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Trade Agreements as Venues for ‘Market Power Europe’? The Case of Immigration Policy*

FLAVIA JURJE and SANDRA LAVENEX
University of Lucerne

Abstract
In the absence of an international migration regime, the rising salience of migration issues and the limits of unilateral policies led the European Union to seek appropriate venues for co-operation with the sending and transit countries of migrants. Many of the newer relevant multilateral or regional venues are soft law frameworks. Conversely, trade agreements provide a formal, hard law instrument for inserting migration clauses. Based on a quantitative analysis of EU trade agreements and expert interviews, this article investigates how far the EU is engaging in strategic issue-linkage when including migration clauses in its trade agreements. Testing hypotheses derived from rationalist and institutionalist approaches, it thereby provides an empirical test of its acclaimed identity as ‘trade power’ or ‘market power’.

Introduction
Despite growing awareness of the need for common solutions, international co-operation on migration faces many obstacles. Governments have traditionally been reluctant to tie their hands with binding international commitments in this sensitive area of national sovereignty. Furthermore, co-operation is impeded by deep conflicts of interest between and within countries as to what the contents of co-operative arrangements should be (GCIM, 2005, p. 67). Notwithstanding the expansion and diversity of migration flows worldwide, the migration phenomenon is generally perceived as being more of a ‘one-way street’ with a clear distinction between sending, transit and receiving countries. As long as this distinction holds and there is more potential for emigration than demand for immigration, there will be little overlap between these countries’ political priorities and co-operation will fail due to the lack of reciprocity. In such asymmetric problem constellations, co-operation is very demanding since one party’s gain tends to be perceived as another party’s loss. A classic strategy for overcoming impediments is the manipulation of the recalcitrant parties’ incentive structure through issue-linkages and the conclusion of package deals.

In this article we take a closer look at one particular venue for co-operation on migration that provides a wide scope for issue-linkages and, at the same time, mobilizes a significant power base: trade-related agreements.¹ Our focus is on the EU as both a major

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¹ According to the EU terminology, these agreements are defined as ‘trade agreements and other agreements with a trade component to which the EU is party’ (<http://ec.europa.eu/trade/policy/countries-and-regions/agreements/>).
economic player and, increasingly, as a migration policy actor. Starting from the reflection that the EU’s trade relations constitute a considerable potential source of influence (Duchêne, 1973; Hafner-Burton, 2005; Meunier and Nicolaïdis, 2006), we ask how far the EU acts as a strategic ‘market power’ (Damro, 2012) in its external migration policies by capitalizing on its economic weight and linking migration policy goals to external trade agreements.

The question of whether the EU engages in strategic issue-linkage through its trade agreements has implications for its nature as a foreign policy actor. Such cross-sectoral linkages presuppose a coherent co-ordination across foreign policy goals, issue areas and administrative divisions. In a first set of hypotheses, we investigate how strategic the EU is in mobilizing its ‘market power’ by linking its trade agreements to migration policy. This would be expressed in the use of trade agreements as venues for gaining leverage, especially towards major sending and transit countries, and by linking enforceable migration control and readmission clauses to economic concessions, visa facilitation or labour mobility. Alternatively, trade agreements could be used as a venue to attract ‘wanted’ migrants for instance in the service sector.

A lively debate in EU external relations literature, however, questions this capacity for co-ordinated strategic action. EU foreign policy analyses have recurrently highlighted the fragmentation of external relations and the weakness of concerted action (Gebhard, 2011). Institutionalist approaches suggest that the EU adopts a ‘one size fits all’ (Börzel and Risse, 2004) or ‘our size fits all’ (Bicchi, 2006) approach in its external relations. Accordingly, the inclusion of migration policy clauses in EU external agreements should mirror changes in the EU’s own internal migration policy rather than functional prerogatives. It would be an outflow of new competences acquired by EU institutions – not the outcome of strategically designed, targeted issue-linkages.

In the following we sketch the evolution of the trade–migration nexus in EU external relations and elaborate the theoretical framework and guiding hypotheses. The empirical investigation is based on a quantitative analysis of 66 trade-related agreements concluded between the EU and third countries since 1963, as well as 14 qualitative expert interviews conducted with officials working in the EU Commission Directorates General for Home Affairs and Trade and the European External Action Service (previously DG Relex) between 2009 and 2013. Our analysis contributes to the conceptualization of different logics driving the use of ‘market power Europe’ in non-trade matters (Damro, 2012, p. 15) and provides a first empirical test using a combination of qualitative and quantitative approaches, based on a unique data set. In short, our results show little support for the strategic use of trade agreements in the pursuit of migration policy goals. The more contested migration clauses in trade agreements are generally soft law and not directly enforceable (Abbott and Snidal, 2000; Hafner-Burton, 2005). Their inclusion in trade agreements hardly discriminates across third countries according to migration-related variables and rather mirrors the evolution of respective competences in the EU and general foreign policy orientations. ‘Market power’ in this field consists mainly in the diffuse

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2 This refers to the totality of EU trade agreements, including more encompassing types like the Europe agreements towards candidate countries, the multisectorial association, partnership and co-operation agreements as well as trade and economic partnership agreements.

