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Issue-Linkage in International Migration Governance: Trade Agreements as Venues for “Market Power Europe”¹?

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Abstract

In the absence of an international migration regime, the rising salience of migration issues and the limits of unilateral policies lead states and the European Union to seek appropriate venues for cooperation with the sending and transit countries of migrants. Many of the newer relevant multilateral or regional venues are soft law frameworks, as for example the Global Forum for Migration and Development or the EU’s Global Approach to Migration. In contrast, trade agreements provide a formal, hard law instrument for inserting migration clauses thus, allowing for politics of issue-linkage and capitalizing on market access that may boost the leverage of the economically dominant party. This article investigates whether the EU is indeed acting strategically through its widespread net of trade agreements in the promotion of its migration policy goals toward third countries, and thereby provides a solid empirical test of its acclaimed identity as “trade” or “market power”.

Despite growing awareness of the need for common solutions, international cooperation on migration faces many obstacles. Governments have traditionally been reluctant to tie their hands to binding international commitments in this sensitive area of national sovereignty. At the same time, cooperation is impeded by deep conflicts of interest between and within countries as to what the contents of cooperative arrangements should be (GCIM 2005: 67). Despite 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 as long as there

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is more potential for emigration than demand for immigration, there will be little overlap between these countries' political priorities and cooperation will fail due to the lack of reciprocity (Trachtmann 2009). In such asymmetric problem constellations, cooperation is very demanding since one party's gain tends to be perceived as another party's loss. A classic strategy to overcome such cooperation problems is the manipulation of the recalcitrant parties' incentive structure through issue-linkages and the conclusion of package deals (Tollison and Willet 1979, Oye 1985, Axelrod and Keohane 1985).

In this article we take a closer look at one particular venue for cooperation on migration that provides a wide scope for issue-linkages and, at the same time, mobilizes a significant power base: trade or trade-related agreements.² Our focus is on the EU as both a major economic player and, increasingly, also migration policy actor. Starting from the reflection that the EU's trade relations constitute a considerable potential source of influence, 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 strategically linking migration policy goals to external trade agreements. As we will show, EU trade agreements have included migration related clauses of different kinds early on. In 2002, the Seville European Council 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" (Council 2002: 10). The Lisbon Treaty formalized the idea of using trade agreements also for other policy ends one step further by bringing EU trade policy under the same EU external action heading as other elements of EU external policy such as for instance environmental, development or immigration policy (Article 207(1) TEU).

² According to the EU terminology (DG Trade) these agreements are referred to as 'trade agreements and other agreements with a trade component to which the EU is party', or also as 'preferential trade agreements'.

The question whether the EU engages in strategic issue-linkage through its trade agreements has implications for its nature as a foreign policy actor. The strategic linkage of migration clauses in trade agreements presupposes a coherent coordination across foreign policy goals, issue areas and across administrative divisions, in particular in this case the Directorates General for Home Affairs and Trade in the European Commission and the former Relex, now European External Action Service.³ In a first set of hypotheses, we therefore investigate how strategic the EU is in mobilizing its “market power” by linking its trade agreements to migration policy purposes. This would express in the use of trade agreements as venues to gain leverage especially towards major sending and transit countries and by linking migration control and readmission clauses to economic concessions and visa facilitation or labor mobility.

A lively debate in EU studies on the nature of EU external relations, however, questions this capacity for coordinated strategic action. EU foreign policy analyses have recurrently highlighted the fragmentation of external relations and the weakness of concerted action (e.g. Smith 2004, Gebhard 2011). Approaches inspired by social constructivism suggest that the EU adopts a “one size fits all” (Boerzel 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 not mirror functional prerogatives but would rather reflect changes in the EU’s own internal migration policy. Therefore, the type of migration clauses in trade agreements should vary less across countries than across time, following the internal evolution of EU competences in the matter. In other words, the inclusion of migration clauses in trade agreements would be an outflow of new competences acquired by EU institutions

³ For trade agreements concluded under the Lisbon Treaty, the European Parliament would be a further important actor since it now enjoys co-decision making powers (Woolcock 2010: 11).

mirroring general policy orientations rather than the outcome of strategically designed and targeted issue-linkages.

