

Trading Values?

Promoting Labor Standards Through EU Free Trade Agreements

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Abstract

With increased emphasis on the concept of ‘sustainable development’ at the international level, concerted efforts are crucial in achieving it. As part of its efforts to strengthen sustainable development, the European Union has broadened the scope of its trade policy agenda. It includes provisions that aim to promote labor rights, environmental standards, and human rights in its partner countries in its Free Trade Agreements (FTAs). These provisions are included in a separate chapter – the ‘Trade and Sustainable Development (TSD)’ chapter in all ‘new-generation FTAs’ of the EU. This paper focuses on the labor provisions in the TSD chapters of two of the ‘new-generation FTAs’ – EU-Korea and EU-Vietnam. It employs the conceptual framework of MPE to answer the following research question: how far the EU is successful in externalizing or promoting labor standards in partner countries via its FTAs?

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Introduction¹

The EU's trade policy is notably one of the most effective instruments through which the EU exerts its foreign policy goals. In the last two decades, the EU has been more active in negotiating and concluding a multitude of bilateral agreements with its 'deep trade agenda' - especially after the failure of the Doha Round in 2001 and with the entry into force of the Lisbon Treaty which brought significant changes to the way the EU conducts its trade policy. One such characteristic of the EU's deep trade agenda is including non-trade issues such as human rights, labor rights, and environmental protection in its bilateral trade agreements to strengthen sustainable development (European Commission, 2006, 9).

Regarding the inclusion of labor provisions in trade agreements, the EU has been consistently trying to incorporate labor standard provisions in its trade agreements since 1999, when its agreement with South Africa was concluded (Harrison, 2019, 710). However, the EU's FTA with the Republic of Korea² in 2010 formalized the inclusion of labor provisions and environmental provisions in a separate chapter in FTAs called the 'Trade and Sustainable Development (TSD) chapter'. Since then, TSD chapters have become a standard feature in all 'new-generation' FTAs (ibid).

Considering the EU's rhetoric of 'value-based' agenda (European Commission, 2015, 24) and its use of a 'promotional approach' that relies on dialogue and cooperation (compared to the sanctioning approach) for the enforcement of the TSD chapters, a number of contributions examine the EU's efforts to promote sustainable development through the lens of Normative Power Europe (NPE)³. However, the focus on 'norms' in the NPE approach 'tends to downplay the potential significance of material and market-based factors' (Damro & Friedman, 2018, 1397) that play an influential role in the design and implementation of these chapters. While few studies⁴ have acknowledged the importance and the capacity of the 'market power' of the EU in promoting non-trade objectives, no detailed research on the TSD chapters of the EU-FTAs using the MPE approach has been carried out so far. To fill this gap, this article focuses on the labor provisions of the TSD chapters of two of the 'new-generation FTAs' and employs the conceptual framework of MPE to answer the following research question: *how far the EU is successful in externalizing or promoting labor standards in partner countries via FTAs?*

¹ This article uses American English. However, wherever direct quotes are used, the original is retained.

² Here after Korea or South Korea.

³ Hoang (2016); Sicurelli (2015); Lawrence (2020); Postnikov (2020). For comparative perspective, refer: Kang (2020); Orbie and Khorana (2015)

⁴ Meunier and Nicolaidis (2006); Jurje and Lavenex (2014)

MPE is a well-suited framework for this research as the EU explicitly expressed its intention to externalize the regulatory provisions such as labor standards (European Commission, 2006; 2010; 2015). Even though the labor provisions contained in the TSD chapters are not internal policies of the EU (but rather a commitment to international standards), it still falls under the ‘social agenda’ that reaffirms the EU’s international commitment to promoting sustainable development. Furthermore, MPE encourages to look at the role of different actors (including the interest groups within and outside the EU), which would help in identifying causal mechanisms explaining the means and the actors through which the EU influences the trade partners that, in turn, affects its extent of externalization (Damro & Friedman, 2018).

