

When “Essential Elements” become Less Essential in EU Trade: Do Economic Interests Silence Human Rights Conditionality?

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Abstract

The European Union (EU) has actively been incorporating normative values in its trade relations with third countries for the past few decades—attaching “Essential Elements” as human rights clauses in bilateral treaties became an obligation by EU law since the Lisbon Treaty came into force. However, European legal scholars identify that this clause has not been applied or enforced in a coherent manner. In fact, the clauses vary across countries, stringent conditionalities were attached on countries with already established human rights standards, and yet sometimes soft clause on states with low human rights practices. The Essential Elements have also not been activated to withdraw or suspend trade preferences by far, even in times of grave human rights violations. In this study, I attempt to answer the question, “Why is the EU inconsistent in linking human rights to bilateral trade?”. While this question has primarily been explained through few legal interpretations and case studies, this research is a first-time attempt in answering through empirical analysis across the EU’s multiple trading partners. The EU has indeed been criticized for taking weaker measures on larger economic powers and countries that it is more resource-dependent on, such as Russia leveraging gas resources as political weapons on the EU to deflect accusations of human rights violations. Positing that the EU will easily compromise human rights elements when economic stakes are high, this study measures how the scope, strength, and enforcement of human rights clauses in trade is associated with extra-EU export and import, especially energy imports given the EU’s high energy dependence. This study finds that in terms of the treaty itself, the scope and strength of linkage was weaker when the EU imported and exported more from its trading partners, which was also not associated with the actual human rights practices of that country. However, in terms of enforcement, the EU showed a general reluctance to the enforcement of human rights clauses, regardless of economic interests.

I. Introduction

The European Union (EU) now seems to have successfully positioned itself in the international community as a firm defender and an advocate for worldwide human rights and democratic values.

Since the early 1970s, the organization has been including “Essential Clauses” in its external relations, signaling that human rights clauses are the most “essential” to agreements, usually appearing in the preamble or at the very beginning of treaties (Horng, 2013). Human rights norms in international relations are especially difficult to enforce due to its nature, where a unified agreement on core rights and a universal enforcement body are non-existent (Goldsmith and Posner, 2005; Hafner-Burton and Tsutsui, 2005). However, when linked to trade relations and commercial interests, countries are more likely to abide by human rights standards (Hafner-Burton, 2005, 2009).

The EU has indeed been actively attaching human rights elements to all of its trade relations, both in bilateral agreements, such as the Free Trade Agreements (FTAs) and unilateral measures under the World Trade Organization (WTO) such as the Generalized System of Preferences (GSP) and GSP+. These normative provisions in economic relations, however, has not always been applied or enforced in a coherent manner, or even at all. So far there were only few cases where human rights violations led to an actual withdrawal or termination of trade relations, and these were limited to unilateral measures that granted developing countries trade preferences and access to European markets, meaning there is little commercial loss on the EU’s end. No case has yet been brought to the WTO for dispute regarding the implementation of essential elements. In fact, the EU’s approaches in linking human rights to trade have been said to vary across its trading partners, applying stricter and extensive provisions on some countries, while being passive on others (Bartels, 2009; Meissner & McKenzie, 2019). This study, therefore, attempts to answer the question, “Why is the EU inconsistent in linking human rights to its bilateral trade relations?”.

While the GSPs and GSP+s have an explicit purpose to promote the economic and social development of underdeveloped countries through trade (Wardhaugh, 2013), bilateral agreements have a more economically-driven goal. The goal of Free Trade Agreements is to reduce trade

barriers and increase economic welfare, hence some scholars have even viewed human rights conditionalities as protectionism in disguise (Bhagwati, 1998, 2000). When it comes to bilateral relations, objectives in free trade and economic benefits oftentimes appear to precede normative values. There have been criticisms towards the EU in its weaker application of human rights clauses when economic and security interests were high (Saltnes, 2008; Williams, 2004), and the fact that the organization is more assertive towards smaller economies (EPRS, 2019). Many scholars and news articles have also pointed out that the EU has been hesitant in criticizing and Russia's prevalent human rights violations including the Crimea incident, due to Europe's gas dependence (Helen, 2010; Bindman, 2013). In this paper, I posit that the EU's position on attaching human rights clauses in bilateral trade becomes weaker and tactical—meaning that it is more of a political gesture rather than serving the purpose of promoting human rights—when economic stakes in trade are high.

