The paradox of human rights conditionality in EU trade policy: when strategic interests drive policy outcomes

Katharina L. Meissner & Lachlan McKenzie

To cite this article: Katharina L. Meissner & Lachlan McKenzie (2018): The paradox of human rights conditionality in EU trade policy: when strategic interests drive policy outcomes, Journal of European Public Policy, DOI: 10.1080/13501763.2018.1526203

To link to this article: https://doi.org/10.1080/13501763.2018.1526203

© 2018 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group

View supplementary material

Published online: 21 Sep 2018.

Submit your article to this journal

Article views: 99

View Crossmark data
The paradox of human rights conditionality in EU trade policy: when strategic interests drive policy outcomes

Katharina L. Meissner and Lachlan McKenzie

ABSTRACT
Increasingly, trade agendas are expanding to include non-commercial objectives such as the promotion of fundamental political and human rights. Although the European Parliament (EP) positions itself as an advocate of such objectives in the conclusion of European Union (EU) trade agreements, it rarely insists on them in negotiations. Yet, in the negotiations with Canada, the EP successfully took a tough stance on a human rights conditionality clause. Why did the EP invest political resources in insisting on conditionality in the agreement with Canada – a country which is among the top five regarding fundamental rights? We argue that, due to limited organizational capacity, composite actors, such as the EP, have to select ‘strategic issues’ among political events that make them appear as unique supporters of public interest. In this context, composite actors factor in saliency in their utility calculation of investing political resources in a policy issue.

KEYWORDS Canada; conditionality; human rights; European Parliament; European Union; trade

Introduction
It is nowadays widespread practice among states to include non-commercial, political objectives in free trade agreements (FTAs). This happens through the inclusion of clauses, for example, on human rights (Lechner 2016; Milewicz et al. 2018). The European Union (EU) is at the forefront of this practice of linking commercial objectives with political interests through the use of conditionality clauses. Yet, this practice is often contested by the EU’s negotiation partners. A case in point is the Comprehensive Economic and Trade Agreement (CETA) where Canada was firmly, yet unsuccessfully, opposed to linking CETA to a human rights conditionality clause.
Amidst this contestation, the European Parliament (EP) positioned itself as an advocate of human rights conditionality in the CETA negotiations. This is puzzling because human rights have rarely constituted a red line for the EP in the ratification of past trade agreements, even when partner countries were less compliant than Canada with fundamental rights (Van den Putte et al. 2015: 64). Given the EP’s mixed record of standing by its commitments to human rights, why did the EP stand firm on conditionality in the negotiations with Canada – a country which is among the top five regarding fundamental political rights (Freedom House Index 2017)? This paradox suggests a gap of understanding the motives of decision-making on conditionality clauses in FTAs.

In this article, we aim to fill this lacuna in understanding decision-making on conditionality clauses by integrating theory on organizational action (Dutton and Jackson 1987) and EP studies (e.g., Roederer-Rynning and Greenwood 2017) with empirical analysis of trade agreement negotiations. We argue that composite actors select ‘strategic issues’ among political events. These actors then appear as unique supporters of public interest. In doing so, they factor in saliency of certain issues in order to calculate the utility of investing resources. While recent research observed that highly salient policy issues increases actors’ willingness to invest political resources (e.g., Auel and Christiansen 2015; Brandsma 2012; Dür and Mateo 2014), the mechanism of why and how this happens remains elusive. In this article, we conceptualize a causal mechanism of how saliency results in organizational action via the identification of strategic issues. Hence, we contribute to organization theory (e.g., Murdoch 2015) by offering a fine-grained understanding of how salience of policy issues is processed within the organizations of composite actors.

We probe our argument through the EP’s actions in the case of CETA and thus contribute to literature on North-North trade agreements (e.g., Aggarwal and Fogarty 2005; Meunier 2000). CETA is a particularly relevant case because it was perceived as a blueprint by EU decision-makers for North-North FTAs, especially the now stalled Transatlantic Trade and Investment Partnership (TTIP) (empirical section). In this article, we understand the EP as a composite actor which is capable of intentional, coordinated, organizational-level action above the level of individual members of the EP (MEPs) (Scharpf 1997: 51–58). Hence, the EP’s motives in promoting human rights through the negotiation of FTAs are based on organizational interests (Egeberg et al. 2013).