This article examines two FTAs – EU- South Korea and EU-Vietnam – to understand how the characteristics of MPE influenced the negotiation and implementation of the TSD chapters. The case selection is based on the following logic: i. *market position*: South Korea is an advanced economy with a comparable level of development to the EU, and at the time of the FTA negotiations, it was considered a ‘priority country’ for the EU (European Commission, 2006). On the other hand, Vietnam is a developing country with a political and social structure considerably different from that of the EU. The differences in the level of development and the market positions of the two partner countries would help determine their bargaining position against the EU; ii. *timing*: the EU-Korea FTA is the first of the ‘new-generation’ FTAs and serves as the model for the subsequent FTAs, whereas the EU-Vietnam FTA is a recently concluded one. Examining the first FTA with the recent one would help identify differences in approach and the interplay of actors over time.

A qualitative analysis of primary and secondary sources informs this study. The primary sources include official texts of the FTA, negotiation agreements, and official documents from the EU, South Korea, and Vietnam. The study also uses secondary sources, including documents and reports from various civil society groups.

The remainder of the article is structured as follows. The following section introduces the MPE conceptual framework, particularly the indicators that would help determine the extent of externalization. Then the objectives and institutional mechanism of the TSD chapter will be briefly explained to have a general understanding of ‘what the EU says’ as a Power. The article then proceeds to examine the EU-Korea FTA and the EU-Vietnam FTA, focusing on the labor provisions and the influential factors in the negotiation and implementation of the provisions. The article then concludes with a summary of the findings.

Market Power Europe (MPE)

A substantial strand of literature on the EU's external relations concerns itself with the questions on the characterization of power. The debates often focus on the particular characteristics and priorities of the EU to understand 'what kind of power the EU is, what the EU says as a power and what the EU does as a power' (Damro, 2012, 682). While the EU is now regarded as one of the influential global actors, the debates continue regarding the basis of the EU's power and how it exercises its power (Damro and Friedman, 2018). The most prominent contribution to this debate is the Normative Power Europe (NPE), which identifies the EU with the 'normative' character it possesses (Manners, 2002). Meunier and Nicolaidis, in 2006, characterized the EU as a 'trade power'. They argue that the EU is not only a power 'in' trade but is also becoming a power 'through' trade, as the EU uses 'access to its huge market as a bargaining chip to obtain changes in the domestic policies of its trading partners, from labour standards to human rights' (Meunier and Nicolaidis, 2006, 907). A more recent contribution to this 'Europe as a Power' debate is Damro's Market Power Europe (MPE). He argues that the source of the EU's power comes from its identity as a single market, and so it may be best to conceive of it as a 'Market Power Europe'. For MPE, the EU exerts its power via 'externalization', which 'occurs when the institutions and actors of the EU attempt to get other actors to adhere to a level of regulation similar to that in effect in the European single market or to behave in a way that generally satisfies or conforms to the EU's market-related policies and regulatory measures' (Damro, 2012, p. 690). These policies and regulatory measures include economic and social regulation (Damro, 2015).

According to Damro, externalization is a two-stage process: the first stage is when the EU actors and institutions attempt to get other actors to adhere to a level of regulation that satisfies the EU, and the second stage is when the non-EU targets *actually* adhere to the said levels of regulation (Damro, 2012) (Emphasis added). MPE argues that three 'interrelated and mutually reinforcing' characteristics inform the basis for the EU's identity: i. material existence, ii. institutional features, and iii. interest contestation. These three characteristics determine the capacity of the EU to 'externalize its social and economic agendas' (Damro, 2015, 19).

- i. *Material existence*: The basic but essential characteristic that represents the material existence of the EU is the European single market. The position of the EU's market in the world – as 'the world's biggest trading block' and its economic figures showcase the importance of the EU's market size as a characteristic of its identity (Damro, 2012, 686).

