condemnable behavior (Portela, 2014). In other words, the EU aims to minimize adverse consequences for the civilian population and the economy as a whole, while affecting only the ones actually responsible for the deplorable situation (Council of the European Union, 2014). Finally, it is important to emphasize that there are two types of EU sanctions: EU stand-alone sanctions and sanctions supplementing UNSC sanctions. Although both practices are governed by a similar framework, the EU obviously has more leeway in the case of stand-alone sanctions (Portela, 2014).

Currently, the EU has sanctions in place against one ASEAN member country, namely Myanmar (European Commission, 2016b). It is certainly not the purpose of this master thesis to provide an elaborate account of Myanmar’s human rights situation and evolution through time. Nevertheless, to better assess the capacity of the EU to enforce social policy conditionality in its relations with Myanmar, a brief background to the current situation is necessary. The EU initially adopted sanctions against Myanmar following the failure of the ruling Military junta to honor the results of the 1990 elections won by their opponent, the National League for Democracy (NLD). Sanctions were consequently upgraded and expanded in respectively 1996, 2000 and 2006. They consisted of, among others: a suspension of high-level bilateral government visits, a ban on the export of technology and the provision of assistance for enterprises engaged in

logging and timber processing and mining, a ban on the import of round logs, timber products, metals and stones and a prohibition on EU-registered companies and organizations making financing available to named Burmese state-owned enterprises (SOE) (European Commission, 2005; Council of the European Union, 2006; Portela, 2014). The official reasons cited for sanctions were listed as human rights violations, restrictions on the activities of international organizations and NGO, the failure of a democratic transition from military to civilian rule, the detention of political opponent Aung San Suu Kyi and the harassment of the opposition more in general (Portela, 2014). The conditions for easing or lifting the sanctions were laid out in a Common Position in 2006: *“in the event of a substantial improvement in the overall political situation in Burma/Myanmar, the suspension of these restrictive measures and a gradual resumption of cooperation with Burma/Myanmar will be considered, after the Council has assessed developments”* (Council of the European Union, 2006).

To assess the EU’s coherence in realizing its trade – human rights nexus, it is important to zoom in on a watershed event in 2007. Indeed, events in Myanmar in August and October 2007 severely put the EU’s sanction policy to the test when street protests evoked by a 500 percent increase in oil protests were harshly repressed. Initial protests in Northern Myanmar triggered further demonstrations in other parts of the country demanding respect for fundamental human rights (Robles, 2008). Soon after the first protests, several European NGO and the European Parliament called on the EU to impose new and stricter sanctions on the regime prohibiting European investment in oil, timber and gas (European Parliament, 2007; Robles, 2008). The European Commission

appeared reluctant to do so, on the grounds that the population would suffer and that chances of convincing the military to undertake reform remained limited (Robles, 2008). Robles, however, points out that the main issue at stake were not concerns about the Burmese population, but rather the European (and mostly French and British) investments in oil and gas in Myanmar. In 2006-2007, foreign investment in oil and gas generated 471.5 million United States Dollars (USD), or sixty percent of total foreign investment in the country. At the time, Myanmar's natural gas reserves were estimated at 9 trillion cubic feet, meaning that the country had the potential resources to generate 2 billion USD a year for the next 40 years. In 2006, 240.68 million USD was generated by UK companies, which taken together were the second largest investors in oil and gas. Total, a French multinational, was also a key player in the story, with interests in both Myanmar's gas and oil supplies. Total argued that it provided free health care to approximately 50,000 people living along its Padana pipeline and that the withdrawal of European companies from the region would only open the door for other firms 'less committed to ethical principles' (Hogue, 2007). Although then French President Sarkozy appealed to Total to freeze its investments in Myanmar, Total announced that it would continue its activities in the country and that it would even build a compression platform in the Padana field (Devine, 2007; Agence-France-Presse, 2006/2007; Smith, 2007; Thomson Financial News Super Focus, 2007). At the same time, representatives of the democracy movement of Myanmar contradicted Total's claims about job creation and working conditions and explained how no company was currently in the position to replace Total were it to leave (Robles, 2008). Finally, on 15 October 2007, the Council

of Ministers announced that it would extend and prolong sanctions on the military without harming the population (Council of the European Union, 2007). Two circumstances severely mitigated their impact however. First, the implementation of the new sanctions was delayed until November (Council of the European Union, 2007). Second, the new sanctions to a large extent excluded the oil and gas sector (France-Agence-Presse, 2007; Robles, 2008). The described developments in 2007, show how clearly, European policy-making was significantly held hostage to the interests of a single French oil company (Robles, 2008).