3 There is a list of the interviews at the end of the article.
leverage that the EU’s structural economic weight generates for external migration policies proper. It does not manifest itself in a targeted and strategic issue-linkage with trade agreements.

I. The Evolution of the Trade–Migration Nexus in EU External Relations

The evolution of international norms in relation to migration has been described as generating ‘substance without architecture’ (Aleinikoff, 2007, p. 467). Relevant provisions have developed in various fields and institutional venues: human rights, labour, refugees, security and, more recently, trade and development (Lahav and Lavenex, 2013). This fragmentation reflects changing policy frames on the issue of migration over time as well as shifting political priorities. These shifts are also salient in the evolution of the EU external migration policy and shape the contents of relevant provisions in EU trade agreements to this day.

EU trade agreements incorporated provisions on migration derived from single market legislation long before the EU developed its own competence in these matters. The first association agreement concluded by the EU with a third country, the 1963 Ankara Agreement with Turkey, contained in its Articles 12–14 provisions extending free movement rights to Turkish nationals. The co-operation agreements concluded with Algeria, Morocco and Tunisia in 1978 provided for the non-discrimination of workers from these countries as regards working conditions, remuneration and social security (Apap, 2002; Guild, 1992). Their presence in the single market was the result of the guest worker and recruitment programmes of several EU Member States in the post-war period.

In the 1970s, and especially since 9/11, destination countries have increasingly linked migration to internal and international security. This shift coincided with the development of a genuine EU competence in asylum and migration matters. The impetus for nascent EU immigration policy was the perceived need to agree on compensatory measures for the safeguarding of internal security after the abolition of internal border controls decided with the 1985 Schengen agreement (Geddes, 2008). This security orientation yielded an external dimension early on, with the Schengen Group signing the first common readmission agreement with a third country (Poland) in 1992. Although the EU migration policy agenda has been widened since, migration control remains the primary focus of its external dimension (Weinar, 2011; Wunderlich, forthcoming).

Attempts to engage countries of transit and origin of migrants in the repression of unwanted flows have faced difficulties. Beyond the circle of EU candidates, which have had to align their policies as part of their preparation to EU accession, the Union has had to define alternative incentives in order to motivate third countries’ co-operation (Lavenex, 2006b). These difficulties are particularly salient in the attempts to conclude readmission agreements that commit countries to take back their own as well as third country nationals who have crossed their territories and are staying irregularly in an EU Member State. These agreements usually also include co-operation in the fight against irregular migration. The potential leverage of trade agreements for generating third countries’ consent was recognized at the 2002 Seville European Council, which formally decided that ‘cooperation, association or equivalent agreements should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration’ (European Council, 2002, p. 10). Yet, despite this decision, whose
implications will be studied in the remainder of this article, the EU has continued negotiating legally binding readmission agreements outside trade venues. Instead of making trade concessions conditional on co-operation on readmission, as the Seville Conclusions suggest, another strategy to overcome third countries’ resistance has been the coupling of readmission with visa facilitation agreements (Trauner and Kruse, 2008). The most recent innovation is the promotion of comprehensive, process-oriented migration dialogues and partnerships, summarized in the ‘Global Approach to Migration and Mobility’ adopted in 2005 and renewed in 2011 (European Commission, 2011; Lavenex and Stucky, 2011). Notwithstanding this move towards soft law frameworks, the potential linkage with ‘hard law’ trade agreements has remained salient on the EU’s agenda. The Lisbon Treaty provides a formal legal basis for this by bringing trade policy under the same external action heading as other elements of EU external policy such as environmental, development or immigration policy.4

Finally, the issue of migration has entered EU trade agreements not only from the perspectives of free movement, migrants’ social and economic rights, and control, but recently such agreements have increasingly codified limited mobility rules as well (Hoekman and Özden, 2010). This development is linked to the 1995 General Agreement on Trade in Services (Gats) of the World Trade Organization (WTO), which covers, as one mode of trading services across borders, the temporary mobility of natural persons (Lavenex, 2006a; Panizzon, 2010). Accordingly, EU trade agreements with third countries that include services replicate or, in some cases, exceed Gats commitments with regard to the admission of ‘wanted’ migrants, especially highly skilled professionals working in international businesses.

Summing up, from a ‘market power’ perspective, EU trade agreements could theoretically be used strategically in two distinct ways: in order to maximize leverage towards recalcitrant countries in the fight against irregular migration, which corresponds to current political priorities in the EU; and/or as venues to ease the mobility of ‘wanted’ economic migrants. Whether this is the case will be explored in the remainder of this article.