In terms of externalization of the EU's economic or social agenda, market size plays a vital role as it serves as an attractive incentive for the non-EU governments when choosing whether to coordinate with the EU-proposed regulatory agenda. It also can 'alter the beliefs of other actors over the likelihood of possible outcomes' (Drezner, 2007, 32). Furthermore, differences in market power 'clearly affect the extent to which the EU can negotiate a favourable deal' (Adriaansen and Gonzalez-Garibay, 2013, 554).

ii. *Institutional features:* As a regulatory state, the EU governs through rules and regulations which influence the market activity. The EU has institutional features that allow for interactions of various actors and provide the EU with a considerable regulatory capacity to externalize its policies and regulatory measures (Damro, 2012). Institutional features such as regulatory expertise, coherence, and sanctioning authority boost the institutional capacity of the EU's power of externalization (Damro, 2012).

iii. *Interest contestation:* Different interest groups within and outside the EU determine a particular policy's regulatory outcomes. Various interest groups lobby the policymakers of the EU for policy outcomes that favor them. Because the EU is a regulatory institution that facilitates public consultation and influence, interest contestation forms one of MPE characteristics.

Given the externalizing nature of MPE, it is crucial to study the role of foreign interest groups. When pro-externalization interest groups (both within and outside of the EU) begin to influence the policy outcomes, their activities bolster the EU's power (Damro, 2012).

Based on the core features and assumptions of MPE, this article analyzes the dynamics of the two FTA negotiations and their implementation. The market size, institutional features, and the interplay of actors will be empirically analyzed to find the extent to which the EU 'successfully' promotes labor standards through FTAs. This article recognizes the limitations in finding the exact level of the EU's 'success' in promoting labor standards since some of the objectives set out in the TSD chapters are not precise to define clear-cut indicators. Acknowledging this and other 'analytical pitfalls', Damro has noted that if an empirical connection is established between the objectives of the EU with the changes in the behavior of the trade partner, then the EU is said to be successful in externalization (Damro, 2015, 30-38). For this paper, the successful conclusion of the agreement with labor provisions (first stage of externalization), the ratification of the ILO conventions, and the trade partner's efforts to comply with the labor

standard commitments (e.g., reforms in national laws) (second stage of externalization) are used as indicators to measure the EU's success.

TSD chapters in EU FTAs

This section briefly explains the objectives, and the institutional mechanism of the TSD chapters set out in the FTA agreements. The objectives specified in the TSD chapters help us determine the indicators to look for, and the institutional mechanism helps us identify different actors and their roles in the implementation phase. Furthermore, this part of the agreement recognizes and encourages the role of civil society⁵. However, the EU-Vietnam FTA text does not include the term 'civil society' anywhere in the TSD chapter⁶. For an MPE-based analysis, the interplay of actors provides for meaningful research. Hence, understanding the objectives and institutional mechanism of the TSD chapter is vital to the study to ascertain the effectiveness and the extent of the EU's externalization.

The general objectives⁷ outlined in the TSD chapters recognize that social and economic development and environmental protection are interdependent components of sustainable development and reaffirm the parties' 'commitments to promoting the development of international trade in such a way as to contribute to the objective of sustainable development'. It also clarifies that the intention is not to harmonize the labor or environmental standards of the parties but to strengthen their trade relations in ways that promote sustainable development. With respect to labor standards, the parties' ratification of core ILO conventions is regarded as a relatively strong commitment. Although the text of the TSD chapters slightly varies across FTAs, all the TSD chapters share some key types of provisions⁸:

- i. Substantive standards* – Commitment to ratifying and upholding International Labor Organization's (ILO) core labor standards and promoting its decent work agenda
- ii. Procedural commitments* – Dialogue and cooperation between parties, transparency in introducing new labor standard measures, monitoring and review of the sustainability impacts of the agreement, and a commitment to upholding levels of domestic labor protection

⁵ The EU uses the term 'civil society' to refer to 'a wide range of non-state actors including most importantly labour, environmental and business groups, but also organisations working on for instance human rights, animal rights, and consumer interests' (Orbie et al., 2016, 9). The same definition is used for this study.