Following several major changes in Myanmar's political landscape since 2011, the EU agreed to almost completely phase out its sanctions within a time-span of two years (Portela, 2014; BBC, 2016). Today, all sanctions are put on hold with exception of the arms embargo, a ban on exports of equipment for internal repression and a ban on provision of certain services (Portela, 2014; Council of the European Union, 2016). The suspension of sanctions was furthermore accompanied by an increase in development aid and a strengthening of EU – Myanmar dialogue (Portela, 2014). Overall, although the EU has demonstrated some capacity to link trade to social policy in the case of Myanmar, its persuasiveness is severely undermined by the 2007 Total debacle. The countervailing pressures on the EU, with the European Parliament and NGO on the one hand, and significant commercial interests of major European firms on the other hand, reveal the EU's struggle in balancing welfare and commercial interests.

### **1.3.2. The Generalized Scheme of Preferences**

For a long time, the EU's most extensive action for fair trade linkage occurred through its GSP (Burgoon, 2009). The GSP is a unilateral trade instrument executed by means of a Council regulation, which is revised periodically (Portela & Orbie, 2014). From 1971 onwards, approximately 178 countries were given GSP benefits in the sense that they faced reduced tariffs for their goods when exporting their products to the EU (European Commission, 2015a). The GSP is linked to the EU's normative agenda because preferences may be withdrawn in case of persistent and serious violations of core human (and labor) rights (*transference*). To date, this has only happened in the cases of Belarus and Myanmar (Portela & Orbie, 2014). The GSP is subject to WTO law and particularly to so-called 'Enabling Clause' (article XX) which allows for an exception from the MFN principle. Several reforms of the policy have taken place since its inception, with a last update in 2014. At this point, the GSP foresees three types of sub-arrangements: the general arrangement, the special arrangement for sustainable development and good governance (GSP+) and the Everything But Arms initiative (EBA) (European Commission, 2015a). Since the reform in 2014, Indonesia and Vietnam fall under the general agreement, the Philippines are subject to the GSP+ and Cambodia, Laos and Myanmar are part of the EBA category (European Union, 2012).

**Table 3: the EU's Generalized System of Preferences**

<b>GSP Beneficiaries (negative conditionality)</b>	<b>GSP+ Beneficiaries (positive conditionality)</b>	<b>EBA Beneficiaries (negative conditionality)</b>
Indonesia	Philippines	Cambodia
Vietnam		Lao PDR
		Myanmar

*Source:* table based on European Commission (2015a)

The general arrangement grants beneficiaries duty reductions for circa 66% of all EU tariff lines. In practice, this means a partial or complete removal of duties on 66% of all product categories (European Commission, s.d.). Negative conditionality in the GSP was introduced in the 1994/1995 regulation which created the possibility of temporary withdrawal of benefits in case of evidence of forced labor as defined in the Geneva Conventions 1926 and 1956 and ILO Conventions 29 and 105. In 1995, the European Trade Union Confederation (ETUC) and the International Confederations of Free Trade Unions (ICFTU) filed a joint complaint against Myanmar for forced labor. At that time, the Commission was not allowed to dispatch a fact-finding mission by the Burmese authorities. Consequently, it consulted with NGO, experts and the democratically elected government of Burma. Also, in 1996, an ILO Commission of Inquiry was established on forced labor in the country. The withdrawal of GSP benefits was approved by the Council in 1997. Reinstatement was completed in 2013, after compelling proof of an improvement in democratization and human rights (including labor rights) (Portela & Orbie, 2014).

