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Editorial

Economic and non-economic values and objectives in the EU's international trade: Normative tensions, actors and processes

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Abstract

This *Europe and the World: A law review* special issue comprises selected papers presented at a RENFORCE workshop on the theme of tensions between the EU's trade and non-economic values, held at Utrecht University in November 2017. The symposium addresses normative dilemmas underlying the EU's trade law and policy. Normative dilemmas subsist between, on the one hand, the EU's basic pursuit of its commercial interests and trade liberalization, and, on the other hand, the EU's mandate to promote and safeguard a number of non-economic values, including human rights and sustainable development. The journal symposium aims to unveil normative tensions existing in the EU's trade and investment policy, and understand some of the key actors and processes through which normative tensions are created and also mitigated. While the tensions between economic and non-economic values in the EU's trade law and policy have been extensively discussed in literature, the present symposium highlights some of the recent developments in the EU's trade relations, analyses not only human rights but also sustainable development, and examines the impact of new technologies.

Keywords: EU trade; external actions; non-economic values; normative tensions

1. Introduction: The theme of the symposium

The competences of the European Union (EU) with regard to its external relations have gradually developed over time along with its internal integration processes. Already the Treaty of Rome (1957) stipulated that the Community was capable of interacting with third countries by concluding international agreements and was granted exclusive competence in issues falling under its international trade policy,¹ officially known under the name of the Common Commercial Policy (CCP). The CCP encompasses EU trade and investment law and policy and, since the dawn of the integration process, the CCP has been considered as the key field of EU external relations.² It represents a unique policy area that includes various multilateral, bilateral and unilateral tools such as tariffs and custom duties, international preferential and free trade agreements, foreign direct investment, export policy, and trade defence tools.³ In addition, the CCP is generally seen as ‘the mother of all EU external relation policies’⁴ due to its strong link with the integration process within the internal market of the Union. As observed, the CCP is in fact the most supranational but also the most successful EU external policy by means of which the EU can express its real power and impact in the world.⁵ At the same time, the CCP represents one of the broadest external policies of the EU, which is capable of covering numerous types of international agreements and actions, even though those actions would normally lie within a different domain, such as environment or common fisheries policy. In a similar vein, energy policy is also intertwined and interrelated with the EU’s trade and investment law and policy.⁶ In this sense, it is difficult, if not impossible, to separate EU international trade policy *strictu sensu* from ‘other’ policy areas.

From the beginning of the European integration processes, the international trade policy has been situated as a tool to protect and strengthen Europe’s strategic commercial and economic interests on the global scene. The foregoing is reflected in Article 206 of the Treaty on the Functioning of the European Union (TFEU) which lists the main economic objectives of the CCP, namely, the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

At the same time, the CCP has also been an important and powerful foreign policy tool. As Article 207 TFEU explicitly instructs, the EU’s trade policy must be conducted in the context of principles and objectives of the Union’s external action. Those principles and objectives can be found in Article 21(1) of the Treaty on European Union (TEU), according to which the EU’s action on the international scene shall be guided by the values that lay at its core, such as democracy, the rule of law, human rights and the principles of international law. In addition, Article 21(2) TEU aspires to safeguard a number of other non-economic EU objectives and interests, including those to preserve peace, strengthen international security, foster sustainable development, and protect the environment. The European Commission even referred to ‘morals, values and ethics’ in general as elements that should inform the external action in the area of international trade.⁷ As articulated by the Commission, ‘the EU’s values and standards also shape its engagement abroad’.⁸

It is against this backdrop that the EU trade policy is confronted with a classical dilemma. On the one hand, the European Commission pursues multiple objectives which uphold the EU’s commercial and strategic interests, protect free trade and global trade liberalization, and safeguard the EU’s social and

¹Article 3(1) TFEU.

²Angelos Dimopoulos, ‘The Effects of the Lisbon Treaty on the Principles and Objectives of the Common Commercial Policy’ (2010) 15 Eur. Foreign Aff. Rev. 153.