⁶ Only once in the whole agreement

⁷ The following section is based on the text of EU-Korea FTA

⁸ The following section (types of provisions of the TSD chapters) is taken from (Orbie et al. (2016); Harrison et al. (2019); Smith et al. (2021))

- iii. *Institutional mechanisms* – In implementing the TSD chapters, civil society engagement is sought significantly, especially for monitoring and overseeing. Each party has to set up a domestic civil society mechanism called ‘Domestic Advisory Group (DAG)’, which includes representation from economic, social, and environmental stakeholders. DAGs from both parties meet regularly (at least once a year). This meeting is often combined with a ‘Civil Society Forum (CSF)’ that includes DAGs and the public. The recommendations from the CSF are then reported to the intergovernmental Trade and Sustainable Development Committee.
- iv. *Dispute Settlement Mechanism* – Parties must request a consultation if a dispute emerges regarding the TSD chapters. If a satisfactory resolution cannot be attained, either party can request an independent adjudication. This body comprises a panel of experts who investigate the parties’ complaints and make recommendations.

‘The implication of the agreement text is that these institutions will interact so as to effectively implement the TSD chapter’ (Smith et al., 2021, 5).

EU-Korea FTA

The EU-Korea FTA negotiations started in 2007, and both parties signed the agreement in 2010. The negotiations started at a crucial point as the two parties had just started shifting their trade policy orientation. Both the EU and Korea have long advocated and benefitted from the multilateral trade regime. In fact, ‘Korea was one of the very few countries that did not negotiate any FTA until the early 2000s’ (Park, 2017, 830). Korea shifted its trade policy orientation and adopted FTAs as policy alternatives. The conclusion of its first-ever FTA (with Chile) and the adoption of the FTA roadmap in 2003 marked the policy shift in Korea (Park, 2017). On the other hand, the EU, along with the US, had been instrumental in shaping the rules of the multilateral trading system, shifted its focus to bilateral relations since the mid-2000s. The 2006 ‘Global Europe’ strategy outlined the EU’s policy shift.

At the time of the negotiations, the EU, ‘with a total population of roughly 500 million inhabitants, and a total GDP of more than US\$ 20,000 billion’ was indeed an attractive market for South Korea (Nicolas, 2009, 25). The EU is the 2nd largest trade partner for South Korea (Nicolas, 2009). Therefore the ‘enhanced access’ to the large market of the EU was the ‘strategic priority’ for South Korea in its FTA negotiations with the EU (Park, 2017, 831).

By contrast, South Korea was a relatively modest market with 48.3 million inhabitants and close to US\$ 900 billion in GDP (Nicolas, 2009). Korea was the EU’s 8th largest trade partner (Lakatos and Nilsson, 2017, 183). However, the asymmetry in the EU and Korea’s market

position is compensated by various factors as follows: Korea had shown significant growth potential – ‘it was the first emerging economy’ to join the OECD in 1996, and it is ‘the only Asian industrial country next to Japan’. Moreover, ‘as one of the most dynamic as well as the most advanced economies in East Asia, Korea may provide an adequate point of entry’ to the EU into the region. This makes Korea ‘a more “equal” (and possibly like-minded) FTA partner for the EU than ASEAN or India, for instance’ (ibid).

Korea’s potential was acknowledged when the EU identified Korea as one of the priority countries to conclude an FTA based on 4 criteria outlined by the European Commission in its ‘Global Europe’ strategy namely ‘market potential’, ‘the level of protection against EU export interests’, ‘potential partners’ negotiations with EU competitors and their likely impact on EU markets and economies’, and ‘the risk that the preferential access to EU markets currently enjoyed by EU’s neighbouring and developing country partners could erode’ (European Commission, 2006, 9).

In the case of the EU-Korea FTA, along with the market factors, external factors such as the timing of the negotiations play an important role. As discussed before, the policy change in both parties might account for the parties’ favorable position to conclude the FTA. Furthermore, the Commission mentioned ‘potential partners’ negotiations with EU competitors’ as one of the criteria for FTA prioritization. South Korea, at the time, was in the middle of concluding an FTA with the US. This might have been one of the most ‘compelling reasons’ for the EU’s interest in concluding the FTA deal with Korea. The prospect of the US-Korea FTA also enhanced South Korea’s negotiating position as Korea intended to use it as a ‘bargaining leverage’ for EU-Korea FTA negotiations (Park, 2017).