The GSP+ differs from the general arrangement, as it is a tool of positive conditionality rather than negative conditionality. The GSP+ also grants removal of tariff on essentially

the same product categories as those covered by the general arrangement. However, benefits are conditional on the ratification and effective implementation of core international human rights and good governance conventions (European Commission, 2015a). Put differently, the enhanced arrangement is an incentives-based approach, offering extra ‘carrots’ when the relevant conventions are ratified and implemented. Thereafter, the preferences are used to make sure that implementation does not deteriorate and improves over time. A periodical dialogue is organized for follow-up and foresees in the mechanisms for temporary withdrawal (*procedural diffusion*). The EU puts a lot of emphasis on the monitoring aspect of the GSP+ and beneficiaries are obliged “to accept without reservation reporting requirements and monitoring imposed by the conventions” and “to accept and cooperate with the EU monitoring procedure” (European Commission, 2013c/2015a).

Finally, the EBA scheme, introduced in 2001, focuses on least developed countries (LCD) and grants duty-free/quota-free access for all products, with the exceptions of arms and ammunitions (European Union, 2013; European Commission, 2015a). Contrary to the aforementioned arrangements which last for 10 years, the EBA has no expiration date. Benefits can be withdrawn in the case of violations of fundamental rights and when the country moves to a higher category of income (as classified by the World Bank). As already described, Myanmar’s benefits were withdrawn between 1997 and 2013 for, among other, poor labor practices.

Overall, a couple of key aspect are important in the recent GSP reform. Firstly, the number of beneficiaries has been greatly reduced and some tariff lines were changed.

Secondly, and more importantly, more incentives were added for countries to join the GSP+ and monitoring mechanisms were enhanced to ensure effective and rightful implementation of conventions. Although many procedures (temporary withdrawals, safeguards, etc.) to sanction infringers have existed for a long time, previous regulation was often rather silent about the details and how to carry out the policy in practice. The 2014 regulation made all of this more detailed and transparent and reinforced monitoring mechanisms (*informational diffusion*). The Commission engages in continuous dialogue with GSP partners and mandates reports every two years. Moreover, scrutiny is now performed not only by the Council, but also by the European Parliament (European Commission, 2012a/s.d.). Still, however, FTA go further in setting monitoring mechanisms for implementations as they involve civil society representatives from both parties and they create the possibility for independent and impartial arbitration by a group of experts, rather than relying on ILO and UN reports (European Commission, 2012a). Six ASEAN members fall under the overall GSP umbrella today. Malaysia, Thailand, Singapore and Brunei fall under the upper-middle income country and high-income country classification of the World Bank and are therefore excluded from the scheme.

### **1.3.3. Others: Torture, military equipment and dual use**

Besides the KP and the above discussed GSP program, the EU refers to the GATT's enabling clause on three more fronts when dealing with ASEAN countries. First, the EU's commitment to stopping torture and abolishing capital punishment includes measures to prevent trade of goods which have no other possible use other than for the aforementioned purposes (European Commission, 2005/s.d.). The Torture Instruments Regulation (1236/2005) in question moreover requires member states to make information available about the applications received and whether or not licenses were granted and therefore clearly allows for *informational diffusion* of norms (European Commission, 2005/2012c). Eight out of ten ASEAN members (Singapore, Indonesia, Brunei, Laos, Myanmar, Thailand, Vietnam and Malaysia) have laws allowing the death penalty (Death Penalty Information Center, 2015). Furthermore, Vietnam and Indonesia are among the world's countries with the highest rate of capital punishments executed each year (The Guardian, 2011). The EU used to be one of the main producers of instruments for torture, and wishes to reduce the global trade of those goods (European Commission, 2012c). Despite the EU's intentions, the availability of other producers severely limits its leverage in triggering change in the target countries.

A second exception to the MFN clause and related to the regulation on torture can be found in the EU's rules and code of conduct in relation to the export of military equipment. More precisely, every request for an arms export license in the EU has to be

assessed according to eight criteria laid out in the code of conduct. One of the criteria covers respect for human rights and humanitarian law in the country of final destination (*transference*) (Export.gov, 2016; European Commission, s.d.). Also, the Council of Ministers publishes an annual report on the application of this code of conduct with information about the numbers of refusals of licenses under each criterion (European Commission, 2012c). These annual reports clearly trigger *informational diffusion* of norms. Obviously, other initiatives in the defense sector such as the Arms Trade Treaty may have indirect implications on human rights and social standards as well. However, the purpose of promoting such standards is not explicitly mentioned in related legal documents (European Commission, s.d.). Therefore, such instruments, together with many others, only include possibilities for *contagion*.

