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An aerial photograph of a coastal city, likely San Francisco, showing a dense urban area with various buildings and a large cargo ship in the harbor. In the background, there are mountains under a hazy sky. A single bird is visible in flight over the water.

EUROPEAN APPROACHES TO MIGRATION AND TRADE

Cover page: Standing on the Rock of Gibraltar at clear days one can see across the Strait the contours of Africa, and all the busy trading ships making their way across the Mediterranean Sea.

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European Approaches to Migration and Trade

Abstract

Among academics there is a strong critique of the European Union's strategy to include migration measurements within trade agreements. While some trade agreements facilitate migration in accordance with liberalism, this thesis looks at two agreements that do not. In the Cotonou agreement with African, Caribbean and Pacific states the EU agreed to regulate migration. In the Euro-Mediterranean Partnership with countries from around the Mediterranean the EU agreed to restrict migration. What explains this difference? That question is answered in this thesis through a Liberal Intergovernmentalist case study of the two agreements. In short, within the scope of the case studies it appears that sharing a track record of agreements increases the likelihood of a European preference for regulation. However, if the other party is geographically close to conflictual areas the likelihood of a restrictive preference increases. Lastly, when the EU prefers restriction, power asymmetry affects the possibility to impose this preference on an often unwilling third party.

Keywords: Migration; Trade; Liberal intergovernmentalism; European Union

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Table of contents

List of figures	7
1. Introduction	8
Thesis roadmap	10
2. The migration-trade nexus.....	12
2.1. A short history of free trade agreements	12
2.2. A short history of migration policies.....	14
2.3. The migration-trade nexus.....	14
2.3.1. The migration-trade nexus in practice	16
3. Theoretical framework	18
3.1. Liberalism and realism on trade and migration	18
3.1.1. Liberalism	18
3.1.2. Realism	20
3.2. Liberal Intergovernmentalism as a procedural model	21
3.3. Explanatory variables.....	26
3.3.1. Variables on level I.....	26
3.3.2. Variables on level II	28
3.4. Conceptual model	29
4. Research design	34
4.1. Case study methodology.....	34
4.2. Process tracing method.....	35
4.3. Data collection.....	37
4.4. Hypotheses and operationalisation.....	38
4.4.1. Hypotheses on level I	38
4.4.2. Operationalisation of level I	39
4.4.3. Hypotheses on level II	40
4.4.4. Operationalisation of level II	40
4.5. Research considerations.....	41

5. Case descriptions	42
5.1. Cotonou agreement.....	42
5.1.1. Domestic preference formation.....	42
5.1.2. International negotiation.....	47
5.2. Euro-Mediterranean Partnership	51
5.2.1. Domestic preference formation.....	51
5.2.2. International negotiation	54
6. The double-edged sword of civil society	57
7. Case discussions.....	59
7.1. Trade and migration in the Cotonou agreement.....	59
7.1.1. Domestic preference formation.....	60
7.1.2. International negotiation.....	63
7.2. Migration and trade in the EMP agreement	64
7.2.1. Domestic preference formation.....	65
7.2.2. International negotiation	67
8. Synthesis: difference between European trade agreements.....	68
8.1. Domestic preference formation	70
8.2. International negotiation.....	71
8.3. Assessment of hypotheses.....	72
9. Conclusions.....	74
9.1. Global migration governance	76
9.2. Reflections for future research	77
References.....	79

List of figures

Figure 2.1. Number of preferential trade agreements signed per year	13
Figure 2.2. The twelve AANZFTA countries	17
Figure 3.1. Global Public Goods Theory and migration governance.....	20
Figure 3.2. The conceptual model with the key concepts.	30
Figure 3.3. Liberal Intergovernmentalist framework of analysis	31
Figure 3.4. Comprehensive conceptual model.	32
Figure 4.1. Details of the selected cases.....	35
Figure 4.2. Explaining-outcome process tracing.	37
Figure 5.1. Protests in Ghana against EPAs	50
Figure 5.2. Systematic relationships between political and economic factors.....	52
Figure 8.1. Basic economic figures for the ACP and EMP	72
Figure 9.1. Hypothesis assessment overview.....	76

1. Introduction

Among academics there is a strong critique of the European Union's strategy to include migration measurements within trade agreements (Adepoju, Van Noorloos, & Zoomers, 2009; De Haas, 2015; Lavenex, 2006; Lindstrom, 2005; Van Houtum, 2010). The worldview of the European institutions can be considered liberal, as they favour the lowering of transaction costs of the exchange of goods, services and people¹. However, in trade agreements that are similar at first sight, the European Union has included different forms of migration clauses. Generally speaking these clauses could facilitate, regulate or restrict movements of people and goods. While there are trade agreements that facilitate migration, the European Union seems to favour those with a restrictive or regulative nature.

In my previous research I concluded that EU migration policies nowadays tend to be directed by security measures, while previously they were more closely coupled to development policies (Groenendijk, 2015). Other researchers such as the renown Hein De Haas (2005) and Stephen Castles (2004) also found that migration policies have a flawed rationale based on myths about security that cause the policies to fail to effectively manage immigration. Furthermore, the Europeanisation of migration, development, territorial and trade policies make the EU an important level on which decision are made that have a large impact. Since a few years, migration towards the European Union has become an important topic of a heated debate. Similarly a debate springs up now and then when the EU undertakes another international trade agreement, such as CETA and TTIP. Within the 2005 European Consensus on Development, development policies are linked to issues from other policy areas, such as migration or trade. This trend is also found within European states, e.g. the Dutch Ministry for Foreign Trade *and* Development Cooperation. As a consequence, when two policy fields have different views on an issue, such as the development field and the security field on migration, one or the other is bound to lose influence. Within the EU's grand trade agreements, a wide range of issues are being linked. Against the

¹ See for example the priorities of the Commission on http://ec.europa.eu/priorities/index_en

background of these societal debates this research attempts to pinpoint some of the difficulties of linking migration to other issues in trade agreements.

With the current societal debate and pressure on the EU in terms of both migrants and trade agreements it is interesting to research why exactly the EU seems to pursue regulation in one agreement and restriction in another. A resolution of this puzzle is badly needed, for the EU continues to ramp up its efforts on trade agreements, and it is only evident that migration will be one of the non-trade issues included in them. Current research has consolidated on statistical analyses of databases of PTAs and their effects, but more research is necessary that “open[s] the black box of trade agreements and concentrate on variation across PTAs in design and content rather than treat all PTAs as if they were the same” (Dür, Baccini, & Elsig, 2014, p. 26). This thesis will attempt to shed some light in that black box. Thus, the question that will guide the research is as follows:

What explains the difference in migration clauses in trade agreements signed by the European Union?

The theoretical framework consists of the migration-trade nexus on a liberal and realist foundation with Liberal Intergovernmentalism as an overarching structure. Liberal Intergovernmentalism incorporates both liberal and realist mechanisms in a two-level analysis of preference formation and international negotiation that lead to an agreement (or not). Originally Liberal Intergovernmentalism is a theory of European integration, but in this thesis the theory will, although with some important annotations, be applied to the process of preferential trade agreements (PTAs). This choice is made for the large consideration that the theory gives to the stakes and interests of the parties that are involved on any level. More important however is that this research will attempt to add knowledge to the field of migration studies. Current research on the migration-trade nexus has been limited to statistical inferences from general flows of migration and trade (Felbermayr & Toubal, 2012) as well as PTA correlates (Dür et al., 2014). The objective of this research therefore is to analyse the migration-trade nexus and provide preliminary knowledge on migration clauses in

(European) trade agreements as well as the applicability of Liberal Intergovernmentalism on European foreign affairs. This will be done by making an assessment of liberal and realist variables and probe them in two most similar case studies.

The inconsistency between the liberal notions of free trade agreements and the current European practice can be noticed in the Cotonou agreement, signed with 79 African, Caribbean and Pacific states (ACP), and the Euro-Mediterranean Partnership (EMP), a set of agreements signed with 9 states (plus Libya and Syria, which are temporarily suspended). Both were initiated when the WTO was established and the liberal narrative of free movement of goods and people was at its heyday. Both PTAs were also initiated by the EU, and within a similar timeframe. Nonetheless the Cotonou agreement initially tried to regulate migration while the EMP is composed of restrictive language. Meanwhile, research has shown that with an increase in economic development more people have the capability to migrate, and will do so as long as the economy does not develop further (Castles, 2004; De Haas, 2005). Other factors that have been recognised as influencing the flows of migration are *inter alia* the institutional legacy, economic development and geographical proximity (Abel & Sander, 2014; Bakewell, 2008; Berthélemy, Beuran, & Maurel, 2009). Ironically, Orefice (2013) found statistical evidence that trade agreements themselves might increase migration flows. Migration is hence described as a means of development and would fit within the liberal perspective of the EU, but the EU is actually being criticised of not pursuing this (Castles, 2004; De Haas, 2015; Nyberg-Sørensen, Van Hear, & Engberg-Pedersen, 2002). In a case study of the Cotonou and EMP agreements the preference formation and international negotiation levels will be scrutinised with the process tracing method in order to open up the black box that previous research delineated.

Thesis roadmap

The structure of the thesis is as follows: first chapter two will give short histories of free trade and migration and synthesise them in an illustrated migration-trade nexus. After that the thesis kicks off with the theoretical framework, which is centred on

Moravcsik's Liberal Intergovernmentalism. Although the actual negotiations are more complex than Liberal Intergovernmentalism portrays, it can serve as a useful investigative instrument. Chapter four will elaborate on the methodological choices to come to an answer for the research question. The theoretical and methodological approach shall then be applied to the Cotonou and EMP trade agreements signed by the European Union in the subsequent chapters. It is expected that the Cotonou has migration clauses of a more regulative nature because of its path-dependency as a follow-up agreement after centuries of previous agreements with the African, Caribbean and Pacific states. The EMP agreement did not have such a past and furthermore, the Mediterranean signatories were less collectively organised than the ACP states. Thus the EU was more powerful to impose its driving motive of securing its borders, implying that proximity and the power constellation play a large role as well. Ultimately, chapters eight and nine will conclude with a synthesising and discussion of the results that came out of the analysis and reflect on any consequences of this project for future research

2. The migration-trade nexus

The following sections will provide short histories of free trade agreements, international migration and the synthesis of the two phenomena in the migration-trade nexus. It is against this background that the trade agreements will be analysed. The strands of literature on migration and development have only recently been linked; the migration and trade nexus is even more uncharted. Hopefully this thesis will colour in some of that chart by reviewing the Cotonou and EMP trade agreements². So far it has become clear that, at least for the linking of free trade and migration in European policies there is an ambiguity between the liberal outlook on the free movement of people and goods on the one hand and the limitation of the movement of people siphoned into migration policies from the security-doctrine as the following sections will show.

2.1. A short history of free trade agreements

After the Second World War a group of states set up the General Agreement on Tariffs and Trade (GATT), which later became the World Trade Organisation (WTO). Rather than a true international organisation the GATT was a series of negotiations on free trade between its signatory members (WTO, n.d.-b). The rounds lasted several years, and the 1986-1994 round (the Uruguay round) ultimately led to the creation of the WTO to replace the GATT structures (WTO, n.d.-b). While some agreements were negotiated after the Uruguay round, the follow-up Doha round is still in the process of negotiation.