In the following we introduce the EU external migration policies in the context of international migration cooperation and elaborate the theoretical framework guiding our analysis. We base our empirical investigation of the trade-migration linkage on a quantitative analysis of 66 trade agreements concluded between the EU and third countries since 1963⁴ as well as twelve qualitative expert interviews conducted with public officials working in the EU Commission Directorates General for Home Affairs and Trade and the European External Action Service (previously DG Relex) in 2010 and 2012. Our analysis contributes to the conceptualization of different logics driving the use of “market power Europe” in non-trade matters (Damro 2012: 15) and provides a first empirical test using a combination of qualitative and quantitative approaches, based on a unique and innovative data set on migration clauses in EU trade agreements. In short, our results show little support for the strategic use of trade agreements in the pursuit of migration policy goals. The inclusion of migration related clauses in trade agreements discriminates little across third countries according to migration related variables and rather mirrors the evolution of respective competences in the EU and general foreign policy orientations. Therefore, ‘market power’ in this field consists mainly in the EU’s structural economic weight rather than in an active strategy of targeted issue-linkage through trade agreements.

⁴ These agreements comprise the totality of EU trade agreements and include more encompassing types such as in particular the Europe Agreements towards candidate countries or the equally multi-sectorial Association, Partnership and Cooperation Agreements as well as more trade-focused ones like simple Trade Agreements and the most recent Economic Partnership Agreements.

EU external migration policy in its international context

The evolution of international norms in relation to migration has been described as a “substance without architecture” (Aleinikoff 2007: 467). Relevant provisions have developed in different fields and various institutional venues. 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.

When the issue of migration first came on the international agenda, in the inter-war and World War II period, this occurred in the context of the broader human rights movement. The first migration-relevant international clauses included labour rights (the ILO Conventions) and the provisions on the protection of refugees (the 1951 Geneva Refugee Convention).

In the 1950s and 1960s, and in the process of economic recovery, migration policy became central to labour market policies, in particular in guest worker programmes in various European Member States that were based on unilateral recruitment treaties with countries of origin in southern and south-eastern Europe as well as Turkey and the Maghreb countries in particular. In EU external relations, the realization of the internal free movement regime had implications on the contents of the association and cooperation agreements signed from the 1960s onward. 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 Cooperation 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).

Beginning in the 1970s, and more forcefully since 9/11, destination countries have increasingly linked migration to internal and international security. The impetus for the

development of a genuine EU competence in asylum and migration matters 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). The *acquis* developed first in the field of external border control and the fight against irregular migration, including a common visa policy as well as measures to deter the abuse of asylum systems. 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). A major instrument in this context is the conclusion of bilateral readmission agreements which commit third countries to take back their own as well as third country nationals who have crossed their territory and who are staying irregularly in an EU member state, usually also including cooperation on the fight against irregular migration.

This one-sided focus on control and readmission has faced difficulties and beyond the circle of candidates for EU membership, the EU has had to define alternative incentives in order to incite third countries' cooperation. One strategy, designed in particular for the Eastern neighbours, has been the coupling of readmission with visa facilitation agreements (Trauner and Kruse 2008). Another decision has been to mainstream migration policy goals in other EU external policies, including trade agreements (Com 2011).⁵

⁵ In 2005 the EU adopted the Global Approach to Migration spelling out a comprehensive agenda for external migration policies with a special emphasis on the link between migration and development. It was revised in 2011 towards the "Global Approach on Migration and Mobility", to include also short-term and circular migration schemes. Like the 2002 Council Conclusions, these documents call for a stronger mainstreaming of migration policy goals in EU external relations, including trade.

So-far we have discussed the possible use of trade agreements to counter undesired migration flows. It should however be noted that migration has entered the trade arena also from the opposite angle: namely regarding measures to ease the intake of “wanted”, trade-relevant migrants. Provisions on the easing of visa requirements for highly skilled professionals working in the service sector have been included at the multilateral level in the 1995 WTO GATS agreement (Panizzon 2010) and bilaterally in the service chapters of EU trade agreements.

Summing up, international migration is a complex field that has been approached from the perspectives of migrants’ rights, states’ security and labour mobility, but lacking a coherent set of principles and norms guiding international cooperation. In the following, we first define the cooperation problem from an EU perspective and then investigate which types of migration clauses have found entry into EU trade agreements with which countries and when. This analysis will show to what extent these clauses can be interpreted as an instance of strategic issue-linkage reflecting an active instrumental use of EU market power in the pursuit of specific migration policy goals.

Cooperation, issue-linkage and market power

Whereas much research is being conducted on the EU’s external migration policy, relatively little attention has been paid to trade agreements as one of the few formal, hard law venues for including migration clauses. This is astonishing given the salience of migration on the EU’s policy agenda, the difficulties encountered in inciting third countries to cooperate on readmission, and the EU’s explicit endeavours to create greater coherence between its external policies.