This article proceeds by setting out the context of human rights conditionality in EU trade agreements. In the second section, we contend that organizational action by composite actors results from identification of ‘strategic issues’. Actors ‘calculate’ the degree to which those issues will have political salience – as well as the hope of improved legitimacy and clout – enhancing visibility as a supporter of the issue. In the empirical sections, we employ the framework of strategic issues and organizational action to explore the EP’s
successful promotion of human rights conditionality in the negotiations with Canada. The conclusion summarizes and reflects on the wider implications of this outcome.

**Human rights conditionality in EU trade agreements**

The EU’s practice of including conditionality on human rights in its external relations has triggered a wide array of research (e.g., Schimmelfennig and Sedelmeier 2004). Next to neighborhood and accession candidate countries, trade partners, since 1995, have become a target of EU human rights conditionality (Bartels 2005). EU decision-making on conditionality clauses in trade agreements, however, is less systematically researched compared to the use of conditionality in the EU’s neighborhood and enlargement policy (see, however, Bartels 2005; Lerch and Schwellnus 2005; Szymanski and Smith 2005). In trade, the EU makes human rights an ‘essential element’ clause of its international agreements either in the agreement directly or through linkage to political agreements (Bartels 2005). Such a clause provides for restrictive measures in the form of suspension or termination of the agreement in case of human rights violations (Commission 2012). In the case of Canada, human rights conditionality was negotiated in the parallel Strategic Partnership Agreement (SPA) and linked to CETA in article 28(7). The SPA included a standard ‘essential elements’ clause with an extensive scope and the irreversible termination of CETA in case of human rights violations (Bartels 2017: 10f.). Such strong human rights language is surprising given that Canada has a recognized fundamental rights record and it was firmly opposed to linking CETA to political objectives (empirical section).

Although the EU has included human rights conditionality clauses in trade agreements systematically since 1995, its insistence on these clauses has varied between negotiation partners (Bartels 2008: 3f.). While most of the EU’s trade agreements include a conditionality clause (Hafner-Burton 2009), there are exceptions like Andorra or San Marino (Bartels 2008: 3) as well as more recent cases where the EU undermined the legal liability of human rights conditionality. Two examples are the EU’s trade agreements with Singapore and Vietnam. In the first case, conditionality in the agreement was accompanied by a side letter recognizing Singapore’s human rights practices (McKenzie and Meissner 2017). In the latter case, the concluded agreement does not explicitly set out the suspension of trade in case of breaching human rights (Hoang and Sicurelli 2017: 11) which also undermines the conditionality clause’s legal liability. In light of these cases, the outcome of an essential elements clause with an extensive scope in the case of Canada requires explanation.

The Canadian case is unique due to the high political relevance of the human rights conditionality clause (Bartels 2017: 11) as well as the EP’s
strong and successful insistence on it. Although the EP positions itself as an advocate of non-commercial objectives such as human rights (Smith 1998: 259), they were never a red line in past trade negotiations even when countries were less compliant than Canada with fundamental rights (Van den Putte et al. 2015: 64). In the negotiations with Mexico as well as Vietnam, for example, the EP supported international pressure for the promotion of human rights (Sicurelli 2017: 10; Szymanski and Smith 2005: 184). With Colombia and Peru the EP demanded a Road Map on human rights (Van den Putte et al. 2015). In other cases like Singapore the EP was specifically passive on human rights conditionality (McKenzie and Meissner 2017). Why did the EP stand firm on human rights in the case of Canada even though this was neither considered necessary by the EP nor an act out of idealism (empirical section)?

Theory: strategic issues and organizational action

In order to make sense of why the EP selected Canada to insist on a strong human rights clause, we rely on literature of organizational action (Dutton and Jackson 1987) that we link to EP studies. In this section we first spell out our assumptions of the EP’s limited organizational capacity. Second, we explain why and how composite actors such as the EP identify strategic issues in order to invest political resources. Third, we develop a mechanism of how strategic issues translate into organizational action.

We understand the EP – similar to other EU institutions and member states – as a composite actor. Composite actors are capable of intentional action aiming at a coordinated, organizational effect at a level above the individual members (Scharpf 1997: 51–58). Hence, in this article, we refer to the EP as a composite actor, capable of deliberate action in the service of organizational interest above the level of MEPs. We further assume that composite actors are constrained by limited organizational capacity (Roederer-Rynning and Greenwood 2017) which restricts their capability of processing information (Ringe 2010).