Finally, a third exception to the MFN clause is the Dual Use Regulation (428/2009) which addresses the spread of sensitive goods and technologies having both civilian and military applications (European Commission, s.d.; Council of the European Union, 2009). Under the EU regime, dual-use goods may not leave the EU customs territory without export authorization (European Commission, 2014b). Authorization may be withheld based on human rights considerations (*transference*) (Council of the European Union, 2009). Also, a series of communications on the part of the Commission explicitly mention the inextricable link between security and human rights and therefore provides for *informational diffusion* of norms (European Commission, s.d./2014b).

Overall, the three above mentioned instruments are most often used when implanting EU CFSP measures (European Commission, 2012c). Their explicit link with trade,

however, makes it necessary to mention them in the context of economic statecraft as well. Obviously, though, these measures as such are not expected to have a huge impact. Rather, they should be seen as appendages to the EU's CCP which links trade and human rights through articles 3 and 207 TFEU (European Union, 2007).

## **2. Delivering a credible commitment**

*“A desired image can often be of greater use than a significant increment of military or economic power. An undesired image can involve costs for which almost no amount of the usual kinds of power can compensate and can be a handicap almost impossible to overcome.” (Robert Jervis, 1970 p. 6)*

In the previous section an overview was presented of the different instruments used by the EU to deliver its normative ambitions in its trade relations with ASEAN. Overall, the EU is particularly proactive when it comes to informational diffusion and overt diffusion, combined with less prevalent undertakings of diffusion through transference and procedural diffusion. Furthermore, limited avenues for linkage in the multilateral trading regime have triggered an emphasis on bilateral and unilateral tools. The question remains, however, whether these instruments suffice to deliver a credible commitment on the part of the EU? Are these instruments enough to provide a clear signals of a Normative Power

Europe? Put differently, does the EU have the capacity to deliver its commitments in a *persuasive* way?

In 'Economic Statecraft', Baldwin points at the fact that images matter in economic statecraft. Policymakers care about how others perceive their capabilities and intentions (Baldwin, 1985 p. 101, 103). Capacity therefore entails the ability to deploy the right instrument for any specific situation. In **table 4**, a summary can be found of the precise way in which the EU diffuses its norms through its trade instrument when engaging with all ASEAN members. For Baldwin, the persuasiveness of instruments of economic statecraft or the way they influence images in politics is closely related to the costs incurred by resorting to the measures in question. Although costs are often regarded as necessary evils to be minimized, there are situations in which costliness is a desirable attribute in policymaking. After all, talk is cheap. Consequently, incurring costs to a verbal commitment adds to the credibility of simple words (Baldwin, 1985 p. 106-111). In the context of NPE, economic techniques usually cost more than mere propaganda and thus tend to be more credible or persuasive (Baldwin, 1985 p. 106-111). When applying this logic to the way the EU diffuses its norms, it can be expected that transference and procedural diffusion will have a larger impact than merely informational diffusion. As contagion is an unintentional process, which can happen at any point in time, the persuasiveness of the EU's model of social policy remains more limited.<sup>10</sup> Also, overt diffusion in ASEAN members usually does not imply any great

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<sup>10</sup> Contagion is not included in the table because it is an unintentional nature. The purpose of this thesis is to assess deliberate EU strategy.

risks or costs on the part of the EU. Consequently, the credibility of the EU's norms diffusion through this avenue will be smaller compared to the cases of transference and procedural diffusion. Obviously, given the fact that trade policy has ramifications in many different fields, the EU needs to balance its priorities. The credibility of a commitment in one area often cannot be boosted without eroding or at least influencing the credible of commitments in related areas (Baldwin, 1985 p. 109).

Keeping the issue of credibility in mind, it becomes clear that an assessment of the EU's capacity to deliver its normative goals through trade relations entails more than simply taking the sum of the different instruments used. The different tools and instrument need to be attributed with realistic weights in order to properly evaluate their impact in a further stage. This master thesis, however, does not investigate the impact of the EU's economic statecraft. A further elaboration on the topic is necessary in future research.