The EU's difficulties in cooperating with countries of transit and origin of migrants are a manifestation of the more general cooperation problems characterizing this policy field. Apart from the fact that the admission of non-nationals touches the core of state sovereignty and national identity, the weakness of international cooperation stems from two features: one substantive, and one more strategic. Substantively, there is the difficulty to specify one set of consistent principles that should guide cooperation on migration. Strategically, and linked to that, there is a profound asymmetry of interests regarding the contents of this cooperation.

Unlike other policy fields such as trade, environmental policy, 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 the environment or the desire for peace, in international migration no single guideposts for action exist. Protection of migrant's rights; labour market needs; concerns about sovereignty, economic competitiveness, social securities, and identity in receiving societies; security considerations as the potential contribution to development are all motives that guide political action and that partially 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 cooperation is however even larger between different countries, i.e. between the receiving and the sending countries of migrants, which points at the strategic difficulty of cooperation. At the most basic level, the cooperation problem rests in the absence of reciprocity. As "a condition theoretically attached to every legal norm of international law" (Zoeller 1984: 15) reciprocity expresses that cooperation is in the joint interest because the participating countries are interdependent, that is they need the others' cooperation 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 cooperation arrangement the other party will retaliate by a

similar measure, with suboptimal effects for all (Keohane 1986). This mechanism does not always work in international migration relations because lower-skilled economic, as well as humanitarian migration is “more of a one-way street” than is trade (see for example Hatton 2007). This leads to an asymmetric constellation with few overlaps between the interests of the sending countries (such as the export of the lower-skilled labour surplus, the reap of remittances, relief in conflict situations, the avoidance of brain drain, etc.) 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 cooperation other than with regard to migration control, and, to a lesser extent, the attraction of highly skilled professionals.⁶ 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.⁷ For granting migrant’s rights too, receiving countries do not rely on cooperation in order to realize them. Cooperation on the rejection and return of irregular migrants poses the highest challenges to cooperation. 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 a welcome source of remittances. In such asymmetric constellations, cooperation is very unlikely unless the incentive structure of the recalcitrant party is changed. Theoretically, possible strategies to overcome such cooperation problems include coercion -

⁶ Labour shortages in specific skill sectors and the scarcity of supply of skilled migrants lead countries to compete for the intake of such migrants. Cooperation with home countries may thus grant competitive advantages over other receiving countries. On the part of the home countries, emigration of the own nationals is not controversial as long as it does not lead to brain-drain and to labour shortages at home.

⁷ Of course this can soon change given the demographic decline in most OECD countries.

that is the overwhelming exercise of power (Krasner 1983, Drezner 2009);⁸ more bargaining-related issue-linkages and package deals that can alter the cost-benefit calculation on the side of the recalcitrant party (Tollison and Willet 1979, Oye 1985, Axelrod and Keohane 1985); or “institutional strategies” (Oye 1985: 17) geared at the establishment of interaction frameworks within which learning and socialization can take place.⁹

The inclusion of controversial migration clauses in trade agreements and their connection with broader economic and possibly also migration specific benefits such as visa facilitations or migrant rights would be an instance of a bargaining-oriented issue-linkage. Trade 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 cooperation to primarily economic agreements has however broader institutional effects. Once embedded in an institutional context, states are likely to enjoy limited opportunities to challenge existing regime principles and norms in ways that more accurately reflects their interest (Shaffer and Pollack 2009: 745). After new provisions are locked in by a stable agreement, interests converge around “focal points” (Schelling 1960) that tend to become “sticky” over time. Institutional theory highlights how initial investments in institutions generate “sunk costs” pushing actors down a particular path

⁸ The membership conditionality applied towards the candidate countries under which these 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.

⁹ 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, networking between migration control officials and border authorities in transgovernmental fora such as the Budapest or Söderköping process, or regular dialogues in specialized bipartisan committees. All these elements are also at the core of the main instrument of the EU’s external migration policy, the so-called “mobility partnerships” (Carrera and Hernandez 2011).

that is hard to reverse (Keohane 1984, North 1990). As a result, institutions become resilient to change, “even in the face of changes in the surrounding political environment” (Carey 2000: 754).

The question is how far the EU has realized this 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 primarily economic instruments.

The EU as a strategic ‘market power’?