II. Co-operation, Issue-Linkage and Market Power

The EU’s difficulties in co-operating with countries of transit and origin of migrants indicated above are a manifestation of the more general co-operation problems characterizing this field. Apart from the fact that the admission of non-nationals touches the core of state sovereignty and national identity, the weakness of international co-operation stems from two features. First, substantively, there is the difficulty to specify one set of consistent principles that should guide co-operation on migration. Second, strategically, there is a profound asymmetry of interests regarding the contents of this co-operation.

Unlike other policy fields such as trade, environment or international security, where the establishment of international regimes could draw on a strong set of shared ideas on the benefits of liberalism, the value of sustainability or the desire for peace, in international migration no single guideposts for action exist. Protection of migrants’ rights, labour market needs, sovereignty concerns, security and identity considerations, and the potential contribution to development are all motives that guide political action and partially

4 Article 207(1), Treaty of European Union.
contradict each other. Competing frames over international migration thus exist already within states’ administrations and constituencies and cut across bureaucratic divides.

The clash over the guiding principles of international migration co-operation is even larger between different countries – that is, the receiving and the sending countries of migrants – which points at the strategic difficulty of co-operation. Generally, the co-operation problem rests in the absence of reciprocity. As ‘a condition theoretically attached to every legal norm of international law’ (Zoeller, 1984, p. 15), reciprocity expresses that co-operation is in the joint interest because the participating countries are interdependent, they need the others’ co-operation in order to regulate an underlying issue. Reciprocity is important because it ensures states’ compliance with governance arrangements; parties know that if they defect on a given co-operation arrangement, the other party will retaliate with a similar measure, with suboptimal effects for all (Keohane, 1986). This mechanism does not usually work in international migration relations because lower-skilled economic and humanitarian migration is ‘more of a one-way street’ than trade (Hatton, 2007). This leads to an asymmetric constellation with few overlaps between the interests of the sending countries (for example, the export of the lower-skilled labour surplus, the reap of remittances, relief in conflict situations, the avoidance of brain drain) and those of the receiving ones (chosen, preferably skilled economic immigration, flexibility of migrant residence rights, limited intake of humanitarian migrants, capacity to return irregular migrants, etc.).

From the perspective of the receiving countries, there is little incentive in co-operation other than regarding migration control and, to a lesser extent, the attraction of highly skilled professionals for temporary stays. Labour market needs in the lower segments can still be met unilaterally given the attractiveness of the domestic markets and the abundance of low-skilled labour force (this might, however, change soon due to demographic decline). For granting migrants’ rights too, receiving countries do not rely on co-operation in order to realize them. Co-operation on the rejection and return of irregular migrants thus poses the highest challenges. Here clearly interests do not converge as the right to leave one’s country is not only a basic human right, but also a relief for countries of origin in the light of high unemployment, and it is a welcome source of remittances.

In such asymmetric constellations, co-operation is very unlikely unless the incentive structure of the recalcitrant party is changed. Theoretically, possible strategies to overcome such co-operation problems include coercion – the overwhelming exercise of power (Drezner, 2009); more bargaining-related issue-linkages and package deals that can alter the cost–benefit calculation on the side of the recalcitrant party; or ‘institutional strategies’ geared at the establishment of interaction frameworks within which learning and socialization can take place (Oye, 1985).

The inclusion of controversial migration clauses in trade agreements and their connection to broader economic and possibly also migration-specific benefits like visa facilitations or migrant rights would be an instance of a bargaining-oriented issue-linkage. Trade

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5 The membership conditionality for candidate countries which had to align with the EU’s migration acquis including readmission provisions can be seen as a coercive means. Towards non-candidate countries, this strategy does not apply.

6 The socialization of countries of origin and transit of migrants into the task of migration control constitutes the main focus of EU activities and operates through the funding of projects for capacity-building and networking between migration control officials and border authorities in transgovernmental forums. These elements are also at the core of the main instrument of the EU’s external migration policy – that is, ‘mobility partnerships’ (Carrera and Sagrera, 2011; Lavenex and Stucky, 2011).
agreements provide a venue in which the anticipated costs of agreeing on migration control can to some extent be compensated through the perceived benefits of closer economic relations. The linkage of migration control co-operation to economic agreements has, however, broader institutional effects. Once embedded in an institutional context, states would seldom challenge existing regime principles and norms in ways that more accurately reflect their interest (Shaffer and Pollack, 2009, p. 745). Thus, once agreed, commitments generate ‘sunk costs’ and become resilient to change (Keohane, 1984).

The question is how far the EU has realized this strategic issue-linkage in its trade agreements. The next section reviews briefly the literature on EU actorness and provides possible alternative perspectives on the dynamics of migration policy inclusion in economic instruments.