**Table 4: Overview of normative diffusion through EU trade instruments**

Trade partner	Multilateral framework		Bilateral framework		Unilateral framework		
	WTO	KP	FTA	SIA	Sanctions	GSP	Others
<b>ASEAN</b>	/	/	Transference Informational Overt Procedural	Informational	/	/	/
<b>Brunei</b>	Informational Overt	/	/	/	/	Transference Informational	Transference Informational
<b>Cambodia</b>	Informational Overt	Informational Overt Procedural	/	/	/	Transference Informational	Transference Informational
<b>Indonesia</b>	Informational Overt	Informational Overt Procedural	Informational Overt procedural	/	/	Transference Informational	Transference Informational
<b>Laos</b>	Informational Overt	Informational Overt Procedural	/	/	/	Transference Informational	Transference Informational
<b>Malaysia</b>	Informational Overt	Informational Overt Procedural	Informational Overt Procedural	Informational	/	/	Transference Informational
<b>Myanmar</b>	Informational Overt	/	/	Informational	Transference Informational	/	Transference Informational
<b>Philippines</b>	Informational	/	Informational	/	/	Transference	Transference

	Overt		Overt Procedural			Informational Procedural	Informational
<b>Singapore</b>	Informational Overt	Informational Overt Procedural	Informational Overt Procedural	Informational	/	/	Transference Informational
<b>Thailand</b>	Informational Overt	Informational Overt Procedural	Informational Overt Procedural	/	/	/	Transference Informational
<b>Vietnam</b>	Informational Overt	Informational Overt Procedural	Informational Overt Procedural	Informational	/	Transference Informational	Transference Informational

*Source:* author's own conclusion

## **VI. Conclusion**

Pursuing a healthy balance between commercial interests and welfare interests is one of the key challenges faced by the international trading system today. Academics and practitioners alike have come to recognize that trade has ramifications far beyond the purely economic sphere, and that one cannot look at trade policy in isolation. Indeed, trade agreements have become more than mere unidimensional frameworks and often contain thousands of pages with obligations in wide-ranging fields. In this master thesis, the commitment and capacity of the EU to advance social policy in ASEAN countries through its commercial policy is investigated in order to assess the former's struggle in shaping fair and deliberate trade relations. A detailed analysis of the EU's behavior and strategy has led to the conclusions below.

An in-depth understanding of the EU's normative commitment is a necessary starting point when attempting to capture generational characteristics, rather than momentary policy fluctuations. The overview presented in the first part of this thesis describes three key motivations behind the EU's behavior. European trade policy outcomes reflect a combination of purely normative preferences, but also bureaucratic interests and responses to concerns of the public. The normative dedication finds its roots in the Union's historical context and was officially anchored in EU external relations in the Lisbon Treaty. Yet, politicians and institutions can be expected to be most apt for fair trade linkage politics when they expect personal gains from it. Indeed, the trade-labor debate has created opportunities for the Commission to expand the EU's international

presence, and in doing so, its own role. The desire of the Commission to restore the legitimacy of EU trade policy in a time when free trade and globalization are highly politicized have made the former especially proactive in this context. By presenting itself as a normative trading power, the EU has tried to broaden the free trade coalition within Europe. On the one hand, liberalizing trade will rally support from exports and MNC. At the same time, when including labor rights clauses in agreements, NGO and the public are likely to back the Commission as well. Opponents of fair trade linkage insist that conditionality clauses are merely a Trojan horse for protectionism against competition from low-wage countries. Although this claim is valid to a certain extent, the related unemployment perspective is not nearly sufficient to explain the EU's stance. Appeasing the public is a key motivation of the EU in its linkage politics. However, it is incorrect to equalize accountability towards EU citizens with self-interested protectionism.

In the second, and more elaborate part of this thesis, further light was shed on how this normative commitment is operationalized vis-à-vis ASEAN countries. When applying Manner's insights on Normative Power Europe to the EU's instruments of economic statecraft, it appears that the EU is particularly active in terms of informational diffusion and overt diffusion, and to a lesser extent in terms of procedural diffusion, transference and contagion. Put differently, norms are mostly spread through declaratory and strategic communications and by means of the EU's physical presence in ASEAN countries. Besides this, the institutionalization of relationships with ASEAN countries through agreements and membership of international organization on the one hand, and the exchange of goods and assistance on the other hand also trigger norm diffusion in limited

cases. Finally, contagion, or the unintentional diffusion of norms can happen continuously and everywhere.