Trade policy – that covers not just trade in goods, but also services, commercial aspects of intellectual property, and foreign direct investment – represents an exclusive power of the EU¹⁰ and a key dimension of its external policy. More specifically, concluding trade-related agreements with third countries constitutes one of the most important legally binding instruments that can be used by the EU in its external policy. This allows for a high codification of key topics relevant for the EU foreign action in relation to third countries (e.g. migration issues, democratic reform, economic modernization, etc.). This power base, that is constituted by both the EU’s market size and its regulatory capacity to set and uphold agreed rules, has often been underlined as the EU’s most significant resource, from Duchêne’s early notion of “civilian power” (1978) to more recent conceptualizations of the EU as a trade power (Meunier and Nicolaidis 2006) or market power (Damro 2012). These approaches have in common, that they underline the EU’s capacity to capitalize intentionally on its market power to achieve foreign policy goals, provided it has the regulatory capacity to act as a

¹⁰ It was set down in Article 207 of the Treaty on the Functioning of the European Union (TFEU).

coherent strategic actor (Damro 2012: 696, see also Bach and Newman 2007). If the EU were to act as a rational, strategic foreign policy actor, intentionally using its trade agreements as a means of “affecting material benefits” (Damro 2012: 6), the inclusion of migration clauses in trade agreements should follow the logic of consequentiality and mirror the security and economic interests the EU has 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, thereby capitalizing on its market power in order to exert leverage. The EU uses the incentive of trade concessions to incite cooperation on its policy priorities, i.e. migration control. Under these assumptions, we would expect the EU to discriminate the insertion of migration provisions depending on relevant properties of the third country. We should thus observe more and stronger “security” related provisions in agreements with countries that constitute sending or transit countries of migrants. Apart from actual migration numbers¹¹, the

¹¹ Immigration flows were operationalized as a dummy variable based mainly on the Eurostat reported statistics (year 2003 was used as reference year as this was the time point with the most comprehensive data on the number of migrant stocks by country of origin reported by the member states) and the OECD SOPEMI datasets on international migration (data collected for the period 1998-2002). We are aware that using migrant stocks per origin is only an indirect measure of immigration pressure. Nevertheless, we systematically compared these values with the dispersed available data (e.g. World Bank, Council of the EU on visas issued by Member States) on immigration flows from these countries towards the EU and found a strong level of correspondence.

EU should also take into account perceived push factors of migration such as the level of poverty or type of political regime. The lower the level of economic development (measured by GDP/capita¹²) and less democratic¹³ 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.

Below this nexus between trade and migration control provisions, another possibility for strategic issue-linkages within such agreements is the granting of migrant/mobility rights (i.e. social rights for emigrants living in the EU or visa facilitations) “in exchange” for cooperation on security-related provisions, i.e. border control, readmission of irregular migrants, etc. If this were the case, the inclusion of rights and mobility clauses should highly correlate with that of 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, we should expect such provisions to figure in particular in agreements with major trade partners. This is because clauses regarding the movement of key personnel or

Furthermore, we have also run the regression models with the reported number of immigrants and the results are similar.

¹² The indicator for GDP/capita was computed based on the datasets available from World Bank (<http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>). The GDP/cap ratios were computed for each country signatory of a trade agreement that correspond to a period of 10, 5, and the year of adoption of the respective agreement.

¹³ For the democracy indicator we use the scores from Freedom House (FH). We acknowledge the potential criticisms associated with the methodology employed by FH, however for the time span and countries analyzed in this research this is the only comprehensive database available. The indicator was also computed for a period of 10, 5, and the year of ratification by the EU of the respective trade agreement with all trading partner countries.

self-employed highly skilled professionals in service-industries and the right to establishment for foreign companies entailing the mobility of natural persons¹⁴ are only useful in the light of strong trade relations which expand to service trade. Therefore, our second rationalist hypothesis stipulates:

H.1.2 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. Furthermore, these macroeconomic indicators could be also used as a proxy to assess the 'power' structure between the EU and its trading partners, thus allowing us 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 trade¹⁵ were calculated based on Eurostat and the World Bank datasets.

As mentioned above, the EU's capacity to act as a strategic actor and to coordinate sectoral policies in terms of targeted issue linkages via trade agreements is put into question by institutionalist and social-constructivist approaches. These approaches take an "inside-out" perspective and suggest that EU external relations are a reflection of developments in its internal constitution rather than outflows of strategic foreign policy choices. One consequence of this "inside-out" logic is that the EU fails to discriminate strategically between countries,

¹⁴ These are the categories of persons also covered by the GATS (see Panizzon 2010)

¹⁵ The ratios for trade balance and shares of EU imports and exports were computed for a period of 5, 3 and the year of adoption of the respective trade agreement, thus allowing to control for potential external factors that might have influence the economic or political setting in the cases investigated.

thereby conducting “one” or “our” “size fit all” policies across countries and regions (Börzel and Risse 2004: 28, Bicchi 2006). From this perspective, the EU follows the logic of appropriateness, namely it acts according to institutional routines. Consequently, we would expect that the quantitative and qualitative patterns of migration clauses inserted in trade agreements differ more along the evolution of EU internal competence over migration matters rather than according to certain properties of the target country.