III. The EU as a Strategic ‘Market Power’?

Trade policy represents an exclusive power of the EU. Trade agreements with third countries are the most important legally binding instruments that can be used by the EU in its external policy. They allow for a high codification of key topics relevant for the EU foreign action – be it human rights as analyzed by Hafner-Burton (2005) or, in our case, migration clauses. This power base, supported both by the EU’s market size and its regulatory capacity to set and uphold agreed rules (Bach and Newman, 2007), has often been underlined as the EU’s most significant resource, from Duchêne’s early notion of ‘civilian power’ (Duchêne, 1973) to more recent conceptualizations ‘trade power’ (Meunier and Nicolaïdis, 2006) or ‘market power’ (Damro, 2012). All these approaches underline the EU’s capacity to capitalize intentionally on its market power to achieve foreign policy goals. If the EU were to act as a rational, strategic foreign policy actor, intentionally using its trade agreements as a means of ‘affecting material incentives’ (Damro, 2012, p. 687; Hafner-Burton, 2005), the inclusion of migration clauses in trade agreements should follow the logic of consequentiality and mirror the EU’s security and economic interests vis-à-vis the respective countries.

From this perspective, we should expect the following rationalist hypotheses to hold:

*H1.1*: The probability that trade agreements include security-related migration provisions increases when emigration from a third country to the EU is higher and when the economic and political push factors of the respective country are stronger.

The rationale for this hypothesis is given by the EU defined as a rational actor that strategically uses its external trade agreements to target migration policy goals via issue-linkage, capitalizing on its market power to exert leverage. The EU uses the incentive of trade concessions to incite co-operation on its policy priorities – that is, migration control. Thus, we expect the EU to discriminate the insertion of migration provisions depending on relevant properties of the third country. We anticipate more and stronger ‘security’-related provisions in agreements with countries that constitute sending or transit countries of migrants. Apart from actual migration numbers, the EU should also take into account...
account perceived push factors of migration like the level of poverty, type of political regime and existence of an unstable socio-political environment. The lower the level of economic development (GDP per capita) and less democratic a country is, the more the EU should perceive it as a potential source for immigration and hence include security-related migration clauses in an agreement. Geographic proximity might also constitute an important factor for security concerns, as the closer a country is to the EU borders the higher the chances of becoming a transit country.

Below this general nexus between trade and migration control provisions, strategic issue-linkages can be realized between the different migration-related provisions within one and the same trade agreement. For instance, the EU can make the granting of migrant/mobility rights (that is, social rights for emigrants living in the EU, visa facilitations) conditional on the third country’s co-operation on security-related provisions (that is, border control, readmission of irregular migrants, etc.). If this was the case, the inclusion of rights and mobility clauses should highly correlate with security-related provisions.

A different view on the strategic use of migration clauses is suggested from a trade perspective. If mobility clauses in trade agreements primarily serve the purpose of easing trade exchanges, then these provisions would figure in particular in agreements with major trade partners. Clauses regarding the movement of key personnel or self-employed highly skilled professionals in service industries and the right to establishment for foreign companies entailing the mobility of natural persons are only useful in the light of strong trade relations which expand to service trade. Therefore, our second rationalist hypothesis stipulates:

\[ H1.2: \text{The probability that trade agreements include services-related mobility clauses (Gats) increases when the EU’s trade linkages with a third country are stronger.} \]

We assess EU trade partners based on measures of the share of exports and imports of the EU with third countries as well as the EU trade balance in relation with third countries. These macroeconomic indicators could be also used as a proxy for the ‘power’ structure between the EU and its trading partners, allowing to control for the potential ‘market power’ of third countries. Generally, a negative trade balance between the EU and a third country would most often indicate a higher ‘market power’ of the Union. The indicators for trade were calculated based on Eurostat and the World Bank data sets.

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8 A control dummy for conflict that codes whether, for the past 20 years, a state was engaged in open conflict on its territory was tested.
9 The indicator was calculated for each country signatory of a trade agreement that corresponds to a period of ten, five and the year of adoption of the agreement (data source: «http://data.worldbank.org/indicator/NY.GDP.MKTP.CD»).
10 The democracy indicator relies on the scores from Freedom House as the only comprehensive data set for the time span covered in this article. This was also computed for a period of ten, five and the year of ratification.
11 This control variable follows Schimmelfennig and Scholtz’s (2008) typology that classifies cases in direct land neighbours of the EU, countries separated from the EU by the sea or another country, and all the rest that are further away from the EU borders.
12 These are the categories of persons also covered by the Gats (Panizzon, 2010).
13 The ratios for trade balance and shares of EU imports and exports were computed for a period of five, three and the year of adoption of the respective trade agreement. This controls for potential external factors that might have influenced the economic setting in the cases investigated.
Nevertheless, the EU’s capacity to act as a strategic actor and to co-ordinate sectoral policies in terms of targeted issue-linkages has recurrently been questioned in the literature. Studies of EU human rights and democracy promotion tend to concur that EU action has been driven by conflicting goals leading to inconsistent action (Smith, 2001). Arguing from the perspective of historical institutionalism and social constructivism, Börzel and Risse (2004) have noted that rather than taking into consideration the different functional needs of its partner countries, the EU has applied a ‘one size fits all’ approach to democracy promotion. This approach would reflect institutionalized routines rather than strategic action. Emphasizing the internal origins of the EU’s foreign policy routines, Bicchi (2006) has further argued that the EU promotes generalized templates based on its own model and evolution. Accordingly, EU external policies follow a logic of appropriateness inspired by EU internal developments. Consequently, we expect the quantitative and qualitative patterns of migration clauses inserted in trade agreements to differ more along the evolution of EU competence over migration as well as general foreign policy orientations rather than according to certain properties of the target country.