Therefore, I attempt to unravel the rationale behind EU's inconsistent behavior towards the issue linkage by examining the change in the “strength”, “scope”, and “enforcement” of linkages depending on the size of the EU's economic interest in trade. Here “inconsistency” not only means that the human rights clauses are not uniform in manner, but that the application of clauses is not associated with the actual human rights standards and practices in the partner state.

The body of this paper is largely five-fold. First, the backdrop and legal landscape of the EU's role in linking human rights matters to trade will be introduced. Second, I review the theoretical framework and literature that provide a guideline for answering my research question, which primarily bases on the perspectives of European legal scholars and sanction/bargaining theories. Then, the main dependent and independent variables of linkage will be introduced, followed by the method by which the association between these variables will be measured. Then I present the

findings from the Ordinary Least Squared(OLS) and Ordered Logistic (OLOGIT) models that show how trade benefits and resource dependence influences human rights-trade linkage Finally, this paper concludes with the implications and limitations of this research.

II. Background and Legal Framework

The idea of a marriage between trade and human is not a newly discussed concept in international relations nor international law. The way that the EU links human rights issues to trade is through policies that ban certain goods that may be used to undermine human rights in the partner country(e.g. electric chairs, drugs used in lethal injections), unilateral measures as the GSP conditionality, and through human rights clauses in bilateral agreements. As mentioned earlier, a more prominent avenue of EU human rights and trade linkage are GSPs and GSP+s, where the primary goal lies in supporting underdeveloped countries and promote democratic and human rights situations through provided free European market access and trade preferences. However, the EU has also been advocating comprehensive and detailed human rights clauses in the “bilateral” free trade agreements with developed countries with already accomplished human rights practices and standards. For instance, Australia had refused to conclude a free trade agreement with the EU in 1997 due to the EU’s insistence of a human rights clause (Prickartz & Staudinger, 2019), and Korea had to sign a pact indicating that it would not execute the death penalty prior to the Korea-EUFTA(Jung & Koo, 2018).

When it comes to these bilateral trade relations, the European Commission officially groups these agreements into three categories. First are the Customs Unions that eliminate customs duties in bilateral trade and establish a joint customs tariff for foreign importers. They include

European countries that are not part of the European Union, such as Andorra, San Marino, and Turkey. The second group includes Association Agreements, Stabilization Agreements, Free Trade Agreements, and Economic Partnership Agreements. These agreements are less comprehensive than customs unions, yet attempt to remove trade barriers between the EU and the partner state. Lastly, Partnership and Cooperation Agreements are agreements that do not change customs tariffs but establish a general framework for economic cooperation and trade. These include countries as Russia, Eastern Europe, the Southern Caucasus and Central Asia.

The inclusion of “Essential Elements” in the EU’s bilateral relations dates back since the 1970s and was enshrined in EU law in 1995. The underlying idea of this clause is to make parties uphold human rights norms and technically holds the power to suspend or withdraw from agreements when violated (Horng, 2013). In terms of trade, the European Commission began including these Essential Elements Clause in EU trade agreements from 1992. These elements mostly incorporate principles under the Universal Declaration on Human Rights (UDHR), and International Covenant on Civil and Political Rights (ICCPR), the fundamental human rights under international human rights law (Horng, 2013).

The Lisbon Treaty that came into force in 2009, introduced a new version of the Treaty of the European Union (TEU) which includes chapters that lay out principles for the EU’s obligation and grounds to advance human rights through external relations, including trade. This treaty also endowed the European Parliament, the EU institution that proclaims itself as the advocate of human rights and normative values, co-decision power in the EU policymaking process that included trade (Gfeller, 2014). Article 3 of the TEU states that “EU external actions must include fundamental values of democracy, rule of law, indivisibility the universality and indivisibility of human rights and fundamental freedoms”, where the inclusion of human rights clauses in EU

external agreements no longer became a matter of choice. Article 21(3) also emphasizes that “the EU shall ensure consistency between the different areas of its external action and between these and its other policies”, which requires the EU to be consistent in enforcing foreign policies. However, due to a lack of model/standard human rights clause, these elements have not been uniformly applied to countries, and EU trade policies to implement these clauses have been described as insufficient by some legal scholars (Bartels, 2014; Prickartz & Staudinger, 2019).