³Article 207 TFEU.

⁴Bart Van Vooren and Ramses A. Wessel, *EU External Relations Law: Text, Cases and Materials* (Cambridge University Press, 2014) 276.

⁵From Marize Cremona, ‘Distinguished Essay: A Quiet Revolution—The Changing Nature of the EU’s Common Commercial Policy’ in M. Bungenberg, M. Krajewski, C. Tams, J.P. Terhechte and A.R. Ziegler (eds), *European Yearbook of International Economic Law* (Springer, 2017) 4.

⁶Thomas Cottier, ‘Towards a Common External Economic Policy of the European Union’ in M. Bungenberg and C. Herrmann (eds), *Common Commercial Policy After Lisbon* (Springer-Verlag, 2013) 3.

⁷European Commission, ‘Areas of EU Trade Policy’ <<http://ec.europa.eu/trade/policy/>> accessed 1 May 2018.

⁸European Commission, ‘Report on the Implementation of the Trade Policy Strategy Trade for All Delivering a Progressive Trade Policy to Harness Globalisation’ COM (2017) 491 final, at 9.

regulatory model. On the other hand, the European Commission is mandated to promote and safeguard a number of non-economic values, including peace and security, human rights, and sustainable development. Perhaps inevitably, frictions have arisen between these vital commercial objectives and the goal of promoting specific non-commercial objectives. The level and nature of these tensions vary, depending on the context-dependent interpretation of values and objectives by various institutions and actors involved in the formulation and implementation of the EU's trade and investment policy. Given that the process of externalization of the EU's trade and non-trade objectives ultimately has impact on the EU itself and her interests, as well as third countries and private actors therein, it is important to examine the question of how coherent, uniform, effective and legitimate the Union's action in this area is. What kind of tensions can be found in the area of promoting non-economic values by the EU in the field of international trade? What actors and processes are employed in that respect?

2. Roadmap

This symposium addresses some of the tensions between the economic and non-economic objectives of the EU in the field of international trade law and policy. Anne-Carlijn Prickartz and Isabel Staudinger start the symposium by analysing the selectivity and consistency in the EU's practice in incorporating human rights clauses in its international trade agreements. The EU has employed mechanisms such as human rights dialogues and conditionality. Human rights clauses started to appear in the EU's cooperation agreements at the end of the 1980s and were standardized in the mid-1990s. Yet, in practice, the formulation of clauses varies depending on trade agreements, even for those concluded after the Treaty of Lisbon. The EU's external action relating to human rights met with criticisms such as being inconsistent. Incoherence at the level of the EU's external action in part reflects divergence at the national level among EU member states in terms of their human rights priorities.

Machiko Kanetake sheds light on the interactions between human rights norms and the EU's dual-use export control which forms part of the EU's CCP. In September 2016, the European Commission proposed to modernize the EU's export control regime by integrating human rights due diligence in the process of controlling exports. This initiative was driven by controversies in the aftermath of the Arab Spring regarding the alleged use of EU-originated cyber surveillance technologies against dissidents' human rights in destination countries. The Commission's proposal invited contestations from industry and member states. These contestations are illustrative of some of the practical hurdles that still subsist in the EU's ambition to accommodate human rights norms in its international trade law and policies.

Mihail Vatsov's paper focuses on the EU's modern trade agreements in order to examine the way in which the EU uses them to further its goal of achieving sustainable fishing. By scrutinizing a number of agreements with the African, Caribbean, and Pacific states as well as with the EU's neighbouring countries such as Ukraine, Georgia, Moldova, and Montenegro, Vatsov highlights the lack of coherence in the EU's approaches to promoting sustainable fishing. Some of the inconsistencies regarding fisheries cooperation provisions reflect a palette of commitments and a variety of interests that the EU and its partners may have.