Coming to the labor provisions in the TSD chapter, we can find a visible interplay between various actors during the negotiations and the implementation phase of the EU-Korea FTA. In this regard, similar changes can be observed in the domestic situation of the EU and Korea. On the Korean side, when Korea started FTA negotiations at the beginning of the 2000s, there has been a steady increase in the salience of trade policymaking, and ‘the voice of CSOs as the main beneficiaries and/or losers of the consequent liberalization process has been increasingly heard and reflected’ (Park, 2017, 833). The enhanced role of the National Assembly of South Korea in the FTA ratification process has also contributed to the increased stakeholders in the FTA negotiations (ibid). On the EU side, the role of the European Parliament was enhanced by the Lisbon treaty, and the DG-Trade of the European Commission established the Civil Society Dialogue (CSD) as a forum for consultation (Park, 2017). These developments on both sides

contributed to the increase in the number of stakeholders in trade policymaking and in FTAs, in particular.

The European Parliament and the European Trade Union Confederation (ETUC) representing national trade unions on the European level, were the main advocates for ambitious labor provisions with hard conditionality mechanisms for effective enforcement of the provisions (ETUC, 2006a and 2006b; European Parliament, 2010). It is to be noted that the Confederation of European Business (BusinessEurope), the main representative of organized business at the EU level, did not make any reference to the labor or environmental provisions in its position paper on EU-Korea FTA (BusinessEurope, 2007). Interestingly, the social NGOs were also relatively less mobilized (Dijkstra, 2017).

On the Korean side, the government officials were initially completely against the TSD chapter. In particular, the involvement of civil society organizations in the implementation of TSD chapter was resisted by the Korean side, and it ‘led to the longest and most complex discussions’ (Smith et al., 2021, 89). Finally, the EU negotiators compromised on some provisions like the scale of civil society interaction to address concerns on the Korean side. The Korean officials agreed as they felt that the EU’s template was ‘flexible’ compared to the ‘US template’ (Smith et al., 2021, 88). On the civil society side, overall, there was no strong opposition (compared to the US-Korea FTA) to the EU-Korea FTA as such. However, civil society was not significantly involved in the negotiation process. For example, the representation of Korean labor representatives was visibly absent, which seemed to be a ‘deliberate exclusion’ of them by the Korean government ‘because such groups tend to be opposed to FTAs’ (Smith et al., 2021, 87). While the Korean civil society’s involvement in the negotiations of the FTA is limited, it was significantly improved in the implementation phase of the FTA. The civil society aspects of the EU-Korea FTA are considered by many as the ‘most advanced and developed of any EU trade agreement’ (Smith et al., 2021, 90). However, it was not without any controversies/limitations. One such controversy includes the Korean government’s initial exclusion of the largest Korean trade union – the Korean Confederation of Trade Unions (KCTU). Only after pressure from the European side, it was included. Apart from these political challenges, there were a number of issues identified regarding the implementation design of the TSD chapters and their effectiveness. Extensive research has already been done on the subject. They point to weak enforcement mechanism and the lack of effectiveness; insufficient resources; lack of political will; unclear objectives of the functioning of civil society mechanism; independence of the civil society; and transparency issues (Harrison et al., 2019; Marx et al., 2017; Orbie et al., 2017;

Van Roozendaal, 2017, Smith et al., 2021)⁹. Particularly, the worsening labor conditions in Korea¹⁰ and the delay in ratifying the core ILO conventions (Korea ratified only 4 out of the 8 core conventions at the time of FTA negotiations) were a case in point. Even when the DAGs sent a letter as early as 2014 to the Commission requesting formal consultations be initiated on these issues, it was rejected, and the Commission decided to pursue the matter through inter-governmental dialogue (Vogt, 2015). Only in 2018 the Commission heeded to the request of DAGs and initiated formal proceedings to request a panel of experts to investigate the issues. It was the first bilateral dispute settlement case raised by the EU and also ‘the first on TSD provisions’ (European Commission, 2021, 17).