Despite the lack of coherency, the European Parliamentary Research Service (2019) categorizes these human rights clauses into three levels, which concerns the scope of human rights norms. The EPRS identifies 1) Clauses with no reference to international norms, 2) Clauses that reference either international or European norms, and 3) Clauses that include both international and European norms. International norms refer to the rights under the UDHR and the relevant international human rights law, and European norms are the principles included in the European Convention for the Protection of Human Rights and Fundamental Freedoms(ECHR), the Helsinki Final Act of the Conference on Security and Cooperation in Europe, and the Charter of Paris for a new Europe¹.

In terms of enforcement mechanisms, essential elements themselves create little obligation. However, adding on a “non-execution” clause enables the state party to adopt “appropriate measures” when provisions are violated by the other, making the clause “harder” and binding (Bartels, 2008). Non-execution clauses that mention appropriate measures also allow for suspensions in other agreements, where a violation of a non-execution clause in one treaty (other

¹ The ECHR is a European Convention to protect civil and political human rights in Europe, concluded in 1950 by the Council of Europe. Helsinki Final Act of 1975 discussed prominent global issues of the Cold War, and human rights were one of the four "baskets" of issues. The Paris Charter, signed by European states, Canada, the US, and the Soviet Union in 1990 addressed peace and security issues which included human rights provisions.

than trade) can lead to an appropriate measure in trade (Bartels, 2015). The non-fulfillment of obligations is weighed against gravity and international law, and a suspension is usually considered as the last resort. Prickartz and Staudinger (2019) classifies human rights clauses in three levels: 1) Clause with no essential elements 2) Clause that only contains essential elements, and 3) Clause that contains both essential elements and a non-execution clause. Furthermore, some non-execution clauses refer to a dispute settlement mechanism and a consultation process, also known as the “Bulgarian Clause”, where consultations and dispute settlement processes are first implemented before being able to take appropriate measures (Hornig, 2013).²

III. Theoretical Framework and Literature

With regards to the literature on human rights and trade linkages, most studies have been done by international legal scholars and few political scientists. Many legal scholars have interpreted WTO rules as permissive and encouraging in promoting human rights through trade relations (Petersmann, 2000). Indeed, trade-human rights nexus has been viewed as a practical way to enforce human rights provisions, a non-self-executing area through commercial incentives, especially for developing countries (Aaronson, 2010; Bürgi, 2017; Borlini, 2018; Nash, 2014; Zagel, 2005, 2006; Hafner-Burton, 2005, 2009).

However, the EU’s inconsistency in the application of linkages and the essential cause has been pointed out continuously in previous studies. Prickartz and Staudinger (2019) states that human rights conditionality and the strength of non-execution clauses are not consistent across countries

² The “Baltic Clause”, on the other hand, authorizes the explicit suspension of provisions without any form of consultation—this makes the non-execution clause more severe and stronger in manner (Hornig, 2013). This distinction has gained general approval by the Council in 1995.

and that they vary depending on the EU's economic leverage towards its trading partners. They posit that because developed countries have more negotiating power, it is difficult for the EU to include more extensive human rights clauses—on the other hand, exerting more economic leverage and thus linkage upon less developed countries. Legal scholars as Bartels(2014) and Borlini(2018) point out that Article 3(5) and 21 of TEU do not provide enough legal basis for the EU to protect human rights in other countries, also referring to the extraterritoriality principle where domestic laws cannot be invoked in international relations. There is a general agreement by these scholars that the European legal system remains fragmentary to establish a coherent framework for applying human rights clauses in the EU's external relations.

Other explanations for such inconsistency have mainly been through case studies. McKenzie and Meissner(2017) have suggested that the EU had made unordinary concessions in the EU-Singapore FTA negotiations compared to other Asian countries(for instance, Korea), and has applied strict human rights clauses on Canada despite the country's high human rights standards. They show how the EU does not apply these linkage clauses based on the compliance of human rights norms in the partner state, but that they were driven by the European Parliament's political incentives to expand its institutional turf, which becomes weaker when political gains from invoking human rights in trade are low. Sicurelli (2015) makes similar arguments for the EU's FTA negotiations with Vietnam, and Jung and Koo (2018) also explains how the linkage between the death penalty and trade has evolved through bureaucratic politics between the Commission and the Parliament, along with the empowerment of the latter. While these studies make sound cases in explaining the inconsistency through the EU's internal politics, there are no empirical findings to account for the EU's general tendency and behavior across a wide array of trade agreements with multiple trading partners.