Marie Musch and Ferdi De Ville analyse, from political science perspectives, the role of the EU in the negotiations of the Environmental Goods Agreement (EGA). The EGA has been negotiated among the EU and several states to remove trade barriers in 'green goods' and align trade with climate change mitigation. Through a number of interviews with European policy-makers and civil society representatives, Musch and De Ville reveal the paradigm of liberal environmentalism which has dominated the negotiations and reduced the role of, for instance, environmental NGOs. The experiences of EGA negotiations so far indicate the difficulties of achieving a balanced integration of environmental objectives in the management of international trade.

Anna Marhold addresses ostensible gaps between the EU's commitment to climate change on the one hand, and the EU's continuous reliance upon the import of fossil fuels on the other hand. This contradiction is in part due to the shared competences in the fields of energy and environment policies, which require extra coordination between the Union and member states. Dissonance between these two commitments can be seen not only in the EU's own policies but also in the Union's trade agreements with third countries.

In her paper Marhold explores the reasons for this cognitive dissonance and examines what elements could facilitate the process of ensuring more coherence in EU external energy policy. In order to mitigate dissonance between the promotion of sustainable development and the security of energy supply, Marhold reiterates the need for the EU to promote renewable energy and to be driven by long-term energy security.

Finally, Eva Kassoti analyses the lawfulness (or unlawfulness) of EU trade agreements which extend to territories that are disputed under international law. Through the study of two territories, namely, Palestine and Western Sahara, Kassoti examines the questions of whether the EU's practice is in conformity with its obligation of non-recognition under international law, and whether the EU has adopted a consistent approach when it comes to trade agreements involving unlawfully acquired territories. Both questions are answered (disconcertingly) in a negative light. In that sense, Kassoti shows that the EU's trade practice in relation to unlawfully acquired territories is not necessarily in line with the image of the EU as an internationally engaged actor that claims to be committed to the observance of international law.

3. Conclusion

Overall, the EU's ambition to combine its trade law and policy with non-economic values and objectives accommodates not only normative dilemmas but also related institutional and political tensions. As highlighted by the contributions in this symposium, there are indeed apparent normative dilemmas and dissonance in the fields of, for instance, the EU's export control and human rights norms, the EU's trade agreements and sustainable fishing, and the negotiations of the EGA. Gaps and inconsistencies also subsist in the EU's commitments to sustainable development and to the supply of energy through trade agreements. Whether or not the EU's trade agreements and practices are consistent with international law and the rule of law more broadly could also be called into question.

Yet these normative tensions are not necessarily due to the fact that the EU pursues inherently contradictory economic and non-economic values and objectives. Long-term commercial gain and competitiveness may well be achieved by upholding human rights and sustainable development, and, in this sense, normative goals that the EU's external action ought to accommodate are not always contradictory. Various contributions in this symposium highlighted instead the institutional and political tensions which at times give rise to and sustain a complex set of normative tensions. The EU institutions may differ in terms of the weight to be given to the EU's commercial interests against non-economic values. There is also an inevitable discordance among EU Member States in terms of how precisely they envisage the integration of non-economic values in implementing the EU's trade agreements.

Despite normative and institutional tensions that the EU's trade policy encounters, the fact remains that Article 207 TFEU and Article 21 TEU envisage the EU's trade policy to be an effective vehicle for safeguarding human rights, the rule of law, sustainable development, and the environment. To resolve some of the fundamental normative tensions is by no means an easy task and this symposium does not intend to provide any blueprint for solutions. Nevertheless, as the symposium contributions suggest, the negotiating processes of the EU's trade agreements or other trade-related instruments provide a unique venue for the EU's institutions, member states and other stakeholders to express their weight given to economic and non-economic values. Despite many shortcomings, such negotiating processes incrementally develop a set of norms and mechanisms to accommodate non-economic values in the EU's trade instruments, and, further, create the opportunities for EU institutions to be an active norm-setting player at the international level to revise its narrative on trade law and policies.

Declarations and conflict of interests

The authors declare no conflict of interest linked to this article.