Our *institutionalist hypothesis* therefore is:

H 2.1 The inclusion of migration-related clauses in trade agreements varies with the evolution of EU competence in migration matters.

Concretely, we should 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 (Weinar 2011). Accordingly, provisions in trade agreements would mainly reflect changes in the organization of migration policies within the EU and would not discriminate across countries. Furthermore, the institutional evolution of the EU migration agenda and therefore the type of migration provisions inserted in trade agreements can be identified in the type of agreement offered to third countries. These types of agreements categorize third countries according to their general scope of interaction with the EU, starting from loose cooperation agreements and culminating in accession partnerships, the most encompassing type of agreements.¹⁶

¹⁶ In order to capture the institutional effect of various types of agreements we have designed a categorical variable, that ranges from a scale of 1 (Accession Partnership - the strongest type of an agreement) to 7 (Cooperation Agreement - the weakest type). The other types of preferential trade agreements that lay in-

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 in 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 especially towards the main source and transit countries and making mobility or rights provisions conditional on these countries’ cooperation on migration control, a more structuralist notion of market power questions the strategic design of issue-linkages and underlines the generalized reflection of EU policy priorities in its trade agreements.

In the following, we develop our empirical investigation that is based on both quantitative analysis and qualitative interviews with experts working in the European Commission and the EEAS. In order to test the hypotheses advanced by the rationalist approach that predict a dichotomous outcome (i.e. if a specific type of migration provision is included or not in the respective trade agreement), the logistic regression represents the most appropriate statistical tool¹⁷ (Borooah 2001). To this end, we distinguish between security-related clauses (third country commitment to fight irregular migration, to cooperate on readmission, to align its visa policies towards other third countries to the EU’s, and to develop asylum systems¹⁸), rights (social rights and visa facilitation for emigrants of these countries to the EU), and trade mobility related provisions (this mainly refers to clauses on the movement of key personnel and self-employed persons within the trade chapters on services and establishment). To

between refer to Stabilisation and Association Partnership, Association Partnership, Partnership and Cooperation Agreement, Customs Union, Economic Partnership Agreement, and Free Trade Agreement respectively.

¹⁷ The analysis was conducted using Stata software/ SE 12.1 (<http://www.stata.com/>).

¹⁸ The promotion of asylum systems in third countries corresponds in so-far to a securitarian approach as it helps spreading the “refugee burden” beyond Europe.

examine the institutionalist hypothesis that assesses variation in the overall number of migration clauses contained in an agreement we employ a linear regression analysis. The study covers all EU-trade related agreements with third countries signed from the 1960s onwards¹⁹ (please see the Appendix for a complete list of the agreements).

The cases of Overseas Countries and Territories and Faroe Islands (with the exception of the Cariforum members covered by the 2008 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. More specifically, this implies that the same provisions apply to all signatory parties and thus it impedes the detection of country-specific issue-linkages. Secondly, systematic quantitative data for macroeconomic and political indicators used as our key independent variables (e.g. GDP/capita, democracy scores, immigration flows, etc.) are not available for this group of countries for the years under study. We do however analyse these cases on a qualitative basis.

In addition to the quantitative analysis we also conducted twelve qualitative expert interviews with public officials working in the EU Commission Directorates General for Home Affairs and Trade as well as the European External Action Service (previously DG Relex) in 2010 and 2012. In these interviews we asked EU officials 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.

¹⁹ We are aware of the fact that the look at these formal agreements discloses the view from the much wider scope of EU external migration policies, dialogues, capacity-building exercises, and other migration specific agreements such as 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 the EU has at hands in its external relations.

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 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 reflect firstly in a clear discrimination of migration clauses 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. Furthermore, if these states are also faced with a high number of perceived push factors that would increase immigration incentives, such as low rates on economic development and democratic governance or display an unstable socio-political environment²⁰, the probability of the EU to opt for cooperation on ‘security’ aspects is likely to increase. Moreover, the geographic proximity²¹ to EU should also play an important role, as the closer a country is to the EU borders the higher the chances of becoming a transit country.

Secondly, 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 such provisions that are mainly in the interest of the third countries, such as mobility clauses and migrant rights.

²⁰A control dummy for conflict that codes whether for the past 20 years the respective state was engaged in an open conflict on the territory of its state, was also tested in this model.