Strategic issues

Due to limited organizational capacity, composite actors identify ‘strategic issues’ (Dutton and Jackson 1987: 77) in which they choose to invest political resources. This is crucial because actors are confronted with a constant stream of events and information which they have to process within their organization (Brandsma 2012; Thierse 2017). Among a stream of political events, actors, thus, have to make utility calculations (Allison and Zelikow 1999) about which of these events best serves the objectives of their organization (Kuehnhanss et al. 2017).
Political issues are not inherently strategic. Instead, actors ascribe ‘strategic meaning’ to issues or events (Dutton and Jackson 1987: 77). In doing so, actors identify those issues that provide the most leverage for reaching the objectives of their organization (Dutton and Jackson 1987: 76f.). To this end of organizational purposes, composite actors emphasize specific interests, they ‘have the possibility of defining a specific identity’ (Scharpf 1997: 65) that distinguishes them from other actors; i.e., that are unique (Dutton and Jackson 1987: 78). Thereby, actors make sure that other actors trace policy outcomes connected to strategic issues directly to them.

Next to uniqueness of strategic issues, saliency informs actors’ calculations of utility regarding their behavior (Dür and Mateo 2014). Salience influences actors’ ‘willingness to invest political resources to influence political outcomes’ (Beyers et al. 2017: 6). It describes the importance which actors attribute to a specific issue (Beyers et al. 2017: 1) or, more generally, it ‘refers to the extent to which people [or actors] care about political issues’ (Hartlapp et al. 2014: 27). We therefore understand a salient political event as an opportunity for actors to invest political resources into strategic issues in order to shape the eventual outcome.

This ‘investment’ happens, in part, under the premise of making these actions publicly visible (Rittberger and Schimmelfennig 2006: 1160). Thus, the EP makes a calculation about which issues will resonate with the public, knowing that resonance will increase visibility of its actions (Auel and Christiansen 2015). One way of exploring issue salience is reasoning backwards from the visibility of an issue, for example in its public profile in the media. The investment of resources can also occur because actors conceptualize a policy issue as an effective location to expend resources. Here, issue salience can result from actors perceiving the opportunity to signal to other players in decision-making, consolidating or expanding turf.

We argue that it is the combination of saliency and uniqueness which defines a strategic issue. Only in those cases where a composite actor like the EP can claim authority of a unique issue that resonates with public opinion and where this issue is likely to attract attention or clout (Thierse 2017: 5 and 8), it will invest in organizational action. By contrast, saliency of issues which are highly controversial (Roger and Winzen 2015) or of an issue where an individual party claims ownership (Klüver and Spoon 2015) is likely to result in defection from organizational action. In other words, polarized issues (Rauh 2018: 3) test the EP’s unity, while strategic issues forge united action.

**Organizational action**

Organizational action occurs when composite actors identify strategic issues which are unique and salient. In the absence of uniqueness, where issues
are controversial, salient issues inhibit unity and, thus, organizational action (Klüver and Spoon 2015). In the absence of saliency actors invest few resources (Auel and Christiansen 2015). How do strategic issues translate into organizational action?

The type of organizational action, for example what political resources to invest, is mediated by whether composite actors categorize strategic issues as a ‘threat’ or an ‘opportunity’ (Dutton and Jackson 1987: 80; Thierse 2017: 8). Within the EP, such a categorization happens intra-organizationally on the committee-level (Ringe 2010) or the individual level of members of the organization. In line with recent empirical results from a survey with Parliament (Kuehnhanss et al. 2017: 5–12) we assume that EP staff, driven by organizational interests, assesses policy proposals based on categories of ‘threat’ and ‘opportunity’.

We argue that such a categorization of strategic issues influences the kind of political resources composite actors invest (Dutton and Jackson 1987: 84). Only in situations of threat the EP turns to risk-intense actions (Almeida 2003: 347). This is because actors are likely to risk more when they fear loss, while, having a ‘prevalence for risk aversion’ (Thierse 2017: 8), they are unlikely to risk the same amount in cases where they could make gains (Dutton and Jackson 1987: 84). We conceive of a situation as a ‘pure’ threat where actors expect to lose regarding their strategic issues: when there is little feasibility regarding their demands and they are little involved in decision-making (Dutton and Jackson 1987: 80). By contrast, we expect that when the EP identifies a strategic issue as an opportunity – a situation where demands are feasible and actors are involved to a relatively large extent in decision-making (Goldstone and Tilly 2001: 182) – it is likely to stick to actions of ‘smaller magnitude’ (Dutton and Jackson 1987: 84) ‘driven by […] institutional incentives to push forward new demands’ (Almeida 2003: 347). Such risk-adverse actions, in the context of EU trade policy, are to publish committee reports, resolutions, or to exert public pressure on the Commission and member states through rhetorical action (Rittberger and Schimmelfennig 2006).