The Uruguay round was considered the biggest reform in its field because of the wide range of topics it covers (WTO, n.d.-b). While previous agreements mainly covered tariffs, anti-dumping and trade barriers, the Uruguay round provided for fifteen different subjects, ranging from agriculture to intellectual property and dispute settlement; as well as providing a negotiation agenda for the years to come (WTO, n.d.-b). With the final Uruguay package also came the incorporation of GATT into the newly formed WTO. The agreement tasked the WTO with the administration of the

² Although in legal terms there might be subtle differences, I will use trade agreement, preferential trade agreement (PTA) and free trade agreement (FTA) more or less interchangeably.

signed agreements, providing a forum for talks and dispute settlements and providing trade policy expertise.

One of the Uruguay Round's "landmark achievements" (WTO, n.d.-a) is the General Agreement on Trade in Services (GATS) from 1995. It is inspired by the GATT but focuses on services, and thus people, instead of goods. It is signed by all WTO members and covers all service sectors except for the governmental and air transport. Since it is a trade agreement, it centres on the liberalisation of the provision of services across borders (e.g. banking), their consumption (e.g. tourism) and the physical presence of suppliers from one state in another (e.g. hotel chains) (WTO, n.d.-a). While the last mode also involves 'natural persons' this is laid down less strict than the other three, for "Members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis" (WTO, n.d.-a), an exception that is not made for corporate entities.

With the historic path in mind, this thesis will start its analysis with the Uruguay round of the WTO talks in 1995. This round embodied the liberalisation of trade and the increase in trade agreements (figure 2.1). However, why is seemingly freedom-restricting language welcomed in freedom-promoting texts? This will be addressed in this thesis.

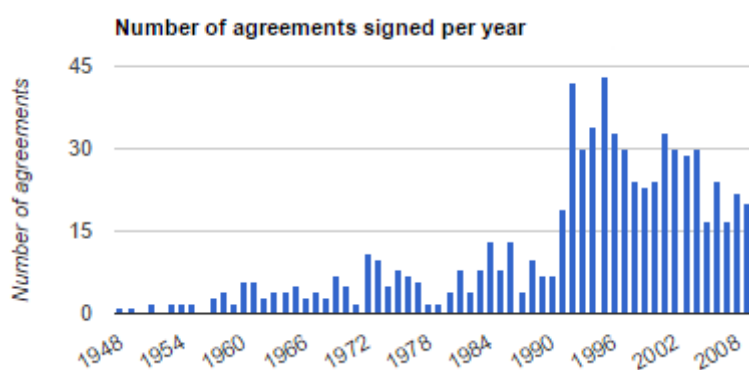


Figure 2.1. Number of preferential trade agreements signed per year (source: DESTA, 2016)

2.2. A short history of migration policies

In a paper for the United Nations, Hein de Haas (De Haas, 2007, pp. 3–7) reviewed the outlook on migration in policies and academia. He found that there are generally four periods with a different paradigm on migration since the Second World War. In the first period, up to 1973, both research and policies tended to be rather optimistic of migration, it would help developing countries to gain capital and knowledge via the migrants. In the years between 1973 and 1990 the pendulum swung the other way, and ideas on brain drain and dependency took flight. Between 1990 and 2001 some of these were adjusted (after empirical research), but migration policies started to get stricter and decoupled from development-thinking. After 2001 this decoupling led to a duality in the view of migration. Within the field of development policies, ideas of brain gain, remittances and diasporas led to a new optimism. In the field of migration policies however, the tightening and securitisation continued, with some exceptions for highly skilled migrations.

In another evaluation of migration policies, Rinne (2013, p. 548) found that policies aimed at the entrance and selection of immigrants were more effective when they are closely linked to the labour market, such as the point-based systems of Australia and Canada. For the increasing demand for high-skilled labour the channel of migration is being seen as the optimal solution to meet that demand (Rinne, 2013, p. 531). It also became clear that labelling these policies as ‘welfare magnets’ is only supported by weak empirical evidence; Rinne found that there is no empirical evidence for excessive participation of migrants in social welfare (Rinne, 2013, p. 535). Any divergences could be explained by a mismatch of qualifications and labour demands and inadequate programmes to settle immigrants in the host country, such as language training (Rinne, 2013, p. 535).

2.3. The migration-trade nexus

Synthesising the narratives on free trade and on migration into a migration-trade nexus is a relative recent endeavour. Based on citations in Google Scholar, the literature specifically connecting trade and migration is only a few years old, probably as an offshoot of the migration-development nexus literature focussing on the impact

of remittances and diasporas on economic development (Felbermayr & Toubal, 2012). In this nexus migration is another factor of production as part of economic transactions (Lavenex & Jurje, 2015, p. 259). On the one hand the nexus focuses on the added value of migration to international trade flows (Parsons, 2012). On the other hand there is the research on the 'commodification' of migrants, especially highly-skilled migrants (Lavenex & Jurje, 2015, p. 260). While production processes that require low-skilled labour are relocated from developed to developing countries, production processes and services that require highly educated labour are a reason for developed countries to compete with each other and attempt to acquire that labour force outside their borders. As such developed countries have policies to make it attractive for foreign human capital to migrate, and some developing countries have policies to promote that migration as well, with the purpose of receiving remittances and knowledge in the long term.

As the previous sections already mentioned, in the decades after the Second World War globalisation and the liberalisation of trade took flight, while migration policies tended to swing between liberalisation and protectionism. As the largest economies moved towards knowledge-based industries or service economies, the demand for highly-skilled labour intensified. This can be seen in the 'mode 4' negotiations of the GATS in the WTO (Lavenex & Jurje, 2015, pp. 261–273). During the negotiations the developing countries argued that liberalisation would enforce an asymmetrical relationship with the developed countries, whose established service industries would obtain relative free access to the emerging markets. However, in the next round on labour migration the tables were turned. The developing countries argued in favour of liberalising labour migration, while developed countries were more reluctant. It was only until after the Uruguay Round was completed that a compromise was found and formulated in the Annex on Movement of Natural Persons: "Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services". This left the scope and implementation open for states themselves to negotiate the details of (service) personnel migration. And as we can see, the EU turned out to negotiate these details of a regulative nature in one agreement and with a restrictive nature in another.

Over time, migration and border control became the façade and the “last bastion of sovereignty” (Dauvergne, 2014, p. 92). Through (technical) developments and securitisation, crossing the border became “intimately intertwined with nationhood” (Dauvergne, 2014, p. 79). Because the economy needs people just as it needs other factors of production, tension arose between pursuing open and closed borders. And PTAs are at the forefront of the paradoxical clash between states’ preferences on trade and migration, or economy and security as some politicians tend to frame it. This does also make PTAs the forefront of migration research, as much has still to be studied on the topic. Before going into how exactly this thesis will be laid out, a short description of the best case scenario of liberalising migration in trade agreements is provided first.

2.3.1. The migration-trade nexus in practice

In 2009 the Association of Southeast Asian Nations (ASEAN) signed a free trade agreement with Australia and New Zealand (AANZFTA, see figure 2.2). From a liberal standpoint, this agreement is the textbook example of trade agreements. It eliminates tariffs, works on compatible regulations and lowers transaction costs, among other things. Relevant for this thesis are the migration clauses. These clauses too follow the liberal line of thought and facilitate migration between the signatories. Take for example the following clause on the objective of the migration chapter:

“Establish streamlined and transparent procedures for applications for immigration formalities for the temporary entry of natural persons to whom this Chapter applies” (AANZFTA, 2009, para. 9).

This has resulted in additional bilateral as well as regional agreements, in which the signatories of the AANZFTA grant full working rights to family members of the migrant and visa concessions for certain professions (including low-skilled ones) (Lavenex & Jurje, 2015, p. 276). This shows that the FTA goes beyond the GATS mode 4 compromises, and shows that harsh border controls (Australia) do not have to hamper the pursuit of liberalising labour migration in a large regional setting. Studying exactly

how Australia came to solve this clash of interests might be an adequate topic for further research.

It is good to remember how the migration-trade nexus could work out if liberalism dominates the process leading to the agreement. This thesis will start with the observed deviation from this 'benchmark' of liberalism by the Cotonou and EMP agreements and scrutinise the differences among the two agreements. Specifically it is puzzling how in the wake of the Uruguay Round the European Union does not pursue the liberalisation of the movement of people, but rather wants to curb or prevent it. This benchmark furthermore sets the boundaries of what to consider regulation and restriction. Whereas facilitation is an attempt at diminishing transaction costs, regulation tries to capsuleate these costs, for example for certain categories of migrants. Restriction on the other hand is an attempt at raising the transaction costs for migrants, in the hope they will not arrive or undertake their travel in the first place.



*Figure 2.2. The twelve AANZFTA countries
(source: Ministry of Foreign Affairs and
Trade, n.d.)*

3. Theoretical framework

Liberalism puts emphasis on cooperation and interactions between state and societal actors, while realism emphasises state interests and power. Liberal Intergovernmentalism (LI) combines the two by putting liberalism stage forward in the preference formation debates, and realism is in the spotlight during the following international negotiations. The following sections will elaborate on the liberal outlook on free trade and the realist view on power. The two are conjoined in the sections on Liberal Intergovernmentalism and the explanatory variables that are assumed to play a key role in explaining the difference in migration clauses in PTAs.

3.1. Liberalism and realism on trade and migration

Anticipating the Liberal Intergovernmentalist framework, the following parts on liberalism and realism do not intend to outline the complete canon of the two theories but rather focus on the respective concepts that are necessary to come to the explanatory variables later on. This means that the section on liberalism will mainly look into free trade, cooperation and the accompanying governance by state and non-state actors on the national or European level. The section on realism will mainly focus on power (asymmetry) and the competition or clash of interests on the international level.

3.1.1. Liberalism

Assuming that humans are able to cooperate despite of their self-interests, liberalism argues that democracy, economic interdependence and international organisations (the Kantian triangle) lead to an increased inclination to cooperate (Russett, 2013). These three factors constrain the possibility of going to war besides more realist constraints of power, distance and size (Russett, 2013, p. 100). According to liberals (1) democracies tend to refrain from fighting each other; (2) trade is served by peace; and (3) international organisations increase the transactional costs of war but decrease those costs of peace. It is perhaps in this mind-set that after the Second World War the international society started negotiating several far-reaching agreements that resulted in institutions such as the WTO. These institutions are necessary to govern (in the sense of governance, not government) and enforce agreements such as GATT and

GATS in the world economy. This however is only one part of the migration and trade narrative. While the governance of trade is more or less a liberal success story, the governance of migration is more ambiguous; as the next section will demonstrate.

Global migration governance

Global migration governance is a subset of global governance literature, which is considered to be a central part of liberalism. Global governance is here understood as “regulation that exists over and above the level of the nation-state, whether at the international, supranational or trans-national level. [...]There is no single authoritative rule-maker” (Betts, 2008, pp. 3–4). Like the liberal assumptions on trade, global governance gained attention in response to more cross-border issues. However, unlike areas such as trade, global migration governance has no single and clear formal multilateral structure such as the WTO and its underlying framework of international law. Instead global migration governance is fragmented and sometimes incoherent, a ‘plurilateral’ structure (Betts, 2008, p. 6). While there is no specific regime of migration governance, matters of migration are embedded in institutions and forums that have it not explicitly in their legal framework as such (Betts, 2008, p. 11). Two examples of this are the International Labour Organisation (ILO) with labour migration and the UN Environmental Platform (UNEP) with climate migration. Another striking reason for the lack of a global migration regime Betts (2008, p. 17) mentions is that during a conference on international migration western diplomats found that there is no Arabic word for migration without immediately implying citizenship. This lack of common understanding is blocking further cooperation because the costs of interaction are (too) high.