The GATT's Most-Favored Nation article in combination with the de facto delegation of international social policy promotion to the ILO severely limit the EU's possibilities for normatively-induced economic statecraft in the multilateral trading regime. On a global scale, the advancement of social policy norms therefore remains limited to overt diffusion and informational diffusion. In limited cases, the EU has referred to the GATT enabling clause, which recognizes that in some cases unilateral trade restrictions may be justified. However, the embedding of the enabling clause in a multilateral context makes it extremely difficult for the EU to resort to unilateral trade restrictions in this regard. After all, the MFN principle implies that if the EU were to adopt sanctions to one country on the basis of human rights, it has to apply the same measures to all countries that infringe on the same rights. Consequently, multilateral trade linkage action may entail huge potential economic and political ramifications for the EU.

In a bilateral context, the capacity of the EU to advance social rights through trade policies seems more promising. Although social concerns appeared of secondary importance when inter-regional EU-ASEAN FTA talks were launched, the EU's emphasis on respect for human rights was instrumental in the failure of the negotiations. Subsequent bilateral negotiations and FTA have created avenues for overt diffusion, informational diffusion and procedural diffusion. Especially the essential elements clauses, which are included in the sustainability chapters of all EU FTA, present a key avenue for the realization of the trade-social rights nexus in the EU's trade policy. Stated

differently, respect for human rights is considered as an ‘essential element’ in treaties on which the reciprocal obligations of the parties are premised. Consequently, human rights violations of a certain scale by one of the parties can amount to a breach of the treaty and result in the suspension of other countermeasures. A final key tool in EU bilateral policy are the SIA carried out prior to the conclusion of all FTA. SIA identify the expected impact of the agreement on aspect like human rights and social standards to allow parties to take timely measures to mitigate negative effects. The EU considers SIA indispensable for sound, evidence-based and transparent trade negotiations and embraces them for the purpose of informational diffusion.

Events that took place in the context of the EU’s unilateral approach most clearly reflect Europe’s struggle to manage globalization and engage in full competition at the same time. On several occasions, the EU has adopted sanctions against Myanmar in retaliation against the latter’s disrespect for human rights and democratic values, thereby providing for transference and informational diffusion of norms. However, in 2007, the reluctance of the EU to extend sanctions and their limited scope illustrate the power of commercial interests within the Union. Despite repeated calls on the EU to impose new and strict sanctions as the situation in Myanmar deteriorated, policy-making was for a long time held hostage to the commercial interests of the European oil industry. Besides sanctions, the GSP is a second tool for the EU to realize its linkage politics vis-à-vis ASEAN. The GSP grants beneficiaries duty reductions on condition of respect for several core human rights and good governance conventions. Vietnam, Indonesia, the Philippines, Cambodia, Laos and Myanmar are exposed to mostly informational diffusion and transference of

norms in this context. Finally, both unilateral instruments heavily emphasize the need for transparent monitoring mechanisms and periodical dialogues to encourage sustainable policy changes in the target countries. The withdrawal of trade benefits should not be seen as a punitive measure, but are designed to bring about change abroad. This thesis has aimed to unravel the EU's take on one of the many facets of the fair globalization, namely the trade-social policy nexus. The EU's apparent emphasis on informational and overt diffusion comes as no surprise given its susceptibility to public approval and its desire to legitimize its trade policy. Nevertheless, the limited potential costs incurred by the EU in the case of policy communications compared to cases of procedural diffusion and transference threaten to limit its credibility in the eyes of ASEAN. At this point, it is necessary to adequately measure and assess the consequences of the EU's policies to shed light on the power relations between the EU and ASEAN. Also, an evaluation of the impact will allow practitioners to derive policy recommendations for the future. Given the complexity and divergence of the EU's described policies, it can be expected that the impact will be equally multifaceted. Future research is therefore needed on the impact in terms of social policies in the target countries, in terms of trade flows and on the EU's legitimacy as a global trading power. If the responses on the aforementioned questions are optimistic and positive, it seems that the EU has truly asserted itself as a global normative power.

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