²¹ For this control variable we follow Schimmelfennig and Scholtz (2008) and create a categorical variable that classifies cases in direct land neighbors 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.

The results of the logistic regression analysis (please see Table 1, model (1) below) for these set of variables lead to a very weak support for the rationalist actor approach. While testing for explanatory variables on the likely outcome of inserting security-related migration clauses in trade agreements, we found no relationship between the impact of immigration flows, economic or political push factors and security-related provisions. Thus, it transpires that the EU repressive policies do not depend neither on the number of third country nationals emigrating to the EU, nor on the domestic economic and political environment of the respective country. The only variable of this model 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 – namely, the closer to the EU borders, would increase the probability for more security and border control clauses to be inserted in concluded trade 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 coupling of visa facilitations and migrant rights with readmission clauses and other security provisions. There is also little support for this proposition: in only 27% of the existing agreements the two types of provisions are granted together (please see Correlation Matrix in the Appendix). This relatively low correlation represents another empirical test contrary to the expectations on issue-linkage advanced by the rationalist framework.

Assessing the EU-ACP relations, it appears that migration does not occupy a central role in these agreements, rather the focus is on trade and aid. Nevertheless, elements related to fighting against irregular migration were initially inserted in the annexes of the agreements (e.g. Annex IX, Lomé III, 1984) and more recently, the Cotonou Agreement (2004) stipulates in Art. 13 commitments by the signatories to address the return of irregular migrants. Namely, all parties are to take back their nationals found to be residing without authorization and are expected to do so “without further formalities” (Cotonou Agreement, Art. 13, paragraph 5).

Yet this clause is not enforceable given that the same article stipulates that the readmission of third-country nationals and stateless persons should be handled via bilateral agreements between the parties involved. This provision failed to be reformed in the 2010 revision of the Cotonou Agreement, moreover indicating that the EU did not use its “market power” to introduce stronger security-related clauses in the current trade agreement with the ACP countries.

These findings were confirmed in the interviews conducted with Commission and EEAS officials. Although, as mentioned above, 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.²²

Our second rationalist hypothesis referred to the insertion of trade-related mobility clauses in EU agreements. The 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 (following the WTO/GATS alleged mode 4 terminology) 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 clauses²³ (Table 1, model (2)). Even when controlling for the

²² Interview with DG Home, Section International Affairs, 17.9.2012.

²³ An interesting result occurs when controlling for the economic development of EU trade partners: the lower the GDP/capita, the higher the probability that trade agreements include also service related clauses. This

alleged “market power” of third countries relatively to the EU “market power”²⁴ 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.

This interpretation is again backed by the interviews conducted with three EU officials in DG Home who asserted that GATS-type mobility clauses were an issue dealt with by DG Trade and that this agenda was not really integrated in the external migration policy. 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 (Com 2006: 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 strategic interests in the policy area of migration. Instead, these clauses should reflect the internal evolution of EU migration policy over time²⁵, with little differentiation across countries.

Therefore, 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 appendix, the

relationship might raise additional questions and invite for further research on explaining the EU logic of linking trade issues and mobility provisions.

²⁴ 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.

²⁵ The time effect was captured by a categorical variable that accounts for each decade starting with the year of the most recent signed agreements and finally ending with the agreements that were adopted back in the 1960s.

time dimension indeed turns out to be statistically significant. More specifically, this follows to a certain extent the evolution of EU competence in migration matters starting from a limited competence over free movement provisions 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 embracement of an external dimension at the Tampere European Council in 1999 and subsequent integration steps. For example, most of the security-related provisions (i.e. irregular migration, asylum, visa cooperation) started 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. Along the same lines, the inclusion of readmission clauses of third nationals in trade agreements concluded after 2002 – when the Seville European Council officially addressed the topic of compulsory readmission in the event of irregular immigration – has intensified.

Summing up the results obtained so-far, the patterns of migration clauses included in EU trade agreements vary less according to measurable migration-related country properties than according to geography (see H1 above) and the evolution of EU competence over time. In order to investigate these patterns further we have also introduced in our statistical analysis the variable "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 agreements 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. Put differently, the EU offers generalized packages of migration clauses inserted in 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 display the highest number of migration provisions. Furthermore, the geographic proximity variable that occurred to be statistically significant in the logistic models, providing some support for a rationalist explanation of the EU external migration policies highly correlates with the type of agreement (see Appendix, Table 3 – Correlation matrix). This might indicate 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, in particular the Association Agreements and Partnership and Cooperation Agreements, tend to include more migration provisions than those concluded with countries that are located further away from the EU borders. This logic of “concentric circles” is however disconfirmed when we look at the EPA concluded with the distant Cariforum countries which includes some of the most far-reaching provisions, although these countries represent neither a major source of migrants nor of trade flows.