The exception to the abovementioned situation is asylum and the protection of refugees, with a demarcated mandate for the UNHCR and the Geneva Convention Relating the Status of Refugees as an international law. Other types of migration have either marginal, multiple or no institutions operating at all, and on different levels. Borrowing from Global Public Good Theory, Betts (2010) states that different levels of governance are applied to different kinds of migrants (figure 3.1). The Global Public Goods Theory asserts that a global public good has benefits and costs that are non-

excludable (A and B profit equally from a contribution) while the benefits are non-rivalrous (the use by A does not affect the use by B) (Betts, 2010, p. 3). As shown in figure 3.1, governance regarding refugees has benefits (security, human rights) of which all states profit but is not rivalrous (thus it is a global public good). Low-skilled migration governance has benefits that are not rivalrous, but it is partly excludable (mainly based on the geographical context) and thus categorised as a club good. High-skilled migration has costs and benefits that are excludable and rivalrous; there is a limited (and costly) supply of skills.

Type of migration governance	Main level of governance	Type of good
Refugees	Multilateral	Public good
Low-skilled migration	Regional	Club good
High-skilled migration	Unilateral/bilateral	Private good

Figure 3.1. Global Public Goods Theory and migration governance (source: Betts, 2010, p. 3)

Since migration has no dedicated international governance regime, other factors should explain why states, or blocs, prefer it this way. The aforementioned AANZFTA agreement has clauses facilitating migration while the Cotonou and EMP agreements do not. Furthermore, the latter two differ in the degree of non-facilitating as well. In the liberal tradition, this might have to do with the degree of cooperation due to existing (trade) agreements or the (lack of) interdependence for various reasons. It could also be a matter of degree of geography or power asymmetry. It is worthwhile to take a closer look at the differentiation between the two EU-signed agreements, and perhaps find out how Global migration governance could address this.

3.1.2. Realism

The four main assumptions of realism are, according to Wolhforth (2008, p. 133) groupism, egoism, anarchy and power politics. The first, groupism, is described as the human tendency to seek group (solidarity) to survive, but this also creates an environment of conflict with other groups (namely states). Egoism equally follows from the human nature and prescribes that they are driven by self-interest. Anarchy

then is filling the space between the groups, and this means that they are in an international system of self-help. Lastly, the former assumptions lead to a situation in which security and material power are at the front stage of interactions between groups: “means matter most” (Moravcsik, 1996, p. 127). The signature argument of realism is that “If human affairs are indeed characterised by groupism, egoism, and power-centrism, then politics is likely to be conflictual unless there is some central authority to enforce order. [...] Anarchy renders states’ security problematic and potentially conflictual, and is a key underlying cause of war” (Wohlforth, 2008, pp. 135–136).

Following this realist logic, Betts (2008, pp. 14–16) says that states formulate policies on migration based on their economic and security interests and let their power speak to pursue them. To maximise those interests, they attempt to promote desirable migration and to prevent unwanted migration. Therefore, he argues, there is no coherent framework of migration governance. Precisely because states are predominantly preoccupied with their security and survival, they will utilise their power to prevent the conditions of conflicts to spread to their borders.

Lastly, because migration has no dedicated international governance regime, it is quite susceptible to factors of power. The AANZFTA agreement mentioned before was negotiated between relative equal powers. In the cases of the Cotonou and EMP agreements there is a noticeable power difference between the EU and the ACP or EMP countries. However, while this might explain why the AANZFTA is facilitative in nature, it does not explain the difference between Cotonou and EMP at first sight. It requires a closer look at the two negotiations to find out how power and security were played to get to the restrictive outcome in the EMP and the regulative outcome in the Cotonou agreement.

3.2. Liberal Intergovernmentalism as a procedural model

Liberal Intergovernmentalism (LI) is originally developed as a theory of European integration, of which there are plentiful and diverse theories. In this mosaic the theory of Liberal Intergovernmentalism has reached the status of a “baseline theory” for

others to be compared to (Moravcsik & Schimmelfennig, 2009, p. 67). LI became a baseline theory because of its conjunction of liberalism and realism. Moravcsik combines the theories of Structural Liberalism and Institutionalism. The former he regards as founded on Kantian propositions, the latter as sharing definitive assumptions with realism (Moravcsik, 1996). The liberal part focuses on state-society dialogue and variations in preferences, the realist part assumes stable preferences and states as the main actors (Moravcsik, 1996, p. 126). It is from this point that Moravcsik adopts Putnam's two-level game approach in which liberalism occupies the first level, and realism the second. The states are the "masters of the treaty" (Moravcsik & Schimmelfennig, 2009, p. 68) that define their interests in a rational manner and put forward in international negotiations. Moravcsik assumes that states are rational actors, and their preferences are formed through a calculation of the costs and benefits, but on the international level these preferences are taken as stable and act as the basis for bargaining and institution creation (Moravcsik, 1993, pp. 480–482). This approach circumvents the usual 'blackboxing' of state preferences by explaining how they are emerged out of domestic conflict: "groups articulate preferences; government aggregate them" (Moravcsik, 1993, p. 483). This aggregation is the bargaining space the government has on the international level. Important for this thesis is the three-staged framework laid out by Liberal Intergovernmentalism. These stages focus on the states' decision to cooperate with others, for example in a free trade agreement. The three phases are preference formation, negotiation and institutionalisation of the agreement (Moravcsik & Schimmelfennig, 2009, p. 69). The focus of the thesis is on finding explanations for the difference in the included migration clauses and therefore the institutionalisation of those clauses is out of scope, and rather the theory's concepts regarding the preference formation and international negotiation are used.

As the other architect of Liberal Intergovernmentalism Robert Putnam describes how a trade agreement requires domestic and international theories to tell the whole story (Putnam, 1988, p. 430). To integrate both spheres, he argues, we need the concept of two-level games (Putnam, 1988, p. 433). The first level is the domestic sphere, and accounts for the formulation of preferences by governments. The second level is the international sphere, and entails the actual bargaining between governments. Each

leading negotiator has their diplomats besides them at the international table, and parliament, all kinds of agencies and interest groups sitting at the domestic table behind them. “The unusual complexity of this two-level game is that moves that are rational for a player at one board may be impolitic for that same player at the other board” (Putnam, 1988, p. 434). This is especially true for the European Union, where the starting position at the international table is the result of a complex bargaining process at the ‘domestic’ table between member states. This last remark already indicates a first alteration of LI for European foreign affairs.

Another key concept of Putnam is called the ‘win-set’ of a party: the set of negotiated agreements that would be accepted domestically (Putnam, 1988, p. 437). A larger win-set is preferable for it would receive more support. The size of the win-set in turn is determined by the overlap of preferences on the international level (Putnam, 1988, p. 438). A small win-set increases the risk of defection, and makes distributing the gains more difficult (Putnam, 1988, p. 440). The description and analysis of the cases will have to elucidate the preferences, institutions, and strategies that underlie the win-set of the EU (Putnam, 1988, p. 442). The role of civil society for Putnam is played out on the domestic level. Not (only) officials but all kinds of “parties, social classes, interest groups” etc. determine the preference the state will be taking to the next level (Putnam, 1988, p. 432). Moravcsik builds this aspect into his LI framework as well. The domestic actors interact as civil society to “constrain their [state’s] identities and purposes” (Moravcsik, 1993, p. 483). Each interest group has an influence that differs over time, space and topic; the group that fears to lose or hopes to gain the most from a deal is likely to be the most influential in the domestic dialogue (Moravcsik, 1993, p. 483). For the topic of free trade Moravcsik would probably focus on corporate actors, for they could both gain (transnational corporations) or lose (small enterprises) from free trade. For matters of migrations, corporate actors also are one of the more influential actors, but so are the advocates of (possible) migrants and labour unions in case there is fear migrant labour will act as a substitute for domestic labour.

While Putnam (1988, p. 434) already illustrates how staggering the political complexities are for actors in two-level games, the (European) reality is far more

complex. However, some authors attempted at employing Putnam's theory in cases very similar to the ones being analysed in this thesis. In an article on the Barcelona Process (which lead to the EMP), Montanari (2007) adopted the two-level game and drew some conclusions on it. First, the negotiations on both levels should be analysed simultaneously, as they were acted out in real life near-simultaneously as well (Montanari, 2007, p. 1018). This is strengthened by the fact that the European Commission launched the debate and the negotiations on the Cotonou agreement with the publication of a Green Paper in 1996. This opened both the preference formation phase and the international negotiation phase. Secondly, this thesis concurs with Montanari that the focus on the European side is legitimised because the EU initiated the agreements and enjoys a very strong bargaining position (Montanari, 2007, p. 1015). Furthermore, the preference formation phase (Level I for Putnam) itself consists in these cases, just like in Montanari's case, of two levels; the debates within member states and the debate between member states and the Commission. Forwood (2001) in turn wrote a two-level game analysis of the predecessor of the Cotonou agreement and too concluded that an additional level in, or after, the preference formation phase is desirable (Forwood, 2001, p. 424). For the same reasons as above, Forwood decided to focus primarily on the European side. Forwood also inferred a critique on two-level games (Forwood, 2001, p. 432). The many European institutions that have a say on (trade) agreements and through which every decision passes makes that the negotiation goes on and off different levels; rather than Putnam's two tables there is a ballroom full of them. To make it even more complex, the European Council can add or remove tables depending on the issue being discussed and these tables are more often than not immersed in secrecy. "The theory of the two-level game [...] tends to be applied to issue-specific, one-off negotiations between sovereign states" (Forwood, 2001, p. 433). This certainly is not the case with both the Cotonou and EMP agreements, and basically with every EU decision in general. In the end Putnam already mentioned that the two-level game is a metaphor and not a theory, but as such can act as a comfortable starting point towards theory reconciling both spheres (Forwood, 2001, p. 435).

On another note, Moravcsik (Moravcsik, 1993, p. 511) discerns the Commission as a neutral agent. However, since the time he wrote about LI, the Treaty of Rome is followed by new treaties. The Commission now has the competence to not only act as an external representation of the EU but also to propose the initiation and content of trade agreements, although a negotiation mandate by the member states is still required (Meunier & Nicoladidis, 2011, pp. 283–284). This makes the role of the Commissioners of relevant policy areas more important, for their views matter too in the debates and the Commission does at least domestically not act as a unitary actor (Young, 2012). However, in the end for the ratification the Commission still relies on the member states. On the other hand, the European structure of delegation reminds somewhat of LI, in what is called two-tier delegation the competence is delegated from the member states to the EU and there from the Council of the EU to the European Commission, with ratification taking the opposite road (Young, 2012). The role of the Council is pivotal in providing the forum for member states to articulate and aggregate their preferences and monitor the negotiations (Young, 2012).