Despite the fact that there are no studies on the EU's human rights and trade linkage conducted on an international relations level, extant literature supports that there is a strong relationship between resource dependence and bargaining power in trade relations. Asymmetrical economic interdependence could be leveraged as a source of political power, and multiple bargaining theorists have proven how economic resources could yield political concessions (Hirschman, 1945; Klaus, 1977; Keohane & Nye, 1977). The effectiveness of economic sanctions from human rights violations also depends on economic power and trade dependency of the parties. Smeets (2018) finds how economically self-sufficient states are immune to sanctions that are imposed against gross human rights violations. He explains how EU sanctions on Russia have been ineffective due to Europe's gas dependence –sanctions have hurt the EU's economic growth, but Russia, on the other hand, had rather diversified its trade routes to its Eastern partners such as China and India. Thus, senders are more likely to impose sanctions when there is higher trade dependence from the target, and when it cannot divert the losses from sanctions (Peksen & Peterson, 2016). This indicates how trading partners that the EU is more dependent on may exert more influence on the EU to make concessions on attaching human rights conditionalities.

In this regard, resource dependence, which is directly related to energy security, is likely to influence the extent to which non-execution clauses are implemented (Larsson, 2017). Paillard (2010) expresses concerns on how Russia has leveraged its natural resources as blackmail on some of the EU member states and a way to deflect the criticism on some of the grave human rights violations. Collins(2017) also references Russia's use of "Energy Weapon" in Europe as a way to strategically achieve their goals, and that gas supplies have been leveraged upon the EU as reward and punishment to disregard and stave off pressures to comply with international and European human rights norms. Studies show energy-rich authoritarian regimes alike have done the same,

using energy as a defensive tool to become immune to the EU's external normative pressures (Bader & Daxecker, 2015; Kortweg, 2018). This has indeed made it difficult for the EU to pressure countries with abundant resources (that the EU is heavily dependent on) to change its human rights policies and reduce violations through trade relations (EP, 2018). These studies suggest the possibility of a weaker linkage towards resource-rich countries that the EU is more resource-dependent on.

IV. Measuring Variables

1. Hypotheses and Scope of Analysis

Given the literature and discussion, I propose two hypotheses:

H1: When the EU gains more economic benefits through trading with the partner country, the human rights-trade linkage in scope, strength, and enforcement will decrease.

H2: When the EU is more resource-dependent on the partner state, the human rights-trade linkage in scope, strength, and enforcement will decrease.

I test these hypotheses using linkage scores as dependent variables and trade shares as independent variables. The observations for this research include all the states that the EU has concluded a trade agreement negotiation with. Only bilateral agreements are included due to the purpose of this study, where unilateral measures do not place EU economic benefits as the prior objective. There are currently 46 bilateral agreements in place, 48 partly in place, and 25 agreements pending. "partly in place" means that agreements have been signed, but not fully ratified by all parties, so some provisions are in place, but not all of them. "Pending" indicates that the negotiation has been concluded and provisions have been fully set out, but have not yet been

ratified nor signed, so no part of the agreement has entered into force yet. In this study, I exclude the trade agreements of 21 countries that the EU is in negotiation with since a full body of treaty and human rights clause for analysis are non-existent.

The human rights provisions included or attached to each of the individual treaties will be analyzed to measure the dependent variable.³ Labor rights, despite being under the broader definition of human rights, will not be measured in this analysis. This is because labor rights are included in a separate labor provision as part of the “Sustainable Development Chapter”, which technically can be distinguished from the “Essential Elements” clause on general human rights. Furthermore, labor rights are “positive rights”⁴ that have direct relations to the production of goods and therefore trade itself, in that it can be in states’ self-interest to enforce and abide by these international norms (Burtless, 2001). This may create a bias towards this study’s goal to observe whether the EU’s economic stake trumps over human rights objectives. In this analysis, I observe only the “negative rights” under the UDHR and ICCPR that give individuals that give individuals freedom from state intervention and abuse, such as freedom of speech, religion, life, and torture.

The timeframe for collecting variables is from the year 2009 to 2018, a meaningful decade in the EU’s trade-human rights nexus after the Lisbon Treaty as well as a sufficient period to capture and compare the trend in trade flows. 2009 was a pivotal year for the EU when the Lisbon treaty came into full effect, which allowed the European Parliament—the main advocate in linking human rights to EU external relations (Gfeller, 2014; Jung & Koo, 2018)—gained co-decision

³ List of bilateral treaties can be found at https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_pending
<https://ec.europa.eu/trade/policy/countries-and-regions/>

⁴ While "negative rights" are rights "from" repression, positive rights entitle individuals rights "to" a certain standard of welfare provisions, such as labor, education, and health.

power in the EU policymaking process, and when EU's obligations of human rights in external relations became binding by EU law (TEU). The data for the independent variables are located from "EuroStats", which provide metadata on EU trade.