Our first institutionalist hypothesis therefore is:

\[ H2.1: \text{The inclusion of migration-related clauses in trade agreements varies with the evolution of EU competence in migration matters.} \]

We expect migration clauses to multiply after the 1992 Maastricht Treaty, when these matters were first included in the so-called ‘third pillar’, and again after their communitarization with the 1997 Amsterdam Treaty and the official launch of the external dimension at the 1999 Tampere European Council (Monar et al., 2011; Weinar, 2011).

Apart from changes in the organization of migration policies within the EU, a second institutional variable that could shape relevant provisions in trade agreements is the type of agreement offered to third countries. These types of agreement that mirror general foreign policy orientations categorize third countries according to their general scope of interaction with the EU, starting from loose co-operation agreements and culminating in accession partnerships, the most encompassing type.\(^\text{14}\) Our second institutionalist hypothesis is:

\[ H2.2: \text{The inclusion of migration-related clauses in trade agreements varies with the type of trade agreement.} \]

None of these contentions denies the notion of the EU as a ‘market power’ that conducts its foreign (migration) policy (also) through the venue of its trade agreements. However, the distinction between rational and institutional logics sheds different nuances on the concept of ‘market power’. Whereas a strategic, rationalist actor understanding stresses the EU’s capacity to engage actively in targeted issue-linkage, formulating migration control provisions according to functional needs, a more structuralist notion of market power questions the strategic design of issue-linkages and underlines the generalized reflection of EU policy developments in its trade agreements.

\(^{14}\) To capture the institutional effect of various types of agreement we have designed a categorical variable that ranges from 1 (accession partnership – the strongest type of an agreement) to 7 (co-operation agreement – the weakest type). The other types that lie in between refer to stabilization and association partnership, association partnership, partnership and co-operation agreement, customs union, economic partnership agreement and free trade agreement, respectively.
Next, we develop our empirical investigation that is based on both quantitative analysis and qualitative interviews with experts working in the European Commission and the European External Action Service (EEAS). In order to test the hypotheses advanced by the rationalist approach that predict a dichotomous outcome (that is, if a specific type of migration provision is included or not in a trade agreement), the logistic regression represents the most appropriate statistical tool (Borooah, 2001). We distinguish between security-related clauses (third country commitment to fight irregular migration, to co-operate on readmission, to align its visa policies to the EU’s and to develop asylum systems),15 rights (social rights and visa facilitation for emigrants) and trade-mobility-related provisions (mainly clauses on the movement of key personnel and self-employed persons within the trade chapters on services and establishment). To examine the institutionalist hypotheses that assess variation in the overall number of migration clauses contained in an agreement we employ a linear regression. The study covers all EU trade-related agreements with third countries signed from the 1960s onwards16 (see online appendix).

The cases of Overseas Countries and Territories and the Faroe Islands (with the exception of the Cariforum members covered by the 2008 economic partnership agreement [EPA]) as well as the group of states covered by the Yaoundé I–II, Lomé I–IV and Cotonou conventions were not included in the statistical analysis for several reasons. First, these agreements are multilateral, contrasting with the bilateral nature of the other treaties investigated in the quantitative analysis. This implies that the same provisions apply to all signatory parties and thus it impedes the detection of country-specific issue-linkages. Second, systematic quantitative data for macroeconomic and political indicators used as our key independent variables are not available for this group of countries for the years under study. We do, however, discuss these cases on a qualitative basis.

In addition to the quantitative analysis we also conducted 14 qualitative expert interviews with public officials working in the EU Commission Directorates General (DG) for Home Affairs and Trade as well as the EEAS (previously DG Relex) between 2009 and 2013. EU officials were asked about the role of trade agreements in the EU’s external migration policy and the rationales guiding the inclusion of migration clauses. Our empirical findings are discussed below.

IV. Strategic versus Institutional Logics in the EU Trade and Migration Nexus

EU Trade Agreements as Venues for Strategic Issue-Linkage?

In line with our first set of hypotheses, we expect the EU to act as a strategic actor in its foreign policy approach towards third countries, thus clearly assessing the potential ‘costs/benefits’ triggered by coupling migration and trade issues in a binding international agreement. This should be reflected in a clear discrimination of migration clauses

15 The promotion of asylum systems in third countries corresponds to a securitarian approach insofar as it helps spread the ‘refugee burden’ beyond Europe.