The EU cited two issues in its complaint: i. insufficient progress towards ratifying the core ILO conventions and ii. the inadequacy of the Trade Union and Labor Relation Adjustment Act (TURLAA) of Korea to guarantee and promote labor rights (Garcia, 2022). In 2021, the panel of experts confirmed that Korea is ‘in breach of labour commitments’ under the FTA. The panel confirmed that the TURLAA was not in line with the commitments made under the TSD chapters and concluded that ‘Korea needs to adjust its labour laws and practices and to continue swiftly the process of ratifying four fundamental International Labour Organization (ILO) Conventions’ (DG-TRADE, 2021). Following this, Korea finally ratified three of the four core ILO conventions on 20 April 2021 and proceeded to amend the TURLAA (Garcia, 2022). This positive development revives the debate on the (potential) effectiveness of the EU in promoting labor standards.

Examining the EU-Korea FTA through the lens of MPE, we can observe that market size played a significant role in concluding the TSD chapter. However, the EU did have to make compromises on some of the strong provisions. In terms of the regulatory capacity of the EU, the Commission’s initial reluctance to file a complaint against South Korea raised questions on its capacity to implement the provisions and to ensure compliance by the trade partners. However, it should also be noted here that it did step up later. The Parliament, on the other hand, played a major role in the implementation phase. It proved to be an ally to interest groups and other civil society organizations in enforcing the labor provisions committed to by the parties. Overall, the EU is successful in the first stage of externalization – by successfully concluding the agreement with labor provisions. Its extent of success in enforcing them has

⁹ Many of these findings were acknowledged by the European Union on its 2018 non-paper. The European Commission pledged to improve the implementation and enforcement of the TSD chapters and outlined a ‘15-Point Action Plan’ (European Commission, 2018).

¹⁰ For an overview of the worsening labor conditions in Korea, refer EU-DAG (2013) and ITUC (2016)

mixed results. Considering the recent developments, it is safe to say that it is getting towards progress.

EU-Vietnam FTA

The EU-Vietnam FTA negotiations started in 2012, concluded in 2015, and both parties signed the agreement in 2019. As in the case of South Korea, this negotiation was also conducted at a crucial time. Over the years leading to the EU-Vietnam FTA negotiations, Vietnam had experienced ‘structural transformation’ of its economy towards a ‘socialist market economy under state guidance’ (Troster et al., 2017, 1). Following its market reforms, Vietnam experienced rapid economic growth and social development (Hoang, 2018). Vietnam turned favorable to FTAs with large economies to boost its economic development. Regarding its socio-political context, the Socialist Republic of Vietnam is an authoritarian state. The labor conditions are poor; access to social protection is limited to non-existent; and issues of forced and child labor (Navasartian, 2020). Independent labor unions were prohibited. There was only one ‘state-led’ trade union federation – the Vietnam General Confederation of Labor (VGCL) (Löprich and Schrey, 2020). There were many instances of human and labor rights violations (European Parliament, 2014).

At the time of the EU-Vietnam FTA negotiations, it had ratified only 5 out of the 8 ILO core conventions. The three conventions that were not ratified were: the Freedom of Association and Protection of the Right to Organize Convention, the Right to Organize and Collective Bargaining Convention, and the Abolition of Forced Labor Convention.

In 2012, when the FTA negotiations were launched, with a total population of roughly 90 million inhabitants and a little over US\$ 150 billion in GDP, Vietnam was a lower-middle-income country (World Bank, 2012 data). It was also a beneficiary of the EU’s Generalized System of Preferences. To the EU, Vietnam was the 32nd trading partner and its 5th biggest partner within the ASEAN. The EU accounted for 6.5% of total FDI in the country in 2012 (European Parliament, 2014, 3).