For these reasons Liberal Intergovernmentalism is used as a procedural model, as a theory of European integration it will be understood more loosely to be conducive to the analysis of European foreign policy and its mechanisms are applied where appropriate. It also justifies the consideration of Level I as a national and European debate, and the relations between the EU and the external party as level II. The European institutions thereby are the place where the two levels are linked (Young, 2012).

In conclusion LI gives a good overview of the causal mechanisms that underlie (European) treaty formation. However, the mechanics of the two-level game do not tell us much about the preferences themselves, or the motivations behind the interests. This is where the explanatory variables of this research step in, for they attempt at providing an answer for the what and why of preference formation and international negotiation.

3.3. Explanatory variables

This section places the aforementioned concepts and assumptions in the framework of Liberal Intergovernmentalism. Different variables start to play an important role in explaining difference between migration clauses at various stages. Each of these variables are hypotheses to have an effect on either the process of preference formation (level I) or that of international negotiation (level II).

3.3.1. Variables on level I

In the preference formation phase it is assumed that history and geography have an influence on the initial preference with which signatories enter the negotiations. The difference in the outcome of migration clauses in trade agreements might be explained by track record and proximity. Both variables consist of two hypothetical ways to explain the difference between migration provisions. Each of these explanations is done through affecting the preferences are aggregated in both national and European political institutions. According to the creator of LI, Moravcsik (1993, p. 481) the interests are “neither invariant nor unimportant, but emerge through domestic political conflict as societal groups compete for political influence, national and transnational coalitions form, and new policy alternatives are recognized by governments.” The ‘black box’ between the explanatory variables and the resulting trade agreement provisions is thus understood as a dialogue by societal actors and political institutions on the vested interests and the common preferences.

Institutional legacy

The variable ‘institutional legacy’ consists of the historical ties between the parties, mainly being a track record of (trade) agreements. Historical ties are proven to affect not only in terms of culture, but also in economic terms (Artal-Tur, Pallardó-Lopez, Said, & Salevurakis, 2017). The expectation is that future signatories who have signed multiple comparable agreements in the past will likely continue on the same basis. Having an established track record of treaties enhances (friendly) diplomatic interaction and, as Moravcsik (1996) discusses, will lead to a more continuous explanation and even convergence of preferences. When chances are high that the parties will meet again “the temptation to defect can be dramatically reduced”

(Putnam, 1988, p. 438). Henceforth international cooperation in the form of a new agreement is made more likely. Felbermayr and Toubal (2010) found evidence that sharing a legacy could improve bilateral trade with up to 16%. Others found evidence that incorporating non-trade issues such as migration is partly dependent on earlier commitment to these issues elsewhere (Milewicz, Hollway, Peacock, & Snidal, 2016). This is explained by the lowered transaction costs of information, as the issues are not completely new on the agenda (Milewicz *et al.*, 2016, p. 3). This translates to the migration provisions as follows: when two players once agreed to regulate migration, it will be harder to change that to restriction. Following liberalism, the agreements become institutions on their own, and, *ceteris paribus*, are perceived as stable. As such it would require much leverage for one player to tempt the other to alter the nature of the migration clause.

Geography

The variable geography is twofold. Key to the geographical closeness of future signatories is their assessment of the domestic economy versus the domestic security. Signatories that are close together are more likely to have more intensive trade flows. Several studies found that geographical proximity is linked to intensive trade flows. Huang (2007) found that for reasons of transportation and familiarity countries tend to trade less with more distant partners. And Blum and Goldfarb (2006) found that consumers consume more goods from neighbouring countries, this even goes for digital products. Moreover, neighbouring countries tend to have relative larger migration populations of each other than of faraway places, and these migrants stimulate trade by importing goods from the home country (Artal-Tur *et al.*, 2017). Proximity might make countries natural trading partners and following a logic of regionalism Magee (2003) demonstrates that this influences the choice for PTA partners. On the national level these high levels of trade gives the commerce and industry sectors leverage to lobby their governments to cooperate (Lechner, 2014, p. 9). This will form the preference of (influential) parts of society to push against restricting migration clauses, as it might harm businesses. However, the other factor entails that if signatory A is close to conflictual areas, signatory B could be more inclined to opt for restricting migration clauses. While some think that 'trade brings

peace' research such as that of Keshk *et al.* (2010) found that it is rather the other way around; in order for trade to prosper, peace has to be present first. Conflicts thus reduce the possibility of trade agreements. To prevent conflicts from spilling over into their own country, governments may decide to place more strict controls on anything or anyone coming from the conflictual region. Recent anecdotal is ubiquitous, such as the reasoning behind the (attempted) 2017 travel ban of the US government against several Middle-Eastern countries. The reason one would sign a trade agreement even with the desire to restrict conflicts from spilling over is that, according to Baccini and Urpelainen (2014), one hopes to stabilise the other's domestic economy through liberalisation and economic reform. As such proximity is a proxy for the clash between trade and security. It could be the case that players A and B are geographically relatively near each other, thus have high levels of investment and trade, but at the same time A is next to C, which has a civil war going on. B then has to navigate between harsh border measures and its economic wellbeing.

3.3.2. Variables on level II

The negotiation phase considers power asymmetry to have an influence on the process started after each signatory has formed its preferences and leading up to the agreement and its institutionalisation. The difference in the outcome of migration clauses in the trade agreement might be explained by whether or not one of the parties is reasonably more powerful than the other.

Power asymmetry

While all states have interests and try to maintain those interests, some have more capabilities to do so than others. When negotiating a trade agreement, this asymmetrical relation correlates with the 'walking away power' either one or both sides could have. Take for example Belgium, which is for its access to the port of Antwerpen reliant on the Dutch commitment to keep the Westerschelde open for shipping. It might be in the Dutch interest to close that off like the other estuaries to avoid floods, or to favour the port of Rotterdam. Therefore the Dutch government would have greater power to walk away than Belgium. This power asymmetry is very likely to play a role in the negotiation on trade agreements. Park (2000) argues that a large

asymmetry in power could mean that both parties focus on different, conflicting, measures. This could result in one of the parties to walk away and pursue an alternative way of accomplishing its preferences. However, Park (Park, 2000) also found that the smaller party might gain a relative advantage from the moment it received irreversible investments from the other. Thus the EU might not automatically possess an asymmetrical power position over the EMP or ACP countries. Pfetsch (2011) concurs and states that power has different dimensions to determine the (a)symmetry in trade agreement negotiations, and neither is it by definition a weakness for the smaller party. Previous research on PTAs and human rights found that power leverage plays a significant role (Lechner, 2014). And powerful actors tend to use that leverage to incorporate non-trade issues into trade agreements (Milewicz *et al.*, 2016). For the clauses on migration in PTAs this could mean that when it is in the interest of the more powerful party to restrict migration, the clauses in the agreement will likely be so. In addition, when the bargaining power of both sides is more or less equal and the (perceived) power asymmetry is downplayed the possibility of regulating migration instead of restricting becomes a possibility. This presumes of course that the EU's counterparts do not pursue the restricting of migration in international trade negotiations.

3.4. Conceptual model

With liberal and realist theoretical assumptions and Liberal Intergovernmentalism as the heuristic framework, a procedural model can be designed as a guide for the analysis. Figure 3.2 visualises this operationalisation of the migration-trade nexus in trade agreements. The assumption is that these concepts will influence the outcome, meaning they might explain the difference between the Cotonou and EMP trade agreements. The procedural model shows how concepts from the migration and trade nexus literature fit with liberal and realist concepts to postulate expectations for the differences between migration clauses in trade agreements. In the first phase, preferences are formulated. These are possibly influenced by the historical legacy, i.e. a track record of agreements, as well as the proximity of the signatories to each other and the proximity of either to conflictual areas. In the next phase power asymmetry might also have explanatory power for the difference between the trade agreements.

The result is one trade agreement with migration clauses of a regulative nature (Cotonou) and one with clauses of a restrictive nature (EMP).

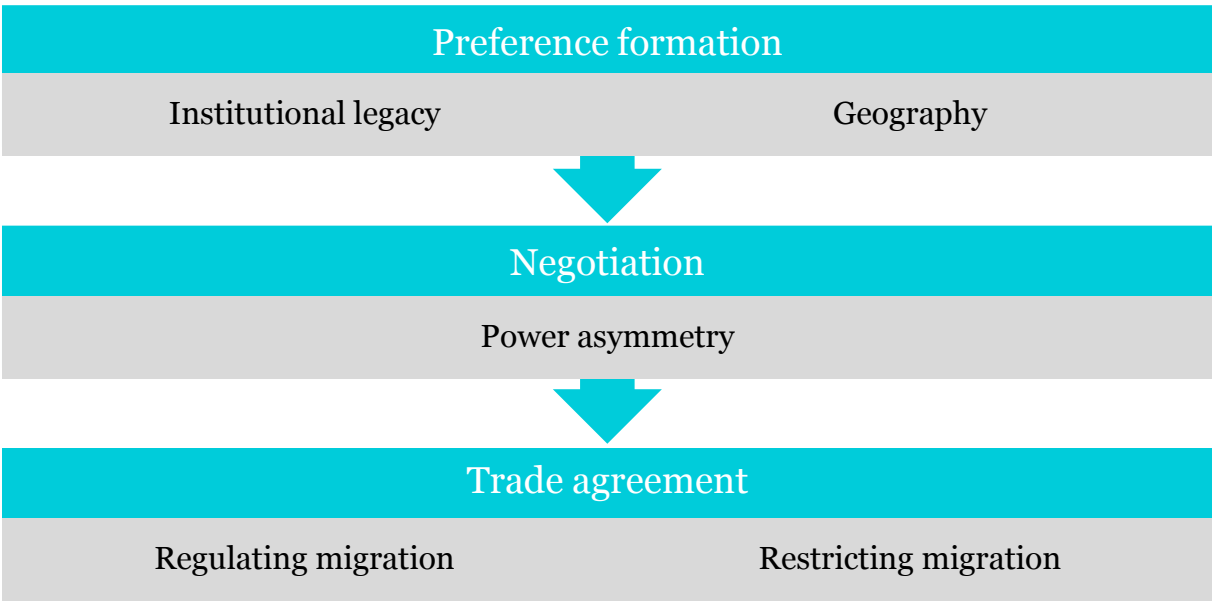


Figure 3.2. The conceptual model with the key concepts.

The figure is however simplifying both the complex interplay of negotiation actors and the factors stemming from the migration-trade nexus influencing the nature of migration clauses in trade agreements. Regarding the latter point, there could be more factors that might play a role in defining how (and if) an agreement formulates migration clauses. However, those reside outside the scope of this thesis to explain the difference between a regulating and a restricting PTA. Therefore variables that focus on facilitating migration can be left out. And because the EU as a region of destination for migration is an actor in both cases, variables focussing on the composition of the region of destination cannot explain the difference between the two PTAs. If prospective research finds plausible other variables that could explain differences between migration clauses in trade agreements I welcome the further substantiating and evaluation of the hypotheses and conclusions of this thesis.