Table 1 Regression analysis of migration related provisions included in trade agreements²⁶

Variables	Dependent variable (Security ²⁷) (1)	Dependent variable (Trade mobility) (2)	Dependent variable (Total migration provisions ²⁸) (3)
Immigration dummy	0.00	-0.61	
Conflict	1.29		
Geography	-0.50*	-0.34	
Democracy 10	0.26	-0.25	

²⁶ Model (1)-(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. Furthermore, collinearity tests were applied and there is no multicollinearity among the explanatory factors of these econometric models.

²⁷ The results are the same also when running the model without the control variables, namely none of the main independent variables of the models are statistically significant.

²⁸We have also estimated each type of migration provisions, i.e. security, rights, and trade mobility using logistic regressions and the findings highly corroborate with the results of the linear regression.

GDP p.c.10	-0.75	-1.82**	
Trade balance_5		-9.64	
Years decades			-0.90***
Type of agreement			-1.01***
No. of observations	53	53	59
Log pseudolikelihood	-28.57	-30.53	
Pseudo R ² /R ²	0.20	0.11	0.65***
Wald chi ²	9.05*	5.63	

Note: *** p<0.01, ** p<0.05, * p<0.1

Conclusions

In the absence of an international migration regime, states seek other venues to promote cooperation on migration issues. In this paper, and with a focus on the EU, we concentrated on one particular, hitherto under investigated venue: trade and trade related agreements. Over time, EU trade agreements have come to include a large range of migration clauses reaching from security-related clauses (irregular migration and readmission) to rights (social rights for migrants, visa facilitations), and movement-related provisions (supply of services, establishment).

Starting from the rich literature portraying the EU as a “market power” which capitalizes on its economic weight in its external relations we analysed how targeted and strategic the EU’s use of its trade agreements actually is with regard to migration policy goals. Given that migration cooperation faces 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 cooperation 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 cooperation dilemmas.

Using logistical and linear regression models over roughly 60 EU trade agreements concluded since 1963, and drawing on expert interviews with EU officials, our analysis gives little support for visions of a strategically calculating “market power EU” making targeted use of issue-linkages between trade and migration provisions. Firstly, the inclusion of security-oriented migration control clauses relating to i.e. border management and readmission does not correlate with effective immigration from these countries to the EU or the presence of potential push-factors for migration. Secondly, we could not find any significant relationship between the inclusion of such security-oriented clauses and potential “compensatory” concessions with regard to migrant’s rights or visa facilitation in these trade agreements. Finally, the strategic actor perspective was clearly refuted in the case of mobility provisions targeting service trade. Contrary to economic considerations that would suggest the inclusion of such provisions in particular in the relations with the closest trade partners we found no positive relationship between trade volumes and trade-related mobility clauses. A good example for this lack of strategic linkage between migration and trade is the case of the EPA concluded with the Cariforum countries whose far-reaching service-related mobility provisions can neither be seen as an issue-linkage for cooperation on the fight against irregular migration nor as an answer to intensive service trade with these countries. All these findings substantiate the conclusion that the EU does not use trade agreements as a venue to capitalize on its market power in the pursuit of migration policy goals.

These findings should not be taken as a rebuttal of the “market power Europe” thesis. Rather, they highlight a more structural, institutional link between internal policy developments in the EU and the contents of external agreement. The type and number of migration provisions included is foremost a function of the type of agreement concluded with a third country. This typology of external agreements tends to coincide with geographic factor, i.e. the closer a country is to the EU the more encompassing is also the type of agreement. The 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. 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, our analysis has shown that at least for the time being, the EU does not really use the possibilities for strategic issue-linkage offered by these agreements. Neither do the association agreements with the neighbours include enforceable provisions on readmission and migration control, nor are such security-related provisions linked to concessions in other fields such as mobility or visa facilitations. In this sense, our statistical findings confirm our interviewees' assertions that trade agreements are not a relevant venue for external migration policies, be them security, rights or mobility oriented. Indeed, as also the detachment of services-related mobility clauses from broader EU migration policies corroborates, trade and migration remain strongly dissociated domains. Rather than linking up with the trade agenda, EU external migration policies have very much developed within their own confines, be it via the (often unsuccessful) negotiation of bilateral readmission agreements, or the more recent turn towards more comprehensive cooperation packages in so-called mobility partnerships or regional consultation processes. In sum, our findings do not disconfirm the notion of market power Europe. In line with institutionalist critiques of EU foreign policy, however, they underline limits of strategic issue-linkage between trade and migration, thereby suggesting a more structural and not primarily tactical understanding of the EU's market power.