In brief, we argue that the EP, within a stream of political events, selects strategic issues to forge united, organizational action. The magnitude of organizational action depends on whether the EP categorizes a strategic issue as a threat or an opportunity. Applying this categorization to EU trade policy, the EP’s last resort, since the Lisbon Treaty, is to decline consent to an agreement – a risk-intense action. The EP, in fact, withheld consent to the Anti-Counterfeiting Trade Agreement (ACTA). ACTA became highly salient. However, during the negotiations, the EP was little involved and its demands were unlikely to be taken into account by decision-makers (Dür and Mateo 2014). By contrast, the EP was involved to an unprecedented degree in recent negotiations with North America, namely the United States (US) and Canada (Healy 2014). We therefore expect that the EP is more
likely to turn to risk-adverse rather than risk-intense actions in the negotiations with Canada on issues it identifies as ‘strategic’.

Research strategy

In examining our argument in the subsequent section, we follow the governmental politics approach developed by Allison and Zelikow (1999). This approach focuses on the complexity of preference formation, and how ‘turf battles’ between composite actors have an impact on this process. Hence, we will focus our analysis on the decision-making process and examine preference formation within composite actors. We are interested in the process of how a composite actor – the EP – selects strategic issues and decides about organizational action. Therefore, we will go into detail in the decision-making process, the players and their interests. In doing so, we rely on components of a causal path akin to process-tracing evidence.

The path starts with the identification of strategic issues (Figure 1 in online supplement). Composite actors (a) identify unique issues that make them distinct vis-à-vis other actors. These issues (b) shall resonate with public opinion and invested resources should attract attention or decision-making clout. Based on the identification of strategic issues, composite actors (c) process and categorize information intra-organizationally on the committee- or MEP-level. The categorization of issues into ‘threat’ and ‘opportunity’ rests on (d) a calculation of whether demands are feasible and whether the composite actor has limited or significant involvement in decision-making. In an opportunity situation, high feasibility and high involvement, composite actors (e) turn to risk-adverse actions rather than risk-intense actions which are employed in threat situations (low feasibility and little involvement).

While we will restrict the plausibility probe of our argument (Eckstein 2000: 140) to a single in-depth case study (Gerring 2004: 342) of EU-Canada negotiations, we believe that our general argument is applicable to a wide range of cases: composite actors and their invested political resources in decision-making processes. The aim of the plausibility probe is to increase confidence in the theoretical conceptualization (Eckstein 2000: 141) of the causal path from saliency of policy issues to activities by composite actors via the selection of strategic issues and calculations of investment of political resources. In order to uncover the causal mechanism between saliency (X) and invested political resources (Y), we turn to a ‘typical’ case (Beach and Pedersen 2013: 154; Gerring 2008: 648–650) within the broad universe of cases of (non-)salient policy issues being processed within composite actors. A typical case is particularly useful when a link between X (saliency) and Y (investment of political resources) is established in the literature (e.g., Auel and Christiansen 2015) and empirically known ex ante, but the causal mechanism is unknown and needs to be probed. In other words, this case selection is
appropriate when probing for a new causal mechanism where a ‘typical’ link between X (saliency of CETA) and Y (high amount of political resources invested by EP) was identified ex ante (Beach and Pedersen 2013: 154; Gerring 2008: 649). Hence, a typical case exemplifies a mechanism between X and Y. The ambition of our article is to probe the plausibility of this mechanism, while it is up for further research to test its external validity on other cases.

We rely on semi-structured interviews carried out in 2013, 2014, and 2018 with officials from both negotiation partners. For this article we selected interviews of 30–45 min duration each with eight officials who were directly involved in the EU Canada negotiations, including negotiators from DG Trade, officials from the EP’s AFET and INTA committees, desk officers from the EEAS, as well as officials from the Canadian mission to the EU. EP officials were selected because of their position within committee decision-making, which advise on and support the coordination of the EP’s strategic position on negotiations. Interviewees were asked a series of semi-structured interview questions which aimed to identify their position and rationale in relation to conditionality and human rights promotion throughout CETA negotiations. Canadian negotiators, EEAS as well as DG Trade officials were also interviewed, with the aim of identifying their positions on conditionality and human rights, with a focus on areas of contestation – or ‘turf battles’ – with the EP. The interview material has been supplemented with EP reports and public statements as well as another round of interviews with two officials from parliaments in EU member states in 2018. This material has been used to gauge both public profile and the salience of conditionality within the process of decision-making.