To describe the inner workings of LI, figure 3.3 shows where the different mechanisms or concepts originate from within the framework developed by Moravcsik (1993). The figure is adopted for the use of this research, and a factor ‘formation dialogue’ has been added to illustrate that the preferences are not a *tabula rasa* but also provide input for

society to formulate its interests and (new) preferences. This is where civil society exerts its influence, through a ‘domestic’ dialogue (in this case this refers to the European level) it determines the preference that the negotiator will have to take to the international level (where there is for LI no role for civil society). These adopted concepts are put together in dedicated diagrams for the explanatory variables and in the end cumulate in a comprehensive conceptual model.

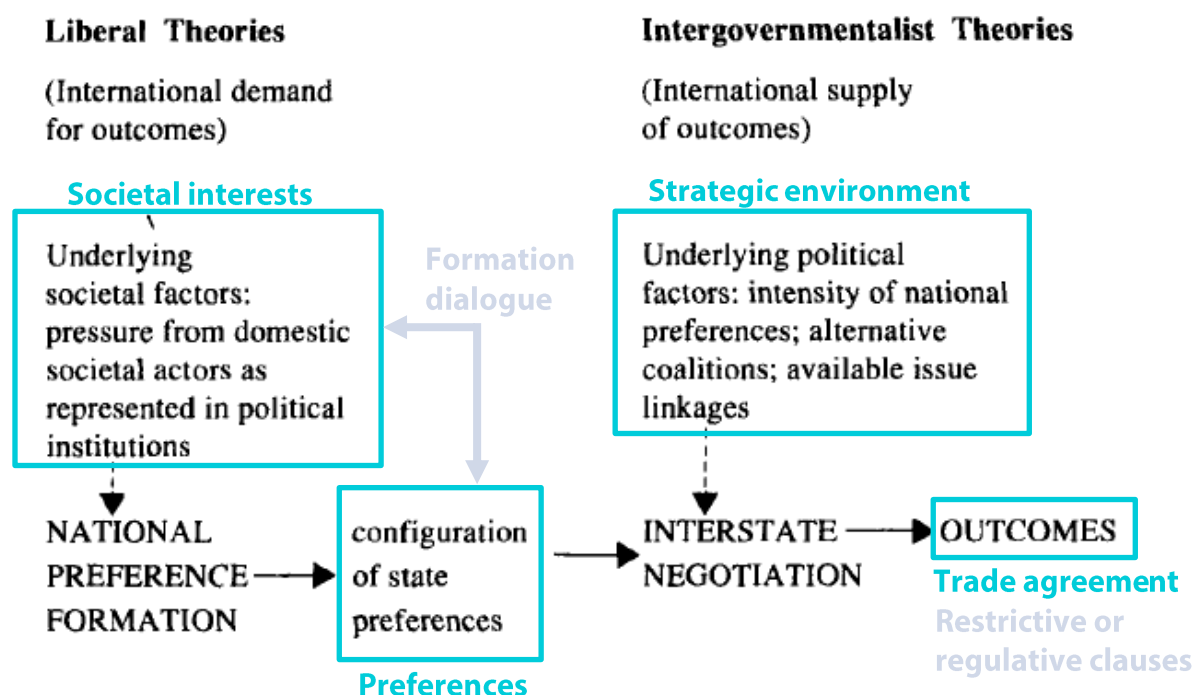


Figure 3.3. Liberal Intergovernmentalist framework of analysis (adopted from: Moravcsik, 1993).

The model in figure 3.4 shows the comprehensive model of this research in its entirety. Through the LI framework of the figure the preferences are assumed to be influenced by the geography (i.e. proximity) and institutional legacy (i.e. track record) while the following negotiations between the European Commission and the ACP and EMP countries are affected by the different power positions they hold. These positions define the strategic environment, and might be part of the cause why there is in the end a difference between the two PTAs in terms of their migration clauses. Essentially the model shows that the outcome depends on the preference of the EU to form a restrictive or regulative agreement, and on the leverage it has in the negotiations to make that preference tangible. This means that, for example for a restrictive, the EU

first needs to want to restrict migration, and second that it needs to have the leverage to impose the restrictive provisions.

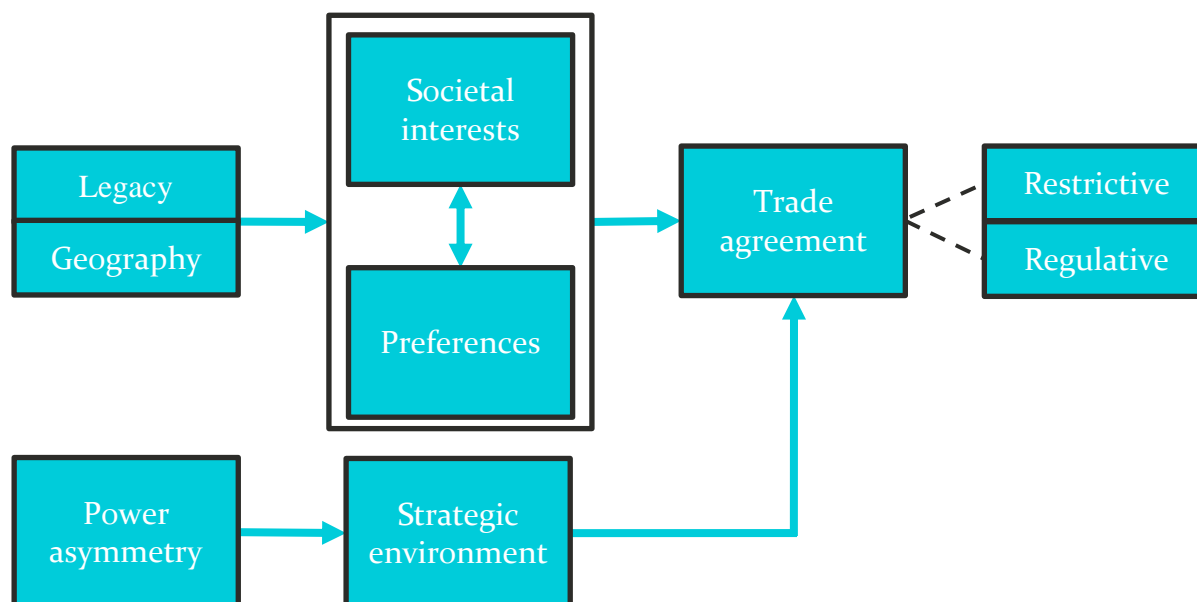


Figure 3.4. Comprehensive conceptual model.

The conceptual model in figure 3.4 shows for track record how a pre-existing legacy of trade agreements will influence the formation dialogue among EU member states and their societal actors (e.g. corporate actors). This box illustrates the duality of LI in these cases, for the preferences are formed through debates within and between EU member states. The larger the legacy, the stronger the dynamic of the box gets, for preferences and interests become path-dependent and more aligned with those of the partner. For geography, the conceptual model demonstrates how proximity, in the sense of the closeness to conflictual areas and intensive trade flows with neighbours, can affect the preference formation dialogue and by extension the trade agreement. For this concept the influence is twofold, as argued the geography can lead simultaneously to an interest in restricting and in regulating. The conceptual model shows how power asymmetry, operationalised as the relative market size of the two parties, affects the international negotiations. The power asymmetry that might exist is composed of a threat of non-agreement, a threat of exclusion and the potential for compromises and linkages (Moravcsik, 1993, p. 499). Together these form the strategic environment in which the negotiations take place. A change in the power relationship

could result in a larger threat of non-agreement because an alternative to the PTA might be better suited for the more powerful party to accomplish its preferences. In the case of the EU, the threat of exclusion is ubiquitous in PTA negotiations with parties that have an interest in access to the EU's internal market.

4. Research design

This chapter will outline the design of the research project. The first part justifies the methodological choices. The second part will use the theoretical framework to distil the hypotheses on the selected cases. After that, chapter five can describe the cases in detail and its following chapters can probe possible issues and make assertions are that follow from the understanding of the narratives by the writer. Lastly, the research can draw conclusions and put the hypotheses to their test.

4.1. Case study methodology

This research is designed as a most similar case study. A case study is an inquiry about a “contemporary phenomenon set within real-world context – especially when the boundaries between phenomenon and context are not clearly evident” (Yin, 2012, p. 4) and a case study that looks at most similar cases selects cases that have substantial differences in the dependent variable but other than that have a relative comparable context. Using this case study design, it is possible to accomplish an exploration and refinement of theory; in these cases the migration-trade nexus. Eckstein refers to this as the plausability probe: “mean[ing] something more than a belief in potential validity plain and simple ... [and] something less than actual validity, for which rigorous testing is required” (as cited in Kaarbo, & Beasley, 1999, p. 375). On the one hand, due to limited data availability, this means that the ability to induce general propositions is reduced. On the other hand this design does allow to analyse whether expected relationships are consistent and in accordance with available data before going into large scale data gathering. The value of a most similar cases design is, in the words of Gerring, that “the researcher looks for cases that differ on the outcome of theoretical interest but are similar on various factors that might have contributed to that outcome” (Gerring, 2008). This fits precisely with the scope and aim of this research. The Cotonou and EMP agreements are relatively similar at first sight, but yet have different outcomes when it comes to their migration provisions.

The identification of the cases was led by the research question, and thus required (at least) two PTAs with migration provisions. Based on research by Milewicz *et al.* (2016)

a preliminary list of fifteen of such agreements exists. Out of these fifteen there are only a handful that share characteristics such as time period, signatories and type of PTA (e.g. free trade area, customs union, etc.). Figure 4.1 shows some basic data on the two cases selected for this project. The negotiations on both PTAs started roughly at the same time, and both received additions or revisions throughout time. In both cases the EU was the initiator of the agreement. The major difference lies in the outcome, one PTA ended up regulating migration while the other restricts it, and both counterparts (the ACP and Mediterranean countries) pursued a more facilitative agreement. This is important, because without comparability it can never be certain if “the variation seen in the cases is due to the explanatory variable[s] under consideration or to the other differences” (Kaarbo & Beasley, 1999, p. 380). In the end these cases are very suitable for a most similar case study to answer the research question.

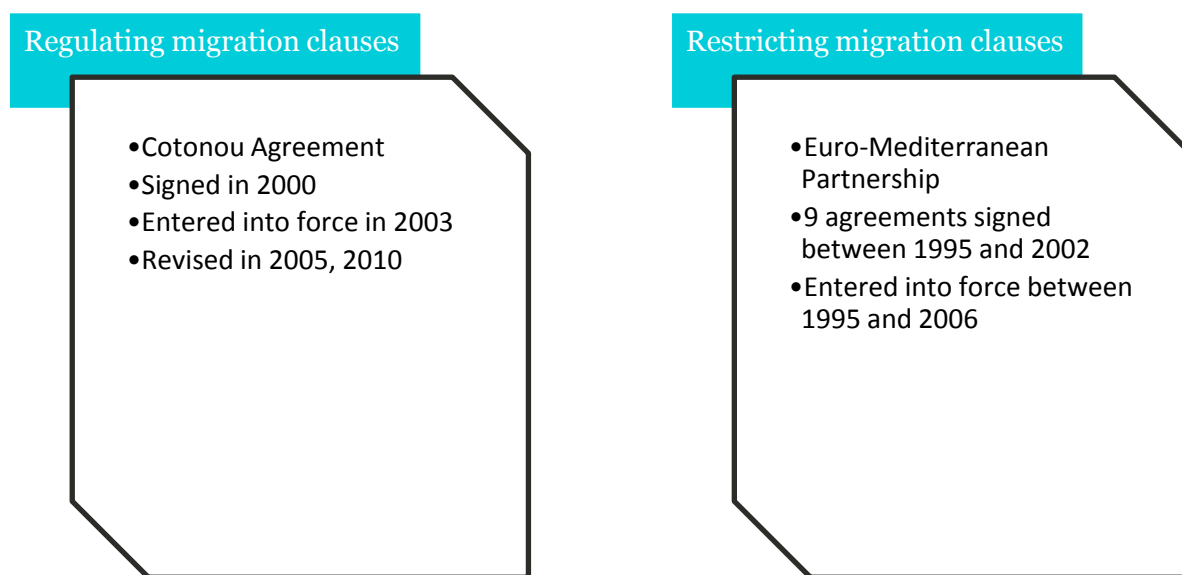


Figure 4.1. Details of the selected cases.