16 We are aware that looking at these agreements discloses the view from the much wider scope of EU external migration policies, dialogues, capacity-building exercises and other migration-specific agreements like readmission agreements and mobility partnerships. Nevertheless, this choice is justified by our interest in the instrumentalization of market power and the use of issue-linkages between migration and trade policies, which clearly are the strongest instrument used by the EU in its external relations.
according to properties of the third country in question. Considering the EU’s ‘migration control’ policy priority, this would imply that the Union would more often insert security-related aspects in trade agreements with countries that show high rates of immigration to the EU. The probability of the EU to opt for co-operation on ‘security’ aspects is likely to increase if these states are also faced with a high number of perceived push factors that would intensify emigration incentives, such as low rates of economic development and democratic governance and/or display unstable socio-political conditions. The geographic location of a country could also impact on the EU’s securitarian approach, as the closer this is to the EU’s borders, the higher the chances of becoming a transit point.

Furthermore, the strategic use of trade agreements should reflect in issue-linkages within these agreements, especially between provisions on migration control, that benefit the EU, and provisions that are mainly in the interest of the third countries, such as mobility clauses and migrant rights. Our analysis of EU trade agreements gives little support for this strategic perspective. First, security-related clauses in trade agreements are generally ‘soft’ and do not provide for legal enforcement (Abbott and Snidal, 2000). The standard migration control clause included reads:

The Parties agree to cooperate in order to prevent and control illegal immigration. To this end [. . .] [the respective country] agrees to readmit any of its nationals illegally present on the territory of a Member State.

In addition, the respective article also stipulates that the parties ‘agree to conclude, upon request’ a separate bilateral agreement covering also ‘an obligation to readmit nationals of other countries and stateless persons’. Therefore, EU trade agreements cover readmission for the contracting parties’ own nationals, but without special enforcement provisions. Concerning the contested issue of readmission of third country nationals, they merely stipulate the intention to negotiate a separate readmission agreement.

How far does the inclusion of these clauses vary according to the migration situation in the third country in question? The results of the logistic regression (Table 1, model 1) provide very weak support for this rationalist perspective. While testing for explanatory variables on the likely outcome of inserting security-related clauses in trade agreements, we found no relationship between the impact of immigration flows, economic or political push factors and security-related provisions. It transpires that the inclusion of such clauses does not depend on either the number of third country nationals emigrating to the EU or on the domestic economic and political environment of the sending country. The only factor that turns statistically significant (although only for a 90 per cent confidence interval) is the control variable, geographic proximity. This would imply that the spatial location of a country, the closer to the EU borders, would increase the probability for more security and border control clauses to be inserted in concluded agreements. We come back to this finding in the conclusion.

A second indicator for the strategic use of issue-linkages in trade agreements would be the coupling of visa facilitations and migrant rights with readmission clauses and other security provisions within the same trade agreement. There is also little support for this proposition: in only about 20 per cent of the existing agreements are the two types of provisions granted together (see the correlation matrix in the online appendix). This low

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correlation represents another empirical test contrary to the expectations on issue-linkage advanced by the rationalist framework.

These findings were confirmed in the interviews conducted with Commission and EEAS officials. Although the intention to systematically include readmission clauses in trade agreements was taken already in the 2002 European Council, a high-ranking official of DG Home asserted in September 2012 that ‘trade agreements are not used as instruments of external migration policy’. In contrast to the debates shaping the decision of the 2002 Seville European Council, he also asserted that ‘conditionality is not our approach’ in collaborating with the source and transit countries of migration. Rather, he emphasized the diverse dialogues, projects and instruments developed within the EU’s ‘Global Approach to Migration’.18

Our second rationalist hypothesis addressed the potential strategic insertion of migration-enhancing clauses with regard to ‘desired’ immigrants. Mobility clauses generally facilitate the movement of highly skilled migrants to enter the territory of the EU for a given time period as a service supplier (Gats mode 4) or give the right to establishment of a company in the territory of an EU Member State. We hypothesized that a higher economic linkage with a third country would increase the probability of mobility clauses inserted in trade agreements. However, based on the current trade exchange volumes between the EU and third countries, contrary to the rationalist hypothesis we find no relationship between trade-related variables and mobility clauses (Table 1, model 2). For instance, the recent EPA with the Cariforum countries includes mobility provisions that exceed the Gats, whereas the trade agreements with South Africa or the EU’s neighbours do not. Even when controlling for the alleged ‘market power’ of third countries relatively to the EU ‘market

Table 1: Regression Analysis of Migration-Related Provisions Included in Trade Agreements