**Human rights conditionality and the EU-Canada trade agreement**

CETA is one of numerous agreements the EU recently concluded or currently negotiates. Launched in 2009, CETA was a highly controversial and salient agreement. This was partly because it was, to date, the most ambitious and wide-ranging trade negotiation that had been undertaken by the EU (Interview 3 2013). In addition, being commercially significant and high profile, CETA became salient as an agreement that would test the EU’s ‘common approach’, set out in the Lisbon Treaty (Art. 16). The common approach is understood by the EP as mandating that the EU’s human rights agenda and trade agreements are linked and coherent.

CETA’s strategic significance for the EU’s approach to linking human rights and trade policy was a result of two factors. Firstly, Canada was opposed to the approach of including a conditionality clause and the linking of CETA negotiations to the SPA negotiations (Interview 7 2013) and found this practice unnecessary (Interview 7 2013). One Canadian official stated that ‘Canada
does not want a legally binding political agreement that does not relate to trade’ (Interview 8 2013). And, in fact, after ten rounds of negotiations, Canadian media reported that the conditionality clause could potentially derail the negotiations (e.g., Duggal 2014).

Secondly, players in EU decision-making, including DG Trade and to a lesser extent the EEAS, signaled that they would be willing to make concessions on human rights. Thus, CETA promised to set the framework for the EU’s approach to conditionality and human rights promotion particularly in light of the now stalled TTIP negotiations with the US, for which CETA was perceived by EU decision-makers as a blueprint (Interview 2 2013). Being sympathetic with Canadian negotiators, the Commission and some EU member states, specifically the United Kingdom (UK) and France, did not see the link between CETA and the SPA as significant to the negotiations. The Commission was primarily interested in commercial benefits (Interview 2 2013). Although this position was in tension with the EU’s policy on coherence and the common approach (Lisbon Treaty, Art. 16; Interview 6 2014), some member states supported it and were opposed to negotiating conditionality with Canada (Interview 6 2014; Interview 7 2013; Interview 8 2013). Rather, member states were interested in an agreement with ambitious commercial components (Interview 2 2013; Interview 3 2013; Interview 4 2013). These decision-making players had, as we will see below, held substantially different preferences in the negotiation process than the EP.

In addition to its strategic importance, the broad scope of CETA triggered public contestation, especially on non-commercial issues such as the investor-state-dispute-settlement mechanism. Framed within the strategic significance of CETA, including the anticipated public profile of the agreement, and set against DG Trade’s position and the potential concessions on human rights linkages being made to Canada, both conditionality and the parallel negotiation of the SPA were salient issues which the EP would defend with the interest in consolidating policy turf grounded in the ‘common approach’.

Thus, conditionality and the SPA were framed by the EP as important for the maintenance of the common approach. Concessions on the common approach would be perceived by the EP as undermining a mechanism where it enjoyed decision-making authority and was established as a major proponent of human rights linkages to trade. Thus, compromise of the common approach in CETA would mean a diminishment of EP policy turf, whereas maintenance of conditionality and the parallel negotiation of CETA and the SPA in the face of Canadian opposition would mean a consolidation or even expansion of EP decision-making turf.

The intense bargaining between decision-making players in a salient CETA led to a high profile negotiation with a lot on the line, but, yet, little convergence in EU decision-makers’ preferences. This created a space for EP activism to push new demands and expand its clout.
The following section analyses the impact of competing preferences between EU players within the context of CETA negotiations. It explains how that competition shaped the decision-making space in which the EP identified the conditionality clause as a strategic issue, and explores the impact of that framing on organizational action.

The European Parliament’s position on human rights

In contrast to the Commission and EU member states, the EP strongly insisted on linking conditionality through the SPA to CETA. This was although the EP did not expect that the conditionality clause would be necessary in Canada’s case (Interview 4 2013; Interview 5 2013). In a debate with then High Representative Ashton, MEPs acknowledged the shared values the EU and Canada hold (EP 2010). The same parliamentary official also noted that the EP did not take a tough stance on conditionality out of idealism (Interview 4 2013; Interview 5 2013). At the same time, the EP was aware that the human rights clause was problematic for Canada and could risk the conclusion of CETA (EP 2013b). If not out of necessity or idealism, why did the EP stand firm on human rights in the case of CETA?