4.2. Process tracing method

Process tracing is a capable method to justify how the various independent variables explain the difference in the outcome between the two cases. Described as causal mechanisms, the process between the explaining variables and the outcome are for this method defined as “the processes and intervening variables through which an

explanatory variable exerts a causal effect on an outcome variable” (Mahoney, 2000). Designed for small-N analyses, process tracing helps the researcher to distinguish and trace back (interlinked) variables that might result in different outcomes (Mahoney, 2000). Assuming that the hypotheses developed below are derived from the theoretical deliberations above, the process tracing method allows for “strong within-case inferences about the causal process whereby outcomes are produced, enabling us to update the degree of confidence we hold in the validity of a theorised causal mechanism” (Beach & Pedersen, 2013, p. 2). In order to set any unclarity aside, the method is used as described by Beach and Pedersen (2013) as ‘explaining-outcome process tracing’ which means the method is used in a way to construct “a minimally sufficient explanation of a puzzling outcome in a specific historical case” (p. 3). Sufficient in this definition means that any redundant variables that do not explain the difference are left out. This translates for this research to the conceptual model of figure 3.4 as the minimally sufficient explanation for the difference between the migration clauses of the Cotonou and EMP agreements. Because of the focus on the two cases, the case-centric approach of the explaining-outcome process tracing method fits nicely. The multifaceted conceptual model of figure 3.4 is another component of the suitability of this method (Beach & Pedersen, 2013, p. 19). The context-specificity and complexity of the cases has the consequence that the knowledge that gets obtained is difficult to generalise beyond the scope of the cases. However, as discussed before, it does solve the question marks around a puzzling outcome and provides support for future exploration and refinement of theories.

Beach and Pedersen use the diagram of figure 4.2 to discuss how explaining-outcome process tracing (EOPT) comes to a sufficient explanation. Interestingly, the method employs both deduction and induction to obtain the knowledge. Under the deductive path (black arrows) a theory is conceptualised as a mechanism (1) and operationalised into an empirical test (2) in order to come to a sufficient explanation outcome (3). Under the inductive path (grey arrows) the researchers look back from the outcome at the empirical evidence (1) and try to uncover any possible mechanisms (2) in order to come to a sufficient explanation outcome (3). Some explaining variables got their

aptitude following from the inductive path, but at this stage they all got substantive deductive reasoning to support the arguments.

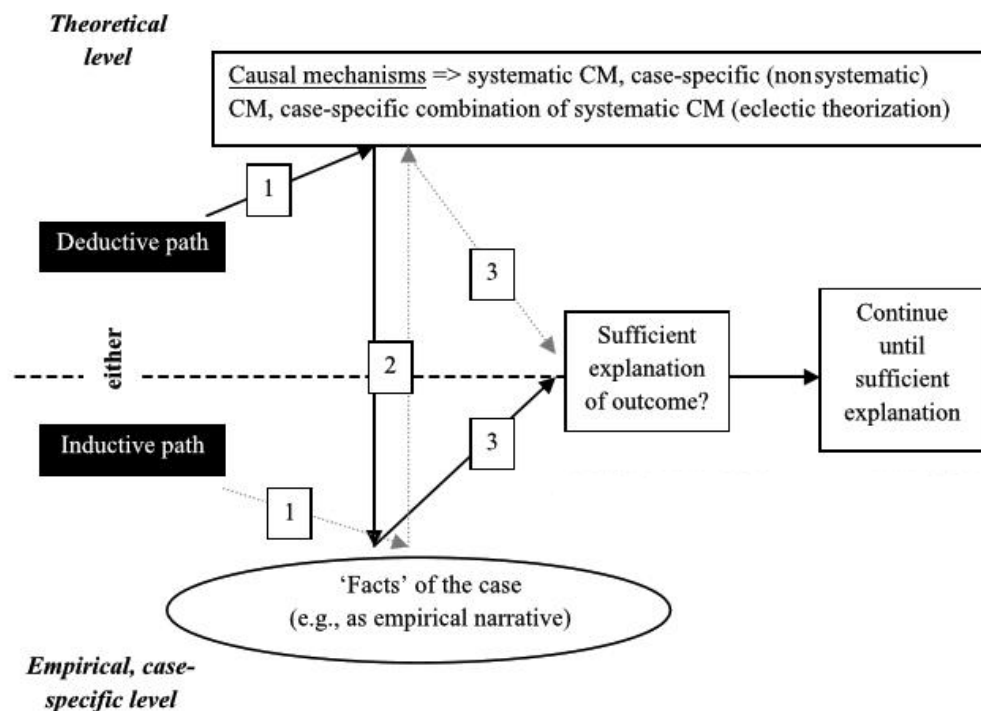


Figure 4.2. Explaining-outcome process tracing (source: Beach & Pedersen, 2013, p. 20).

4.3. Data collection

The main sources of empirical evidence will be newspapers and academic literature. Due to the limitations of the researcher, only items written in English, Dutch and French can be taken into account, items in languages such as Arabic can unfortunately not be understood. Luckily, there are numerous newspapers from the ACP and EMP states that publish in one of the languages I understand. Because even though the scope is the EU, the statements of European officials get highlighted, and sometimes interpreted, in foreign press as well. Especially on level II the interactions between the parties take place in different locations, and thus get covered in different media.

The news items, mostly from newspapers, act as a window to the times of preference formation and international negotiation. Although the internet was in its infancy in the 1990s, initiatives such as LexisNexis made it possible to retrieve plentiful news items from the period the agreements were initiated. Lacking the knowledge of

hindsight, statements will be more close to the *Zeitgeist*. Academic contributions, ranging from articles to books, contain the additional reflection on the events and statements and put them into a broader context. Moreover, the use of academic literature from different time period (e.g. five and ten years after the PTA got signed) allows putting those reflections themselves into context as well, and conclusions might get more robust because they are built on more elaboration.

4.4. Hypotheses and operationalisation

The theoretical framework explained how the variables track record, proximity and power asymmetry can add explanatory power to the Liberal Intergovernmentalist causal mechanisms. As discussed in the theoretical framework, the outcome is preconditioned on the preference of the EU and the leverage it has to pursue and impose that preference. Based on this we can draw a number of hypotheses on what is explaining the difference in migration clauses in PTAs signed by the EU. Parallel to the theoretical framework, the hypotheses are divided into those on level I (within the EU) and level II (between the EU and the ACP or EMP states). Together with the hypotheses, the explanatory variables are operationalised to clarify exactly what is required to confirm or falsify the hypotheses.

4.4.1. Hypotheses on level I

In the preference formation phase it is assumed that history and geography have an influence on the initial preference with which signatories enter the negotiations. The first two hypotheses focus on this:

Hypothesis 1: A restrictive trade agreement is probable if the EU has the preference to restrict migration.

Hypothesis 1.1.: An EU preference for restriction is more probable if the parties do not share a track record of agreements.

Hypothesis 1.2.: An EU preference for restriction is more probable if the other party is close to a conflictual area.

The first hypothesis finds it adversary in the second hypothesis:

Hypothesis 2: A regulative trade agreement is probable if the EU has the preference to regulate migration.

Hypothesis 2.1.: An EU preference for regulation is more probable if the parties share a track record of agreements.

Hypothesis 2.2.: An EU preference for regulation is more probable if the parties are geographically close together.

Both the second and third hypotheses have multiple sub-hypotheses. First off is the variable of institutional legacy. It is argued that having a track record of (trade) agreements increases the likelihood of cooperation and by extension of non-restrictive migration clauses in the PTA. Secondly, the preferences are formed under influence of the geography of the two parties. As argued before, parties that are close together tend to cooperate more. However, the variable of geography contained another hypothesis for the restrictive preference; the proximity of the other party to conflictual areas. Conflict tends to temper international trade and cooperation, and influences the security calculations of states.

4.4.2. Operationalisation of level I

Section 3.3.1 explained the mechanisms of the legacy and geography variables. Legacy is being operationalised as a track record of agreements that precede the agreement under review. These previous agreements are not meant to be random, but are in relevant policy areas, in this case mainly trade and migration. This will have to be a contextualised argument on whether or not relevant agreements were signed and put into practice before the questioned PTA. Only then the parties have interactions that lower the transaction costs of information and cooperation. This would imply that the parties refer back to those previous commitments in a positive light. In terms of geography, the variable of proximity can quite straightforward be operationalised as sharing borders or the distance in kilometres. However, since in both cases the other

party consist of a group of states, the EU might share borders with some states, or be close to some, but far away from others. Therefore the analysis has to look out for the more vocal states as well as take the more general spread of states as a factor. This goes for both the closeness of the EU to the other parties as well as the closeness of the other parties to conflictual areas.

4.4.3. Hypotheses on level II

The negotiation phase considers power asymmetry to have an influence on the process started after each signatory has formed its preferences. In order for the EU to pursue or even impose its preference on the other party it needs to have the leverage to not give in to the preference of the other. Henceforth, the last two hypothesis focus on international negotiation:

Hypothesis 3: A restrictive trade agreement is probable if the EU has the leverage to impose its restrictive preference.

Like the first hypothesis, the third one also has an adversary:

Hypothesis 4: A regulative trade agreement is probable if the EU has the leverage to impose its regulative preference.

4.4.4. Operationalisation of level II

The mechanism of power asymmetry is explained in §3.3.2. This variable has been operationalised as the relative market size based on the Liberal Intergovernmentalist literature. This would lead to the assumption that the EU, with its attractive and large market, holds a significant power position over the ACP and EMP countries, but something puzzling is at hand that might affect the EU's leverage. Since the Cotonou agreement is regulative and the EMP restrictive, there is something puzzling in the Cotonou case where the ACP countries were more able to withstand the EU's power leverage than the EMP countries.

4.5. Research considerations

The research design laid out in this chapter obviously has its strengths and weaknesses. Several of them have already been mentioned and justified. In the end the design allows me to accomplish the research objective set out in the introduction; to provide preliminary knowledge on migration clauses in PTAs and evaluate the applicability of LI on EU foreign affairs. The research design narrows this down to PTAs signed by the EU and specifically to the Cotonou and EMP agreements. However the applicability of LI on EU foreign affairs is still feasible and the knowledge gained from the case studies might give within-case insights for the migration-trade nexus literature, and henceforth give an urge for future research in this area. For if the objective was to get knowledge about a large number of cases a statistical analysis would be more appropriate. But the migration-trade nexus field is currently composed of almost solely this kind of research. Therefore the research design as it now stands has the promise of adding more valuable insights than with a statistical analysis.