The EU, as the second-largest trading partner to Vietnam, ‘wields a significant level of influence over the country’ (Hoang, 2018, 261). With respect to Vietnam, the EU’s market power can be best explained by the estimate of the report ‘Deepening International Integration and Implementing the EVFTA’: ‘full implementation of the EVFTA could increase Vietnam’s GDP by 2.4 percent, boost exports by 12 percent, and lift an additional 0.1 million to 0.8 million people out of poverty by 2030’ (World Bank, 2020, 30). This prospect was very attractive to Vietnam.

Apart from the huge market difference, Vietnam's negotiation position (in particular to the TSD chapters) was also constrained due to various other factors such as¹¹:

- i. At the time of the launch of the EU-Vietnam FTA negotiations, the two parties signed a Partnership and Cooperation Agreement (PAC). This enhanced the position of the EU as 'the PCA makes the EU's trade cooperation with Vietnam conditional upon Vietnam's compliance with the EU's normative demands' (Hoang, 2018).
- ii. As in the case of South Korea, Vietnam was in the middle of signing the Trans-Pacific Partnership (TTP), which also mandated strong provisions on the labor standards.
- iii. Vietnam also wanted to diversify its trade partners so as to reduce its dependence on China.
- iv. In the case of Vietnam, its human rights violations were the main concern for many actors like the European Parliament and NGOs. Vietnam was arguing against the Parliament and civil societies' demand to include human rights provisions in the FTA, and this reduced its leverage in negotiation for other aspects such as labor standard provisions.

The societal actors in the EU were highly vocal about the human rights and labor standard situations in Vietnam and demanded strong binding provisions in the TSD chapter. There were also demands to take into consideration of the human rights violations in partner countries for the Impact Assessment (ETUC, 2012; FIDH, 2013). The European Parliament also stresses these points in its 2014 resolution on 'the state of play of the EU-Vietnam Free Trade Agreement' (European Parliament, 2014). On the other hand, the Commission was reluctant to do the Human Rights Impact Assessment. It argued that human rights would be discussed in the context of PCA negotiations and not in the FTA negotiations (Sicurelli, 2015).

While the EU's position on TSD chapters did not differ to a great extent during the negotiations, there was a shift in its approach during the pre-ratification phase (2015-2019). It adopted a 'stronger, more conditional strategy' toward Vietnam (Marslev and Staritz, 2021). One of the decisive events that established this conditional strategy was when Bernd Lange – the chairman of INTA – was on a mission to Vietnam. He met with the Prime Minister, the Ministry of Labor, Invalids and Social Affairs (MOLISA), the VGCL, and other stakeholders and stressed that the ratification of ILO core conventions was 'a precondition for getting the EVFTA through the Parliament' (Marslev and Staritz, 2021, 19). There was continued pressure from the Parliament

¹¹ Refer Haong (2018); Dijkstra (2017).

on Vietnam and the Commission throughout the period. In the INTA public hearing in October 2018, which Vietnam's Chief negotiator attended, several MEPs called for a 'pre-ratification' conditions for ILO core conventions.¹² In January 2018, the EU Trade Commissioner Cecilia Malmström sent a letter to Hanoi asking 'concrete progress' on 'freedom of association and the right to collective bargaining' and said she would 'pay close attention to the reform of the labor code' (Politico, 2018). Later in mid-December 2019, Lange and other INTA members sent a letter to the Vietnamese Prime Minister asking for further commitments for the implementation of TSD commitments. Only after Vietnam had ratified the convention on the right to organize and collective bargaining (in June 2019), passed a new labor code (in November 2019), and submitted a written and binding roadmap for the implementation of TSD commitments (in January 2020), did the INTA pass the EU-Vietnam FTA, leading to the final consent by the Parliament (Marslev and Staritz, 2021).

Throughout the negotiation stage, we can observe that the European Parliament and the EU civil society groups were very active and persuasive in pushing for strong commitments. However, there was no significant pressure from the Vietnamese civil society, which is not surprising given the socio-political context of Vietnam.