Identifying human rights as a ‘strategic issue’

The link between trade and political clauses was a unique parliamentary interest, particularly in the case of Canada (Interview 4 2013; Interview 5 2013) (component a of the causal path). The EP knew that it was the only actor within the EU that insisted on a ‘horizontal dimension’ (Interview 3 2013) of trade policy, including human rights, in contrast to bare commercial interests of the Commission and the Council (Interview 3 2013). This made it a unique supporter of human rights, and granted the opportunity to attempt to expand policy turf by being active in implementing a horizontal dimension to the agreement. Thus, the EP selected conditionality as a ‘strategic issue’ in the EU-Canada negotiations as this would be credited to EP initiative rather than the one of Commission or the Council. This was a matter of strategic prioritization, as one official noted:

[T]he Parliament sometimes has interests that are divergent from normal technical interests. For instance the big issue is how to reconcile human rights [...] into trade policy. [...] This means the Parliament has to make in itself a sort of reflection and say what are the objectives that I am trying to achieve. And I am going to stick to principal at the risk if killing one of the most [...] interesting aspects of the EU’s external policies [trade], or am I going to be as flexible as I can and try and take some advantage whilst trying to reaffirm certain principles. (Interview 10 2013)
Indeed, human rights conditionality was a major goal of the EP (Interview 4 2013; Interview 5 2013). It was also meant as a template for future agreements (Interview 4 2013; Interview 5 2013). This was articulated by the rapporteurs Charles Tannock and David Martin (EP 2017) who argued that ‘[i]t is important that human rights clauses are included in all agreements with third countries’ (EP 2013b). Hence, the EP knew that human rights would be an issue that resonates within EU decision-making as well as public opinion. CETA’s status as a blueprint for TTIP and early signals of DG Trade’s willingness to make concession on the common approach meant that the EP anticipated both public visibility and internal profile of the negotiations in EU decision-making. Thus, CETA met the conditions of saliency and hence component b) in the causal path. General public pressure on policy-makers to ensure human rights contributes to the EP’s decision-making authority through the legitimacy of its actions (Hafner-Burton 2009; Smith 1998: 272). A large majority of people agreed to the statement that the EU ‘should work to guarantee Human Rights around the world, even if this is contrary to the wishes of some other countries’ (Eurobarometer 2005). While these numbers were collected more than ten years hence, human rights promotion through the EU’s trade policy still resonates with public opinion today. In the Eurobarometer of 2016, more than one in five (24 percent) considered democracy and human rights among the three most pressing issues for the future.

At the same time, CETA started to become highly salient at the latest with the start of negotiations on TTIP and increased visibility was anticipated by EU decision-makers (Interview 2 2013). TTIP negotiations were launched in 2013, which was about the same time when the EP initiated debates about human rights in relation to CETA within its organization (section below). CETA, at this time, was about to become highly salient among national constituencies (Puntscher-Riekmann 2017). Civil society started to mobilize against CETA and TTIP (Neslen 2013), and the negotiation’s saliency was reflected in national parliamentary debates. In the German Bundestag, for example, CETA became subject of debate (Interview 1 2018). This started as early as 2011 in countries where the agreement was most controversial (Interview 9 2018), Austria and Germany, with first plenary debates taking place in 2014 (Bundestag 2017; Parlament 2017). Given awareness and debates within national parliaments, the EP could assume that its activities on CETA were publicly visible.

**Intra-organizational processing of information on human rights as a ‘strategic issue’**

In the case of negotiations with Canada, intra-organizational processing of information happened through two different parliamentary committees (component c) of causal path). First, INTA was responsible for scrutinizing the trade
negotiations (CETA), while, second, AFET followed the parallel negotiations of the SPA, including human rights. Due to this division of labor, CETA and the SPA were also subject to separate plenary debates within the EP.