5. Case descriptions

In this chapter the two cases will be laid out as narratives of preference formation and international negotiation. This enables us to see if the explanatory variables can be traced back. The cases are presented as disentangled narratives of different levels of preference formation and negotiation, but as Knodt (2004, p. 703) acknowledges: “both levels are simultaneously involved in negotiations in this concept, and cannot be treated separately as a two-step process but must rather be seen as a reciprocal process of influence.” The first part will lay out the case of the Cotonou agreement, the second part the EMP agreement. Only after the cases are described, the analysis can really take off.

5.1. Cotonou agreement

5.1.1. Domestic preference formation

The following paragraphs elaborate on the developments in preference formation in the EU in three phases in chronological order. The first part shows where the agreement comes from. The second and third parts elucidate the 2005 and 2010 revisions that are a part of the agreement. In the first revision non-trade issues were a part of the discussion, but migration was only marginally discussed. After that, for the second and last revision, migration was far more topical. The explanation of why so will not be addressed until the two cases are described in their entirety. The next chapters will satisfy the need for that explanation.

A new millennium, a new relationship

After the European Commission launched the debate on the successor of the Lomé agreements in 1996, national debates remained rather modest. It was not until 1998 that the British parliament had an inquiry committee on the agreement that concluded that a fully functioning [free trade area] to replace the Lomé preferences was essentially “blackmail” and “immoral” of Europe towards the ACP countries (Sarno, 1998a). This was a response to the proposal of the Commission. DG Development³, like

³ This DG is notorious for its various name changes over time. For the sake of readability it will be referred to as DG Development throughout the thesis.

DG Trade, proposed the ACP to be split up to negotiate several FTAs as “the best way forward.” (Sarno, 1998a). DG Trade initially (in 1998) was the main proponent of strong trade liberalisation and wanted to differentiate the ACP group: “the ultimate objective would be to establish economic partnership agreements with each of the three ACP regions” (Sarno, 1998b). This was partly due to the WTO’s push towards free trade without preferential treatments (Atarah, 1999; Sarno, 1999). However, some member states opposed these views. In 1999 the German government put forward that the ACP could only improve their trade position “by closing ranks more tightly at regional level” (Sarno, 1999), thus reaffirming the preference to deal with the ACP countries as one trade bloc. Finland, at the time holding the presidency of the Council, supported the Commission’s proposal to build a free trade area on the structures of the WTO (Atarah, 1999). The European Parliament on the other hand warned that this approach would hurt the relations with the ACP countries (Sarno, 1998b). Like the British parliament, the Dutch and Danish debates also tended to prefer a more developmental approach with waivers and preferences for certain sectors (Atarah, 1999). The French viewpoint echoed into DG Agriculture, which states that “the natural aim for the EU is to maximize our share of world agricultural exports in line with WTO rules while assuring a livelihood for those farmers in Europe who cannot compete at a global level but who provide other services to society” (Sarno, 1998a). European NGOs also spoke out against heavily liberalising trade with the ACP states because it would only benefit the European global exporters (Sarno, 1998a). The argument that the EU had to comply with WTO laws was for them only a façade (Atarah, 1999). However, NGOs could only respond to statements of officials, the text of the agreement was not published until its signing. And although the ACP and EU did organise consultations with NGOs, the EU only recognised them as agents of development instead of as actors with knowledge to construct an informed preference (Sebban, 2007).

Because of a lack of consensus in the Council of the EU and since they only had a year left to negotiate with the ACP (the deadline was strict as the Lomé agreement would expire), the Commission stepped away from a strong free trade area as the main preference. In 2000 the Cotonou agreement was signed, but the negotiators had little

rest. In 2005 and 2010 there were revisions planned of the agreement to work out changes in the world economy and any policy incoherencies that might have risen.

The first revision

A key component of the revisions were the Economic Partnership Agreements (EPA). In 2000 the EU got together with the Cotonou agreement a new WTO waiver for its non-reciprocal PTA regime. The deadline for this waiver was 2008, so with the 2010 revision the EU and ACP had to work on EPAs for those countries that seemed according to the Cotonou agreement capable of dealing with free trade with the EU (Arts, 2003, p. 105). While the Commission wanted the EPAs to be as similar as possible, it did not prefer a single EPA for the entire ACP group, but rather wanted to split it up into several subgroups. The preference of the EU as a whole seemed to move in this direction, although due to its opposition, complementary measures were included in the mandate for the LDC. One of them is the 'Everything But Arms' policy, under which the LDC get non-reciprocal access for all sectors (except for arms, obviously) of the European market (Makhan, 2009). In the words of Trade Commissioner Mandelson: "EPAs are the European Commission's most basic expression of the desire to put trade and development together" (Makhan, 2009). An additional Joint Africa-EU Strategy and Summit was held to smoothen any hurdles, such as EU development funding allocations. During the Summit 'new' non-trade issues were also discussed, such as climate change, security, and migration. Regarding the latter, there was no change in the agreement's text. This is probably due to the fact that it was only after the deadline of the 2005 review that European migration policy became more coherent, more European and more salient. As such terrorism and weapons of mass destruction were seen as key security threats and their respective articles were revised (Mackie, 2008, pp. 149–151).

The second revision

The views on EPAs continued to differ after the second revision, and their progress slow with the deadline of the WTO approaching. In 2005 the UK Labour Party published a manifesto to urge for a transition period of twenty years for the Least Developed Countries (LDCs) to give some kind of preferential access to the European

market (Sapp, 2005). The British government echoed this statement by saying that "We need to ensure the EPAs are genuinely development-friendly" (Mahony, 2006). In 2006 DG Development reaffirmed the Commission's commitment to sub-regional EPAs, for then they could act as catalysts of economic growth (Diaz, 2006, p. 4). The DG argued that it is an "indispensable step towards their successful integration in the world economy" (Forwood, 2001, p. 427). To push their preference forward, the DG sent a dedicated 'guidelines for negotiation' to the European Council to steer the discussions of the heads of state (Forwood, 2001, p. 433).

Since the EU expanded with several new member states around 2005, new voices entered the debate as well. There were roughly three camps (Forwood, 2001). First the new member states, mostly from Eastern Europe, which aspired to place poverty eradication above any neo-colonial aspirations. Germany tended to side with them as well and wanted to normalise the ACP-EU relations, which would mean the abolishment of preferential treatments. Secondly, the UK, the Netherlands, Denmark and Sweden were quite vocal in safeguarding the LDCs' interests. They argued that pursuing FTAs would contradict the EU's commitments to the Millennium Development Goals (MDGs) by opening the LDC's markets to the far more competitive European businesses (Phillips, 2008a). In turn the European businesses complained that Chinese firms enjoy state backing in overseas markets that the Europeans lack (Johnson, 2008). Thirdly, France was the most vocal one to argue in favour of continuing the special relation and took trade liberalisation (especially agriculture) as secondary. This is likely what the Eastern Europeans meant with neo-colonialism, because French president Sarkozy actually proclaimed that "Africa's tragedy is that the African man has not entered into history sufficiently" (Johnson, 2008). The directorate-generals of the European Commission tasked with the Cotonou Agreement differed in their stance over time. DG Development surprisingly could be placed in the first camp of trade liberalisers, DG Trade on the other hand swung from this camp in the 1990s to the second camp in 2008 with a new Commissioner and staff. The resignation of Commissioner Mandelson was received as sad by business advocates, while NGOs rejoiced the fact (Phillips, 2008b). Mandelson was known for statements such as "the UK [is] being too influenced by NGO's agendas" (Sapp, 2005) and

pursuing market access for European companies while proclaiming that he had "no mercantilist objectives" (Mahony, 2006; Sebban, 2007). With a new Commissioner and staff, the EU seemed to have settled on multiple EPAs as the preferred way to go. This step away from multilateralism also seems to coincide with the European failure for an all-encompassing WTO agenda and the US signing several large FTAs (Woolcock, 2007, p. 5).

After 2005 the EU took steps to finalise its Common European Asylum System (CEAS) to account for common rules for asylum, visas and border controls. This included directives on FRONTEX, family reunification, return and resettlement of migrations, a US Green Card inspired Blue Card and a European Asylum Support Office (EASO), all before 2010 (Groenendijk, 2015, pp. 24–26). 2005 also brought the European Consensus on Development, a manifest by the EU to promote policy coherence and complementarity of policy fields such as development and security. Furthermore, the European Commission launched in 2005 a 'Global Approach to Migration' (GAM) followed by a revised 'Global Approach to Migration and Mobility' (GAMM) to define "how the EU conducts its policy dialogues and cooperation with non-EU countries, based on clearly defined priorities and embedded in the EU's overall external action, including development cooperation" (European Commission, 2015). The GAM and GAMM introduced the possibility for member states to participate in Mobility Partnerships with third countries to facilitate short-term migration (e.g. students, businesspeople). However, due to a lack of interest of member states, the focus was shifted to enhancing the capabilities of FRONTEX with new intervention teams, state-of-the-art satellites and cameras at the external borders.

It is against this background that the debate on the 2010 revision gave more attention to migration and the European Council decided that matters of illegal immigration should, like terrorism and WMD be included in all agreements to be negotiated by the European Commission (Arts, 2003, p. 104). Because of the policy cooperation on the European level mentioned before, the preferences are mostly articulated within European institutions as well. In contrast to the previous revision, migration and its corresponding article 13 in the agreement now played a major role. There was more

consensus within the EU on this topic than on others, but the discussion mainly focused on illegal migration to the EU (Koebe & Hohmeister, 2010). NGOs raised alarm over the preference to make readmission compulsory, placing the burden of proof of the nationality of a migrant on the ACP states and the lack of human rights monitoring (Migreurop, 2010). A network of European parliamentarians found the Commission's approach to be too aggressive and short-sighted (AWEPA, 2016). They quoted a diplomat from the European Council, who said the vision is to have "reduced flows of illegal migration and increased return rates" (AWEPA, 2016). The parliamentarians also criticised the Commission and Council for employing development funds for migration management efforts. While this review was written in hindsight, it could influence the next round of preference formation in 2020, when the Cotonou agreement expires (Barbière, 2016).

5.1.2. International negotiation

As soon as the Commission received a (preliminary) mandate from the heads of state, it could engage in international negotiations. This process is not necessarily chronologically following the first level, but rather happening simultaneously, the domestic actors can respond to preliminary negotiation results and adapt their preferences or give the Commission additional bargaining chips.

Negotiating the new relationship

At the international negotiating table, the Commission put forward that the new agreement, which later became the Cotonou agreement, should comply with WTO rules; the WTO favoured free trade and regional FTAs (Sarno, 1998b). In this case it would mean the breaking up of the ACP group. The ACP states however resisted this approach, arguing that it would be detrimental to their developing economies and marginalise the ACP within the world economy (Sarno, 1998b, 1999). In continuous rounds of negotiation, the ACP states expressed their fear for an unequal relationship in a free trade area with the EU (Machipisa, 1999). As a consequence, Cuba pulled out of the ACP group and would not commit to any further negotiations (Belin, 2000). The EU was sensitive about this (feeling of) inequality, and put on the table an additional fund of €24 billion for development assistance (Africa News, 2000b). Even

with the funds, NGOs criticised the negotiations mainly for two things. First, the provisions of the agreement were not publicised before the agreement was signed, making civil engagement impossible (Africa News, 2000a). Secondly, they found the European proposals “essentially incompatible with the promotion of pro-poor growth” (Atarah, 1999).