2. Dependent Variables: Scope, Strength, and Enforcement

Drawing from Koo and Kim (2018)'s trade and issue linkage literature, there is merit to measuring human rights-trade linkages in terms of strength and scope, the dependent variable. In their analysis of the East Asian countries' environment and trade linkage that brings in Haas' (1980) issue linkage framework, they investigate whether environmental provisions in Free Trade Agreements are tactical or more substantial in nature. They use "strength" and "scope" as indexes to determine these issue linkage mechanisms. Haas' linkage mechanism can be broken down into three components, tactical, substantial and fragmented—Koo and Kim view that as scope and strength of the linkage increases, tactical linkages become more substantial. In their research, tactical linkages, lower in strength and scope, do not include provisions that refer to enforcement mechanisms directly and are less detailed in manner. The strength level is coded from 1 to 3—3 explicitly includes dispute settlement mechanisms where 1 does not, and 2 only tacitly does so. For the scope of linkage, the levels are broken down from 0 to 3, where provisions are more generic in 0 and more specific as they approach 3. This model can also be useful and applicable to understanding the EU's human rights and trade linkage mechanism.

Bringing this framework into the analysis, the strength can be coded in terms of whether provisions include essential elements and the non-execution clause. I adopt Prickartz and Staudinger (2019) and the Council of the European Union's classification of human rights provisions, and have coded the strength variable in four levels on a scale from 0 to 3: 0) Clause with no human rights element, 1) Clause that only contains essential elements, 2) Clause that

contains both essential elements and a “Bulgarian” non-execution clause, and finally, 3) Clause that contains both essential elements and a “Baltic” non-execution clause. The Bulgarian clause, compared to the Baltic clause refers to a dispute settlement mechanism and a consultation process before being able to take appropriate measures. For the scope of linkage, I adopt the EPRS(2019) ‘s classification of human rights clause in trade by its substantive content, also on a scale from 0 to 3: 0) Clause that does not contain any human rights elements 1) Clause with no reference to international norms but includes generic human rights elements 2) Clause with reference to either international norms or European norms 3) Clause with reference to both international and normative European norms. My main dependent variable adds up the scope and strength scores to observe how closely human rights and trade are linked together.

Lastly, the level of visible enforcement of the linkages will be examined. No studies have yet touched upon the EU’s enforcement behavior, mostly due to the very little cases of the EU overtly taking action in times of a violation, and no existing case of withdrawal or suspension. For this analysis, I exclude the pending agreements and those without essential elements, since an agreement and a human rights clause have to be in place in order for it to be activated. Giving each country a default value of 1, whenever an actual activation of human rights clause took place between 2009 to 2018, the country is coded as 2. While my initial coding included a scale up to 3, which was the EU taking necessary measures, 2 remains the highest level since there was no such case. I then observed all of the EP resolutions on human rights issues between the year 2009 to 2018 and coded the countries as 0 when a resolution on the human rights violations of the country was issued, yet the EU chose not to activate the human rights clauses. This means that countries that had neither human rights-related EP resolutions nor activation of HR clauses were given a score of 1, in which I viewed non-identification of human rights violation and non-activation of

the clause as a level in between action and inaction. Compared to the other dependent variables, the regression model for enforcement has fewer observations and drops the signed year variable(control) which is unrelated to enforcement itself.

<Table1> Description of Dependent Variables

	Strength+ Scope (0-6)	Strength (0-3)	Scope (0-3)	Enforcement (0-2)
Mean (SD)	3.64 (1.34)	2.05 (0.77)	1.56 (0.78)	0.58 (0.52)

3. Independent and Control Variables

First, to examine whether the EU's linking behavior becomes weaker when economic benefits are high, I examine the export shares of the EU with its trading partners. I use the average export share values between the years 2009 to 2018 of each country. This also captures the EU's export dependence on the partner country. For the second hypothesis, to measure resource dependence I use two indicators. First is average import shares between 2009 to 2018, and for the other, I collected data on average import shares of energy (2009-2018), resource that the EU is the most trade-dependent on. Here "dependence" indicates a dependence on the import of primary commodities. While EU economy is mostly self-sufficient, it is still largely dependent on energy sources, especially fossil fuels as gas.⁵