Coming to the implementation of TSD chapters, Vietnam had ratified one more ILO convention (Abolition of Forced Labor) in June 2020. Now, there is only one outstanding convention – which is scheduled to be ratified by 2023. The EU funds an ILO project – 'Trade for Decent Work' – with a specific objective of effectively implementing the TSD chapter of the EU-Vietnam FTA.¹³ The ILO is assisting Vietnam in ratifying the ILO conventions and in promoting international labor standards in Vietnam. In May 2021, Vietnam signed a Memorandum of Understanding with the ILO to promote international labor standards in Vietnam over the next 10 years (ILO, 2021). Vietnam is evidently making efforts to ratify the ILO core conventions. However, structural and practical issues in the implementation of the TSD chapter remain still. For instance, the role of civil society in the implementation mechanism. The text of the EU-Vietnam TSD chapter is vague about the criteria to form DAGs. It is entirely up to Vietnam. Given Vietnam's 'state-controlled' nature, it is highly doubtful that there would be representation from 'independent' stakeholders.

¹² INTA meeting on 10.10.2018. Available at https://multimedia.europarl.europa.eu/en/webstreaming/committee-on-international-trade-ordinary-meeting_20181010-1500-COMMITTEE-INTA

¹³ Trade for Decent Work Project – Available at https://www.ilo.org/hanoi/Whatwedo/Projects/WCMS_712617/lang--en/index.htm

Analyzing the EU-Vietnam FTA, the EU did exert its market power to conclude the agreement with Vietnam successfully. When we look at the regulatory capacity/institutional features, the Parliament did make use of its capacity to pressure the Vietnamese government to act in a positive direction. However, the text of the agreement and the criteria for setting up the institutional mechanism provided for implementation appear to be vague and give room for interpretation. This might affect the behavior of Vietnam later on. Interest contestation at the EU level is high, but it was absent on the Vietnamese side. The first stage of externalization is successful with the ratification of the FTA. The EU-Vietnam case clearly showcases the effect of market power, the regulatory capacities, and the interest contestation of the EU. The implementation phase of the EU-Vietnam FTA is still too early to assess. However, the weak language in the text of the TSD chapter and the weak implementation design pose serious questions about the complete adherence of Vietnam, given its political context.

Conclusion

This article makes use of MPE as a conceptual framework to analyze the extent of the EU's externalization in promoting labor standards through FTAs. For this purpose, it considered a comparative case study of the EU-Korea FTA and the EU-Vietnam FTA. This article contributes to the much under-researched MPE-based analysis and encourages further research in the direction.

Comparing the two case studies, we make the following observations:

The *EU's market size* played a significant role in the successful conclusion of both agreements. It was rather more evident in the case of Vietnam. In terms of *regulatory capacities*, even though the Commission was the chief negotiator of the agreement, the Parliament played an influential role (with reference to the TSD chapters). In the case of South Korea, it was evident in the implementation phase and in the case of Vietnam in the pre-ratification phase. There was significant *interest contestation* in both cases. In the case of South Korea, it was evident during the implementation phase, and in the case of Vietnam, it was evident right from the launch of negotiations. Another aspect is the *role of civil society groups in partner countries*. The civil society groups in South Korea were very active in demanding change, and they were successful in mounting pressure on their own government to bring about positive changes. In the case of Vietnam, it was visibly absent.

Given these observations, I would argue that the EU is successful – especially in its first stage of externalization. The second stage, which deals with partner countries' adherence, is complex. The EU's promotional approach, no doubt, is limited in its scope, but its potential cannot be overlooked or underestimated. For instance, causing a small change in the attitude of partner

countries, especially countries like Vietnam with an authoritarian political setup, might lead to significant changes. By reforming its labor code and partnering with the ILO, Vietnam shows a change of attitude, which would positively impact the lives of Vietnamese workers. In this regard, the EU's efforts should not be taken lightly.

Considering the recent developments (the case against South Korea, the assertive stance towards Vietnam, and the '15-point Action Plan' to improve the enforcement mechanism of the TSD chapters), the EU is definitely moving in the right direction.

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