<table>
<thead>
<tr>
<th>Variables</th>
<th>Model (1) (Security)</th>
<th>Model (2) (Trade mobility)</th>
<th>Model (3) (Total migration provisions)</th>
</tr>
</thead>
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<td>Immigration</td>
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<td>-0.61</td>
<td>-0.90***</td>
</tr>
<tr>
<td>Conflict</td>
<td>1.29</td>
<td></td>
<td>-1.01***</td>
</tr>
<tr>
<td>Geography</td>
<td>-0.50***</td>
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<td>Democracy 10</td>
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<td>-0.25</td>
<td></td>
</tr>
<tr>
<td>GDP p.c.10</td>
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<td>-1.82**</td>
<td></td>
</tr>
<tr>
<td>Trade balance_5</td>
<td></td>
<td>-9.64</td>
<td></td>
</tr>
<tr>
<td>Years decades</td>
<td></td>
<td></td>
<td>-0.90***</td>
</tr>
<tr>
<td>Number of observations</td>
<td>53</td>
<td>53</td>
<td>59</td>
</tr>
<tr>
<td>Log. pseudo-likelihood</td>
<td>-28.57</td>
<td>-30.53</td>
<td></td>
</tr>
<tr>
<td>Pseudo R²/R²</td>
<td>0.20</td>
<td>0.11</td>
<td>0.65***</td>
</tr>
<tr>
<td>Wald Chi²</td>
<td>9.05**</td>
<td>5.63</td>
<td></td>
</tr>
</tbody>
</table>

Source: Authors’ own calculations.
Notes: a Models 1 and 2 were computed using a logistic regression, with robust standard error estimates. Model 3 was estimated with a multiple linear regression, with robust standard errors. Collinearity tests were applied and there is no multicollinearity among the explanatory factors of these econometric models. b The results remain the same when running the model without the control variables (none of the main independent variables of the models are statistically significant). c We have also estimated each type of migration provisions (that is, security, rights and trade mobility) using logistic regressions and the findings highly corroborate with the results of the linear regression. *** p < 0.01; ** p < 0.05; * p < 0.1.

18 Interview 7, European Commission, DG Home, International Affairs Section, 17 September 2012.
power\textsuperscript{19} the results remain similar. This might be interpreted as a strong negative finding that brings additional evidence against the realization of strategic issue-linkages between EU trade and migration policies.

Interviews conducted with three EU officials in DG Home and the EEAS asserted that Gats-type mobility clauses were an issue dealt with by DG Trade and not part of external migration policy.\textsuperscript{20} The person responsible for negotiating services in DG Trade concomitantly explained that these mobility clauses constitute questions of market access; therefore they belong to the sphere of trade, and not migration.\textsuperscript{21} This is corroborated in policy documents such as the 2005 and 2011 communications on the global approach to migration (and mobility) that make no mention of this service-trade related mobility (Commission, 2006; European Commission, 2011).

**EU Trade Agreements as Institutionalist Projection**

From the institutionalist perspective, we argued that the inclusion of migration clauses in trade agreement would not mirror targeted, country-specific EU interests in the policy area of migration. Instead, these clauses should reflect the internal evolution of EU migration policy over time and the type of trade agreement concluded, with little differentiation across countries.

More recent agreements should contain more migration provisions than older ones. As shown in Table 1 (model 3) and illustrated in the descriptive graph in the online appendix, the time dimension indeed turns out to be statistically significant. This follows to a certain extent the evolution of EU competence in migration matters starting from a limited competence over free movement to the intergovernmental provisions of the 1992 Maastricht Treaty’s ‘third pillar’ and the communitarization of asylum and immigration matters in the 1997 Amsterdam Treaty, including the official embrace of an external dimension at the Tampere European Council in 1999 and subsequent integration steps. For example, most of the security-related provisions (irregular migration, readmission, asylum, visa co-operation) began to be present in trade agreements with third countries from 1997 onwards, which corresponds to the development of EU immigration policies encompassed by the Amsterdam Treaty. The inclusion of readmission clauses intensifies after 2002, when the Seville European Council officially addressed the topic (see above).

Our second institutionalist hypothesis investigates the ‘type of agreement’ that is granted to a particular country. Whereas the time variable measures the impact of institutional developments with regard to EU internal competence over migration matters, the type of external agreement addresses institutional developments in the design of overarching external relations. As shown in Table 1, model 3, the type of agreement is the variable that produces the strongest statistical results on the inclusion of migration provisions. The EU offers generalized packages of migration clauses inserted in

\textsuperscript{19} This indicator is based on the percentage of exports of third countries to the EU out of the total percentage of exports for all third countries.

\textsuperscript{20} Interview 7, European Commission, DG Home, International Affairs Section, 17 September 2012; Interview 8, European Commission, DG Home, International Affairs Section, 17 September 2012; Interview 12, European External Action Service, MD IV.1, 18 September 2012.

preferential trade agreements to different ‘categories’ of countries, depending on the type of association in place and overarching foreign policy criteria: the closest type of association with a third country displays the highest number of migration provisions. The geographic proximity variable that turned statistically significant in the logistic models correlates with the type of agreement (see the correlation matrix in the online appendix). This indicates that different trade agreements offered to third countries partly capture the geographic location of the respective state: preferential trade agreements with the countries in the immediate vicinity of the EU – particularly the association agreements and partnership and co-operation agreements – tend to include more migration provisions than those concluded with countries that are located further away from the EU borders. This finding corroborates the logic of ‘concentric circles’ in EU external migration policy highlighted by Kostakopoulou (2002, pp. 512ff.) and Lavenex and Uçarer (2002, pp. 212ff.). However, the new generation of EPAs trumps this geographic logic of association agreements: the EPA concluded with the distant Cariforum countries includes some of the most far-reaching provisions, although these countries represent neither a major source of migrants nor of trade flows.