The control variables included in the OLS model are: level of human rights practice, economic integration, whether the country is a signatory state of the European Council of Human Rights(ECHR), whether the country is a GSP/GSP+ beneficiary, and the year in which the trade negotiation was concluded. I use the Freedom House index as an indicator for measuring the level

⁵EU's most dependent resources https://ec.europa.eu/eurostat/statistics-explained/index.php/Extra-EU_trade_in_primary_goods#EU_is_a_net_importer_of_primary_goods

of human rights practices in each country, a widely used index to measure civil and political rights— 1 represents most free, and 7 as the least, therefore higher numbers represent worse human rights practices.⁶ The average “freedom rating scores” from the year 2009 to 2018 will be used. For each year I have added the civil rights score and the political rights score, hence the range of values is from 2 to 14. Using these freedom rating scores as a control variable allows to observe whether the linkages are indeed implemented to improve human rights situations in counties with low freedom scores, or rather used as a tactical tool that can be compromised by economic interests.

The economic integration variables are agreement types coded as 1) Customs Unions, 2) Free Trade Agreements, and 3) Partnership and Cooperation Agreements. This serves as a control variable to show the highest (1) to lowest (3) economic integration. Another important control variable, ECHR signatory state, is added, which also accounts for whether the country is a European trading partner. Countries that are not member states of the EU but are considered European Neighbors and a member of the Council of Europe are coded as indicators. Since these countries are bound by the ECHR human rights regulations, this membership may have effect on how human rights provisions are laid out in trade agreements. The countries include the Republic of Moldova, Albania, Russia, Ukraine, and so on. The GSP and GSP+ beneficiary status is also included as indicators, as human rights conditionalities attached to these preferences may more or less influence the conditions added in the bilateral trade agreements. Lastly, the year in which each negotiation was finalized is included as an indicator to account for the legal obligation that was created after the Lisbon Treaty, therefore coded as 1 when the treaty was signed (or negotiations completed) after 2009. This variable may also examine whether human rights-trade linkage has

⁶ Data can be retrieved from <https://freedomhouse.org/report/freedom-world-2018-table-country-scores>

increased in strength and scope after the treaty came into effect.

<Table 2> Description of Independent Variables

	Export Share	Import Share	Import Share (Energy)	Freedom score (2-14)	Agreement Type (1,2,3)	Post- Lisbon =1	ECHR =1	GSP =1
Mean(SD)/ Observations	0.43 (1.15)	0.45 (1.29)	0.63 (3.13)	6.86 (3.53)	2.10 (0.38)	61	16	28

V. Analysis and Discussion

<Table 3> Regression Results for Strength and Scope

DV \	Linkage Score			Scope			Strength		
Intercept	-0.25 (0.64)	-0.56 (0.64)	-0.86 (0.70)	-1.1** (0.36)	-1.21** (0.36)	-1.45***	0.77* (0.38)	0.58 (0.39)	0.51 (0.43)
Export Share	-0.38*** (0.10)			-0.13* (0.06)			-0.24*** (0.06)		
Import Share		-0.32*** (0.09)			-0.12* (0.05)			-0.20*** (0.06)	
Energy Import			-0.10* (0.04)			-0.06** (0.02)			-0.04 (0.02)
Freedom Score	0.05 (0.03)	0.06 (0.03)	0.07 (0.03)	0.01 (0.02)	0.01 (0.02)	0.02 (0.01)	0.04 (0.02)	0.04* (0.02)	0.04* (0.02)
Post-Lisbon	0.51** (0.23)	0.54* (0.22)	0.52* (0.23)	0.10 (0.13)	0.11 (0.13)	0.10 (0.13)	0.36** (0.13)	0.38** (0.14)	0.36* (0.15)
Economic Integration	1.62*** (0.30)	1.73*** (0.30)	1.83*** (0.33)	1.20*** (0.17)	1.24*** (0.17)	1.34*** (0.18)	0.48** (0.18)	0.55** (0.19)	0.55* (0.21)
GSP Beneficiary	-0.57* (0.26)	-0.57* (0.26)	-0.52* (0.36)	-0.25 (0.17)	-0.25 (0.15)	-0.25 (0.15)	-0.40* (0.16)	-0.39* (0.16)	-0.36* (0.17)
ECHR Signatory	0.95** (0.35)	0.83* (0.36)	0.80* (0.03)	0.84*** (0.20)	0.80*** (0.21)	0.86*** (0.19)	0.10 (0.21)	0.03 (0.22)	-0.06 (0.22)
Observations	103	102	103	103	102	103	103	102	103
R Squared (Adjusted R)	0.35 (0.31)	0.35 (0.32)	0.31 (0.27)	0.41 (0.37)	0.40 (0.37)	0.42 (0.39)	0.30 (0.25)	0.29 (0.25)	0.21 (0.16)