The first time MEPs debated human rights in plenary was in 2013 when Elisabeth Jeggle presented the AFET report on the EP’s recommendation to the Council, the Commission and the EEAS on the negotiations of the SPA. In her plenary statement, she emphasized the ‘common approach’ of linking political agreements (SPA) to trade agreements (CETA) (EP 2013a). More specifically, she highlighted this approach and ascribed high importance to fix in place political conditionality clauses in the case of Canada (EP 2013a). On behalf of the EP, Rapporteur Charles Tannock (AFET Committee) and Shadow Rapporteur David Martin were particularly active regarding the inclusion of human rights conditionality (Interview 4 2013; Interview 5 2013). With this strategy, the EP was successful. This was also acknowledged by trade commissioner Malmström, ‘for years many of you have been calling for trade agreements which include human rights […]. All this is in this unique agreement [with Canada]’ (EP 2017).

Although the EP’s insistence on human rights conditionality in the EU-Canada negotiations was not entirely uncontroversial among MEPs, the Parliament emerged as a unitary actor and the strongest supporter of a political clause in the eventual SPA. As one parliamentary official indicated there is a ‘debate between Member of the Parliament as to whether Canada should be subjected to human rights laws’ (Interview 4 2013). This was also reflected in the debate within the AFET Committee on the EU-Canada SPA: British MEPs were skeptical of a human rights conditionality clause (AFET 2013a). Nevertheless, the conditionality clause was not contested among political groups within the EP. With the exception of the Greens, which were opposed to the SPA due to its lack of ambition regarding sustainable development, S&D, PPE, ALDE and even EFD voted in favor of and appreciated the human rights clause in the agreement (EP 2013b). This consensus across political groupings cannot be understood as a desire to curb harmful human rights practices in Canada, but instead as the identification of conditionality as an issue of salience for the EP’s own organizational interests and decision-making clout.

Moreover, during negotiations of CETA, the EP was involved to an unprecedented degree, perceiving its demands on human rights as feasible, thereby categorizing the issue as an opportunity to expand decision-making clout (component d of the causal path). Indeed, the EP was aware that the EU was in a good bargaining position vis-à-vis Canada because, as parliamentary officials stated, ‘Canada is the small partner in the negotiation and we are the bigger one’ (Interview 4 2013; Interview 5 2013). The strong bargaining position of the EU made the chances of including a conditionality clause feasible, especially with a country that has an excellent human rights
record. At the same time, all negotiators knew that the EP was an important interlocutor, and that its role, by now, goes beyond an actor that simply ratifies an international agreement. One Canadian negotiator highlighted that they took the EP’s demands very seriously (Interview 7 2013). Therefore, the EP could calculate the feasibility of its demand as highly likely despite competing preferences by other decision-making players and opposition to conditionality by Canadian negotiators.

**Turning to organizational action**

Based on the identification of human rights as a strategic issue and the categorization of an opportunity situation, the EP was ready to turn to organizational action on the conditionality clause. AFET’s rapporteur Jeggle took a tough position on human rights conditionality (AFET 2013b), and, endorsed by Parliament, she sent recommendations to the Council, Commission and EEAS (component e) of causal path) stating that the:

Parliament indicated that all EU agreements with third countries should include reciprocal conditionality and political clauses on human rights and democracy, [...] regardless of the state of protection of human rights in those countries. Accordingly, it insisted that such conditionality should form part of the SPA with Canada, should ensure the consistency of the EU’s common approach on the matter. (EP 2013c)

The EP’s organizational actions and its insistence on human rights conditionality in the negotiations on the SPA also resonated with Canadian non-governmental actors. As reported by The Council of Canadians, the political clause became so vital for the EU – as a result of the EP’s strident insistence on its inclusion as a red line – that it threatens to derail the entire SPA and trade agreement (The Council of Canadians 2017). This demonstrates the EP’s success in mobilizing its limited decision-making power to shape negotiation outcomes and subsequently consolidate its policy turf in the area of human rights linkages in EU trade policy.

Besides AFET’s draft report and its recommendation to the other EU institutions, the EP’s activities included the publication of a resolution and of written questions next to plenary debates on that matter. In a resolution of 2011, the EP communicated ‘that the Commission’s level of ambition in discussions with Canada should be balanced by an equally ambitious approach to [...] promote legally binding human rights [...] standards’ (EP 2011). The EP’s communication must be understood in the context of its new right to ratification since the Lisbon Treaty, which made parliamentary officials well aware that the Commission would need to follow the EP’s resolutions unless it wanted to risk decline of consent by MEPs (Interview 3 2013). This was also acknowledged by Canadian negotiators who knew that the EP was able and willing to reject an agreement if its demands would not be met
Nevertheless, the EP stuck to risk-adverse actions, assuming that its demands on human rights conditionality would be acknowledged. Moreover, the SPA, including human rights conditionality, was subject of plenary debates. One occurred in December 2013, when a large share of MEPs endorsed the AFET’s report on the agreement, especially the human rights clause (EP 2013b). Even those MEPs voting against the report because they were in opposition to CETA altogether (GUE/NGL) expressed their strong support for the EP’s firm insistence on human rights conditionality. Again in 2017 when the EP ratified CETA, the SPA and human rights were reiterated by MEPs in plenary (EP 2017).