Conclusions

Rather unnoticed from academic debates about EU external relations and international migration governance, ‘migration’ has entered EU trade agreements from many angles: in terms of socio-economic rights for the nationals of the signatory parties, commitments on readmission and the fight against irregular migration, and, most recently, mobility in service trade.

Starting from the rich literature portraying the EU as a ‘market power’ which capitalizes on its economic weight in its external relations, we analyzed how targeted and strategic the EU’s use of its trade agreements actually is with regard to migration policy goals. Given that current policy priorities focused on the fight against irregular migration face a highly asymmetric constellation of interdependence between destination countries and sending countries, and considering that beyond the circle of candidate countries for membership the EU has little leverage to induce co-operation from ‘recalcitrant’ third countries, we hypothesized that the inclusion of migration clauses in trade agreements could be a targeted strategy of issue-linkage to modify incentives structures and therefore overcome co-operation dilemmas. In a second hypothesis, we analyzed whether trade agreements are used as a venue to attract ‘wanted’ migrants.

Based on a statistical analysis of EU trade agreements and expert interviews with EU officials, our study gives little support for visions of a strategic ‘market power EU’ drafting targeted issue-linkages between trade and migration provisions. Security-oriented migration control clauses are generally weekly codified in trade agreements and their inclusion does not correlate with effective immigration pressure from these countries. In addition, we could not find any significant relationship between the inclusion of security-oriented clauses and potential ‘compensatory’ concessions with regard to migrants’ rights or visa facilitation in these agreements. Finally, contrary to economic considerations that would suggest the inclusion of mobility provisions, in particular in the relations with the closest trade partners, we found no positive relationship between trade volumes and trade-related mobility clauses.
Rather than strategic issue-linkages, our analysis highlights the role of structural and institutional factors in the projection of ‘market power Europe’. The main determinant of the substance and number of migration provisions included in trade agreements is the type of agreement concluded with a third country. This typology of external agreements tends to coincide with geographic factors – that is, the closer a country is to the EU the more encompassing is also the type of agreement. The generally declining intensity of these packages with increasing distance from the Union confirms the picture of EU external relations being conducted in a series of concentric circles around the EU’s core (Lavenex, 2011). This geographic logic is not void of rationality as it implies more commitments for neighbouring countries through which migrants transit in order to reach the Union. However, security provisions in neighbourhood agreements are weak, and the new generation EPA concluded with the Cariforum countries exceeds some of their provisions, thereby breaking with the geographic logic.

The lack of strategic issue-linkage was corroborated in our interviews which revealed that trade agreements are not a relevant venue for external migration policies, be they security-, rights- or mobility-oriented. Instead, migration, trade and foreign affairs officials all asserted that trade and migration remain dissociated domains, operating with distinct instruments – even though the inclusion of mobility clauses in service chapters tends to blur this neat distinction (see also Hoekman and Özden, 2010). Rather than linking up with the trade agenda, EU external migration policies have very much developed within their own confines, either via the (often unsuccessful) negotiation of bilateral readmission agreements, or the more recent turn towards comprehensive co-operation packages in so-called ‘mobility partnerships’ or regional consultation processes.

In sum, two conclusions can be drawn from our analysis. From a ‘market power Europe’ perspective it confirms the predominance of institutional over strategic factors in conveying the EU’s economic weight. Notwithstanding the possible gains of issue-linkage, EU trade and migration policies have remained largely dissociated from each other. From the perspective of international migration, our results document the incremental proliferation of relevant norms beyond the confines of migration policy proper. Together, both the sectoral logic guiding foreign policy and the unco-ordinated spread of relevant rules contribute to an increasingly fragmented, overlapping and sometimes inconsistent tapestry of governance arrangements.

Correspondence:
Sandra Lavenex
Political Science Department
University of Lucerne
Frohburgstrasse 3
6002 Lucerne
Switzerland
email: sandra.lavenex@unilu.ch

List of Interviews
Interview 4: European Commission, DG Trade, 7 October 2009.
Interview 5: EuropeAid Co-operation Office, Brussels, 6 October 2009.
Interview 6: European Commission, DG Relex, 6 October 2009.
Interview 7: European Commission, DG Home, International Affairs Section, 17 September 2012.
Interview 8: European Commission, DG Home, International Affairs Section, 17 September 2012.
Interview 12: European External Action Service, MD IV.1, 18 September 2012.

References


Trade agreements as venues for ‘market power Europe’?


Supporting Information

Additional Supporting Information may be found in the online version of this article at the publisher’s web-site:

Figure S1: Evolution of migration provisions across time and trade agreements
Table S2: EU Trade-related Agreements
Table S3: Descriptive Statistics
Table S4: Correlation matrix