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Appendix

Table 2 EU Trade Agreements and Migration Provisions

Regional Trade Agreements Parties	Type of Agreement
1. EC-Albania	Stabilization and association agreement
2. EC-Algeria	Association agreement
3. EC-Andorra	Customs union
4. EC-Andorra	Cooperation agreement
5. EC-Bosnia and Herzegovina	Stabilization and association agreement
6. EC-Cameroon/Central Africa Party	Interim Economic partnership agreement
7. EC-CARIFORUM States	Economic partnership agreement
8. EC-Chile	Association agreement
9. EC-Cote d'Ivoire	Economic partnership agreement
10. EC- Croatia	Association agreement
11. EC- Egypt	Association agreement
12. EC- Former Yugoslav Republic of Macedonia	Stabilization and association agreement
13. EC-Iceland	Free trade agreement
14. EC-Iceland	Agreement on European Economic Area
15. EC-Israel	Association agreement
16. EC-Jordan	Association agreement
17. EC-Lebanon	Association agreement
18. EC-Mexico	Economic partnership agreement
19. EC-Montenegro	Stabilization and association agreement
20. EC-Morocco	Association agreement
21. EC- Norway	Free trade agreement

22. EC- Norway	Agreement on European Economic Area
23. EC- Overseas Countries and Territories	Overseas association decision
24. EC- Palestinian Authority	Interim Association agreement
25. EC-South Africa	Trade, development and co-operation agreement
26. EC-South Africa	Strategic partnership
27. Agreement EC-Switzerland	Free trade agreement
28. EC-Syria	Cooperation agreement
29. EC-Tunisia	Association agreement
30. EC-Turkey	Customs union
31. EC-Turkey	Accession partnership
32. EC-Korea	Free trade agreement
33. EC-San Marino	Customs union
34. EC- Serbia	Stabilization and association agreement
35. EC- Papua New Guinea	Economic partnership agreement
36. EC- Fiji (Pacific States)	Economic partnership agreement
37. EC- Switzerland Bilateral I	Bilateral I
38. EC-Switzerland Bilateral II	Bilateral II
39. EC-Turkey (Ankara Agreement)	Association agreement
40. EC-Armenia	Partnership and cooperation agreement
41. EC-Azerbaijan	Partnership and cooperation agreement
42. EC-Belarus	Trade and cooperation agreement
43. EC- Georgia	Partnership and cooperation agreement
44. EC- Moldova	Partnership and cooperation agreement
45. EC-Ukraine	Partnership and cooperation agreement
46. EC-Russia	Partnership and cooperation agreement
47. EC-Kazakhstan	Partnership and cooperation agreement

48. EC-Kyrgyzstan	Partnership and cooperation agreement
49. EC-Uzbekistan	Partnership and cooperation agreement
50. EC-Tajikistan	Partnership and cooperation agreement
51. EC-Kosovo	European partnership
52. EU-US	Transatlantic economic partnership
53. EU-Brazil	Cooperation agreement
54. EU-China	Trade and cooperation agreement
55. EU-Canada	Partnership agenda
56. EU-India	Cooperation agreement
57. EU- Japan	Action plan
58. EU-Central America	Association agreement
59. EU-Peru-Colombia	Free trade agreement
60. Yaoundé I Convention	Cooperation convention
61. Yaoundé II Convention	Cooperation convention
62. Lomé I Convention	Cooperation convention
63. Lomé II Convention	Cooperation convention
64. Lomé III Convention	Cooperation convention
65. Lomé IV Convention	Cooperation convention
66. Cotonou Agreement	Cooperation agreement

Table 3 Descriptive Statistics

Variables	No. Of observations	Mean	Std. Dev.	Min	Max
Type of agreement	59	4.220339	1.732726	1	7
Year	59	1.644068	0.688895	1	3
Security	59	0.5423729	0.5024778	0	1
Rights	59	0.5254237	0.5036396	0	1
Trade mobility	59	0.5932203	0.4954498	0	1
Migration_total	59	2.830508	2.49242	0	8
GDP_cap_10	57	0.4665261	0.6581365	0.0155	2.177
Democracy_10	53	3.327358	1.752596	1	7
Immigration	59	0.440678	0.50073	0	1
Conflict	59	0.3050847	0.4643957	0	1
Trade balance	59	-449.089	8789.413	-40641.67	21140