Coefficients (standard error), *p<0.05, **p<0.001, ***p<0.0001

As the purpose of this study is to examine the general association between economic interests and

how closely or weakly the human rights and trade are linked, and its direction, I use the OLS regression model. My main dependent variable is the total “linkage score” which is the added value of the strength and scope, both of which are also regressed on independently. The regression outcomes show the change in the linkage scores as export and import levels increase.

Table 3 summarizes the OLS results for three regression models on three different dependent variables, which are linkage score (strength+scope), strength, and scope, applying the 0.05 significance level. What is most noticeable in the table is that for the main dependent variable (total linkage score), export shares, import shares, and energy import shares all had statistically significant negative associations. This was consistent even when divided into the strength and scope factor, where the two variables’ Cronbach Alpha is 0.67. In fact, the higher the import and export shares, the linkage was weaker, supporting both of my hypotheses. What is also notable is that export shares have higher coefficients across models than other variables of interest, where a unit increase in export shares resulted in a 0.38 lower total linkage score. This indicates that the EU is more willing to make concessions to attaching human rights clauses when it was exporting more to the partner country. The coefficients and p-values for the freedom scores showed statistically insignificant results, support the inconsistency argument, where the country’s actual human rights practices had little to do with the stringency and scope of the human rights clauses.

Other factors such as economic integration (agreement type) show that linkage scores are higher towards countries that the EU has a weaker economic integration with. Also, the linkage was looser with GSP+, GSP beneficiary countries, mostly in terms of strength, which may be explained by the fact that human rights enforcement and obligations are more important in these schemes themselves than in bilateral trade agreements. In fact, in GSP and GSP+s, human rights obligations are much more detailed and stringent in terms of enforcement, where there were even

withdrawal cases in times of severe human rights violations. However, among the ECHR signatories, which are mostly European states, the scope was higher. This would be explained by the fact that trade agreements with most European countries include European human rights norms by default, along with international human rights norms. Finally, it is predictable, yet notable that the countries that the EU signed an agreement with after the Lisbon treaty came into effect in 2009 were more likely to have a higher linkage score, especially in terms of strength. This trend is likely to continue in the EU's future trade agreements.

<Table 4> Regression Results for Enforcement

	OLS Enforcement			OLOGIT Enforcement		
Intercept	1.50*** (0.29)	1.48*** (0.30)	1.58*** (0.32)			
Export Share	-0.06 (0.04)			0.66 (0.26)		
Import Share		-0.03 (0.04)			0.68 (0.26)	
Energy Import			0.007 (0.01)			1.005 (0.15)
Freedom Score	-0.06*** (0.02)	-0.06*** (0.02)	-0.06 (0.02)	0.72*** (0.95)	0.72*** (0.10)	0.74*** (1.06)
Agreement Type	-0.25 (0.15)	-0.24 (0.16)	-0.30 (0.17)	0.13 (1.08)	0.14 (1.07)	0.15 (1.06)
GSP Beneficiary	0.29 (0.16)	0.30 (0.16)	0.32* (0.16)	6.95 (1.07)	6.71 (1.06)	6.40 (1.02)
ECHR Signatory	-0.08 (0.14)	-0.14 (0.15)	-0.18 (0.14)	-0.60 (0.70)	0.47 (0.73)	0.41 (0.69)
Cut Point 1 (0 1)				-6.75** (2.31)	-6.59** (2.27)	-6.05** (2.18)
Cut Point 2 (1 2)				-1.06 (2.18)	-0.98 (2.19)	-0.60 (2.17)
Observations	77	76	77	77	76	77
R Squared (Adjusted R)	0.28 (0.23)	0.27 (0.22)	0.26 (0.21)			