Furthermore, MEPs exercised pressure on the Commission by asking in a written question on the Commission’s position on human rights conditionality:

Parliament stresses that all EU agreements with third countries should include reciprocal conditionality and political clauses on human rights [...]. What is the Commission’s opinion on this? [...] Will it grant our request for conditionality to form part of the SPA with Canada, to ensure the consistency of the EU’s common approach on the matter? (EP 2013d)

This mindset expressed by one EP official demonstrates the dynamic of EU decision-making and the EP’s behavior as a composite actor. The EP utilized the CETA negotiations to advance a strategic interest – conditionality – anticipating opposition from other players in decision-making, in order to reinforce the common approach and the EP’s own clout in influencing policy process and outcomes. It had carefully selected human rights conditionality in EU-Canada negotiations as a strategic issue in which it decided to invest political resources. In this particular case, the EP emerged as a unitary actor and was eventually successful in promoting its interest.

**Conclusion**

The EU is at the forefront of expanding its trade agenda to include non-commercial objectives such as human rights through conditionality clauses. These clauses can, under specific circumstances, be used to great effect (e.g., Donno and Neureiter 2018). Nevertheless, the EP’s record of taking a tough stance on human rights conditionality in past trade negotiations is mixed as this article put forward. Of all European trade agreements, the EP chose the EU-Canada negotiations to insist on a human rights conditionality clause.

In order to explain this puzzle, we argued that composite actors such as the EP calculate the utility of investing political resources into an event by ascribing strategic meaning to specific issues. In the EU-Canada negotiations, the EP identified human rights conditionality as a ‘strategic issue’ because human rights made it appear as a unique supporter of legitimate and public interests. In the mobilization of its political resources in favor of conditionality, it
factored in the saliency of the CETA negotiations. Salience of the EU-Canada trade deal provided an opportunity for the EP to invest political resources in order to shape the eventual agreement in favor of non-commercial objectives. Based on this utility calculation, the EP invested the political resources it had at its disposal – reports, resolutions, written questions, plenary debates – to successfully insist on a conditionality clause in the agreement with Canada.

The results of this study are particularly relevant for two currently ongoing debates in the literature. First, our article speaks to research on the design of trade agreements and the inclusion of non-commercial objectives. While it is increasingly widespread practice to insert these objectives in trade agreements, our article shows that there is need to shed light on the decision-making process through which they are reached and what importance actors ascribe to them. Even though the EP managed to have a conditionality clause included in the agreement with Canada, none of the involved actors believed that the clause would or should ever be used (Interview 4 2013; Interview 5 2013). Second, we address the important role of the EP in the negotiation of trade agreements and conditionality clauses. With the EP’s new right to ratify agreements that came with the Lisbon Treaty, the concern was that it could behave ‘irresponsibly’ and derail trade agreements by insisting on political and unrealistic demands (Armanovića and Bendini 2014). In this article, we shed light on the tension which the EP faces between being a responsible actor and contributing constructively to trade agreements, on the one hand, and insisting on strategic issues or principles, on the other hand. While the EP has the teeth to stand firm on certain issues, it only does so when this contributes to its organizational purposes and is visible in public. Our argument, put forward in this article, helps to understand when and why the EP will insist on strategic issues and turn to organizational action.

Acknowledgements

We are grateful to the organizers Tina Freyburg and Solveig Richter of the panel ‘EU Conditionality’ at the 5th IB Sektionstagung, DVPW, as well as Eugénia da Conceição-Heldt, María García, and three anonymous referees for immensely helpful comments.

Disclosure statement

No potential conflict of interest was reported by the authors.

Notes on contributors

Katharina L. Meissner is assistant professor at the Institute for European Integration Research (EIF), University of Vienna, Austria.
Lachlan McKenzie is Honorary Fellow at The University of Melbourne, School of Social and Political Science, Australia.

References


List of interviews