Coefficients (standard error), *p<0.05, **p<0.001, ***p<0.0001

The regression results in table 4 show how only the coefficients for the freedom scores are statistically significant at a 0.05 level, yet they remained very small. Compared to how the agreement was signed, this outcome indicates that enforcement had little to do with economic interests or whether the country was a GSP beneficiary or an ECHR signatory. It is also important to note that the freedom scores have a negative association with the dependent variable, whereas coefficients in the previous models above were positive. This outcome, however, is difficult to interpret as there were less than 10 cases where the human rights clauses were actually activated against the identified violators, yet EP resolutions were issued on 36 countries between 2009 to 2018. This means that most of the least-free states that the EP issued a resolution on were coded as 0 and few as 2. Considering the small number of outcome categories and the skewed distribution, I also applied the OLOGIT on the enforcement variable as an alternative method of analysis. In table 4, while the coefficients for independent variables signify consistent outcomes with the OLS models, the cutoff points show how the 1 and 2 are hardly differentiated to measure the actual activation of human rights clauses. These results likely show that in terms of enforcement, in most cases the EU chose not to take action even when human rights violations were identified, and this behavior was not associated with economic interests. The regression outcome depicts the EU's general reluctance in enforcing human rights clauses in bilateral trade agreements, even when grave human rights violations were detected. A seemingly counter-intuitive outcome of enforcement calls for further case studies, and analysis on whether clauses would be activated less on the worst human rights violators because of an expected ineffectiveness and even worse undermining of human rights situations, as some studies have already shown (Peksen, 2019).

VI. Implications and Conclusion

This study's main contribution is in its first-time attempt to empirically test the "inconsistency" in the EU's human rights-trade nexus that European legal scholars have identified, and in that it seeks to explain the reason behind this behavior. The inclusion and observation of "enforcement" as a dependent variable is also a novel approach in understanding issue linkage mechanisms. While many factors such as institutional politics and member state interests may drive trade negotiations, it is evident that economic trade interests are influential factors in bilateral trade agreements. Statistical models show that in terms of the trade agreements themselves, the clauses were inconsistent, in that the EU's application of human rights clauses were unrelated to actual human rights practices of the country, but was willing to make concessions when it was exporting or importing more from the country. This was also true for energy imports, supporting my resource-dependence hypotheses and previous literature. These outcomes suggest that these "essential elements" may not be as "essential" to trade agreements as the EU claims. However, when it comes to the enforcement of human rights clauses, economic interests did not play a role, but the OLOGIT outcome shows how hesitant the EU is in the actual activation of essential elements in trade to begin with.

The study, however, provides an explanation for only a segment of EU behavior and views the organization as a unitary actor. In reality, multiple actors are involved in the EU's policymaking process. In future research, the interests of member states, Members of the European Parliament, the political dynamics of European institutions—especially the European Parliament and the Commission—will be taken into account. Another alternative explanation would be that the EU could be more assertive towards states that are more dependent on EU trade. As with the sanction theories, the linkage may be weaker for countries that are less dependent on EU trade and have the

capacity to divert trade routes. However, regression outcomes using trade dependence—the EU imports divided by national GDP of the individual partners—as an independent variable showed no significant relationship with the linkage scores (see Appendix). Furthermore, substantive components and details of human rights provisions may not be adequately captured in this regression model. The EU could impose a longer list of human rights conditionality, and ones that are so controversial as to undermine domestic policy and affairs. The death penalty, for example, is not illegal under customary international law and domestic public opinions tend to be greatly divided on this matter, but the EU continues to urge its trading partners to abolish it (Jung & Koo, 2018). Therefore, in-depth qualitative studies may provide further information that fills in the gaps of this research.

Finally, including the EU's major trading partners such as the US and China may greatly support or weaken this study, as FTA negotiations with these economic powers are still ongoing and hence omitted in the study. Yet, this may be an indicator of how future EU trade agreement negotiations will play out with these states where there are evidently high economic stakes on the EU's end. It would be worthwhile to investigate the ongoing negotiations of EU trade agreements and observe how much concession on human rights elements the EU is willing to make, or how these may be leveraged as political bargaining tools.

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<Appendix 1> Regression Results using the Partner States' Trade Dependence

	Total Linkage
Intercept	-0.21 (0.69)
Dependence	-1.20 (2.32)
Freedom	0.06 (0.03)
Econ.Integration	1.56 (0.33)***
GSP	-0.51 (0.28)
ECHR	0.56 (0.39)
Post-Lisbon	0.52 (0.25)*
Observations	103
R Squared (Adjusted R)	0.27 (0.23)

Coefficients (standard error), *p<0.05, **p<0.001, ***p<0.0001

Dependence: Average of EU import/ National GDP through 2009-2018