In 2000 the ‘*Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States of the other part*’ was signed in Cotonou, Benin. Even though the Commission had a strong inclination to create a WTO-compatible trade agreement, the Cotonou agreement (2000, sec. 1.1) became “centred on the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy.” The fact that the WTO marked the deal as an illegal one with “a predatory attitude toward developing countries” (Rufino & Sapp, 2005) shows that the EU in the end did not put their foot down as much as it seemed on beforehand, although it did have more attention for trade and trade-related issues than its predecessor (Africa News, 2000b). Even though the revisions planned for 2005 and 2010 should circumvent this WTO criticism, the agreement remains focused on poverty eradication, for which the agreement has special preferential provisions for the LDCs. A key clause to take into account for the revisions, and a focal point of the EU’s interest is the differentiation of the agreement into regional EPAs:

“Cooperation arrangements and priorities shall vary according to a partner's level of development, its needs, its performance and its long-term development strategy. Particular emphasis shall be placed on the regional dimension” (Cotonou Agreement, 2010).

As the next section will make clear, this second article of the agreement was a sign of the EU’s weighing of the importance of regional EPAs. In terms of migration, article 13 stresses that it “shall be the subject of in-depth dialogue” (Cotonou Agreement, 2010)

and existing commitments that have been made still stand. The parties will treat each other's nationals fairly when crossing territories. The beginning of the article thus asserts that migrants' rights as workers or refugees stand before anything else. Only after that the parties consider that:

“Strategies aiming at reducing poverty, improving living and working conditions, creating employment and developing training contribute in the long term to normalising migratory flows” (Cotonou Agreement, 2010).

To accomplish this, the EU will provide vocational training for ACP nationals, facilitate studying in the EU and finance other cooperation programmes. This facilitation of migration becomes regulative when the last section of the article elaborates on political deliberations for migration prevention policies and the possibility of negotiating readmission agreements. This readmission clause is not binding, and will become the battleground of conflicting EU and ACP stakes in the 2010 revision.

The revisions

Soon after the signature of the Cotonou agreement, the negotiations for the first revision started. Ghana kicked off with the statement that the agreement as it currently stands amounted to collective imperialism by the Europeans (Denny, 2002). Several African states, organised in the Southern African Development Community, unanimously demanded that they would get more duty-free access to the European markets, such as agriculture (Kirk, 2004). After the opposition to free trade areas in the previous negotiations, they now push the EU to make work of the EPAs. However, at the same time there were protests against the EPAs in Ghana just before the deadline of non-reciprocity (figure 5.1). This was for some countries an important issue, for customs taxes account for a fair share of the state revenue while at the same time (subsidised) European goods could price their local manufactures out of the market (Johnson, 2008). The WTO, with the US in the front seat, continued to push the EU to let its system of trade preferences go (Johnson, 2008). The debate on the

first revision seamlessly devolved into the debate on the second revision with the WTO deadline sitting in-between.



Figure 5.1. Protests in Ghana against EPAs (source: CMO, 2010)

Revisiting article 13

Article 13 of the Cotonou Agreement addresses migration, and it was for the EU an important subject for negotiation. Since 2005 the EU has unilaterally introduced several policies regarding legal migration, such as the CEAS, Mobility Partnerships and the Blue Card. However, in the area of migrants' rights and low-skilled migration there has been little progress (Koeb & Hohmeister, 2010). Instead, the priority lied with readmission agreements, both bilateral and multilateral. The ACP expressed their own priorities, which were quite the opposite. The ACP wanted to steer Article 13 towards migration and development, with migrants' rights and legal migration at the centre. Currently, readmission agreements within the Cotonou framework have to be negotiated and ratified independently between states from both parties. The EU wanted to make these self-binding by the Cotonou agreement while the ACP found this unmanageable and cumbersome (Frenzen, 2010; Koeb & Hohmeister, 2010). At this point the negotiations were at a standstill.

The 2008 WTO and 2010 Cotonou deadlines were approaching, and no consensus was negotiated. The Council of the EU tried to make the deal better by putting on the table

a €800 million fund to support the readmission capabilities of the ACP (Nielsen, 2015). The Commission tried to play the ‘hands are tied’ card by stating that their position in the negotiations “was already the outcome of a compromise within the EU” (cited in: Forwood, 2001, p. 436). The ACP rather maintained the status quo than have a revision. Moreover, they criticised the EU and WTO for incoherencies in their positions on migration and stated that they need to understand it better (ACP, 2009). Because the EU felt that they could not afford to walk away from the Cotonou agreement, the 2010 version did not include a renewed article 13. The ‘Joint Declaration on Migration and Development’ that accompanied the agreement worded the stances of both parties, by stating that they would strengthen their political dialogue on migration and development, legal and illegal migration, and border management (Frenzen, 2010).

5.2. Euro-Mediterranean Partnership

5.2.1. Domestic preference formation

The following paragraphs elaborate on the developments in preference formation in the EU for an economic partnership with 9 Mediterranean countries. In contrast to the Cotonou agreement, there was much more interest in matters of migration and border security from the start. The explanation of why so will not be addressed until the two cases are described in their entirety. The next chapters will satisfy the need for that explanation.

The preferences within the EU for the EMP focussed on the migration from the start. In 1995, the Maltese prime minister proclaimed that “illegal immigration [is a] threat to Europe from unstable countries around the Mediterranean” (Mantiri, 1995). With France holding the EU presidency at the time, and with Spain and Italy holding it after that, they felt it was an appropriate time for “rebalancing [the EU] towards the south” (Borst & Mantiri, 1995). An indeed the Spanish presidency made it a spear point to be a catalyst of development in the Middle East (Alul, 1995). When the idea of an EU-Mediterranean PTA surfaced in 1994, DG External Affairs wanted to use the opportunity to tie aid, trade and political cooperation together with an overarching

goal of promoting peace (European Commission, 1994). This would, according to the DG, have to be done within the framework of the WTO. DG Development already proposed to set aside \$7,2 billion as a bargaining chip (Mantiri, 1995). The Council of the EU was sceptic of this proposal, wary that the figure might be a guess; “we want watertight guarantees that it will not disappear into people's pockets” (Mantiri, 1995). Italy, together with DG Energy, saw it to be a key concern for the EU to include non-trade issues in the PTA, for stable neighbours would ensure a stable supply of energy (Financial Times, 1995a, 1995b). DG Justice and Home Affairs (JHA) argued that cooperation is necessary to deal with migration and migrant populations (Spillmann, 1995). DG Trade added to this that a free trade area could ensure a redistribution of labour in which the industries around the Mediterranean are complementary rather than counteracting. Figure 5.2 shows the complex rationale behind the EU’s reasoning. The security of the EU is tied to economic cooperation (note how it does not say regional). The EU then argues that political liberalisation and economic growth will trickle down to reduced migration, and that will enhance the EU’s security. Such a line of reasoning was not found in the preference formation for the Cotonou agreement.

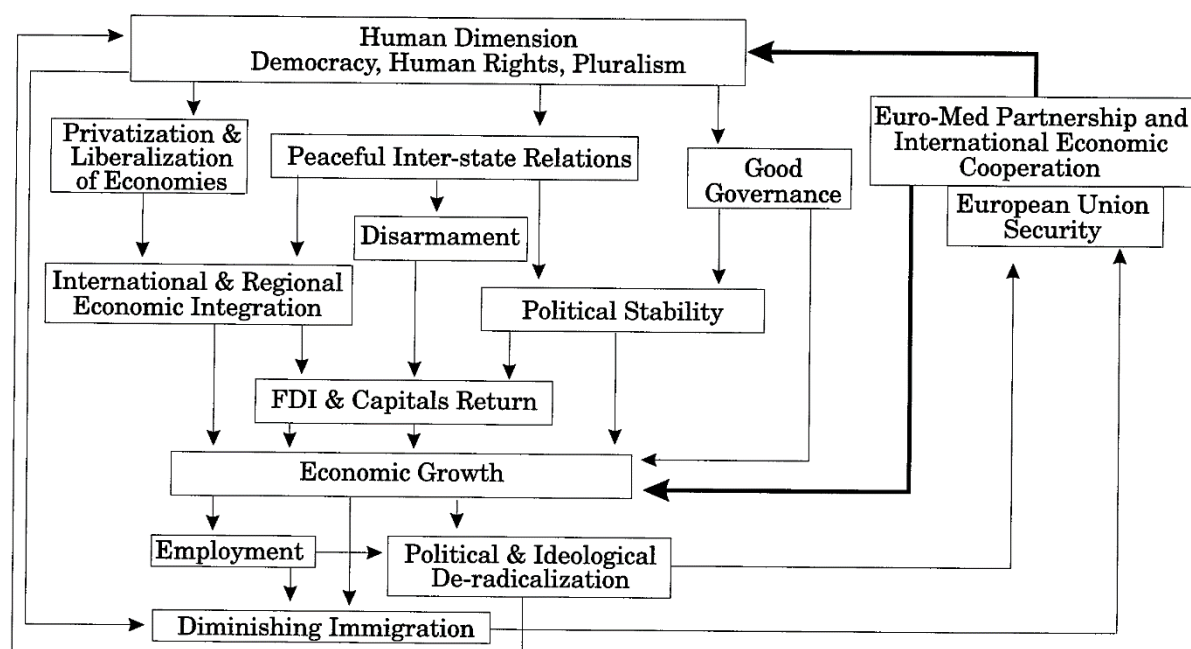


Figure 5.2. Systematic relationships between political and economic factors (source: Blank, 1999, p. 132)

Another incentive for the preference of linking restrictive migration measures to trade were conflicts occurring along the borders of, or in, the EMP countries. Volpi (2004, p. 151) for example tells about the conflict in Algeria just before the launch of the Barcelona Process:

“The beginning of the civil conflict in Algeria in 1992, and the flow of refugees that reached Europe as a result, quickly led the southern members of the European Union to propose joint European initiatives to tackle the security and socio-economic challenges that erupted on the southern flank of the EU. From a security perspective, therefore, the Euro-Mediterranean Partnership retained the realpolitik outlook that had prevailed during the Cold War [...] Furthermore, if direct military threats were thought to be near immaterial in the short term, the EU increasingly considered illegal trafficking, migration and terrorism as extremely serious problems.”

Meanwhile several NGOs got frustrated with being ignored consistently by the EMP and the EU that they created their own trans-Mediterranean forum (Jünemann, 2002, p. 102). They recurrently pointed out human rights abuses and the Western conception of terrorism (API, 1997; Mideast Mirror, 1997). The EMP countries were actively pushing for not consulting any civil society actors, and the EU was equally reluctant to involve them (Jünemann, 2002; Volpi, 2004).

While different DGs preferred the linkage of different issues in the PTA, a separate battle was taking place within the European Council (MacKinnon, 1995). Because of the 1995 enlargement of the EU, Germany wanted to prioritise European financial support for Eastern Europe. France however opposed it strongly, rather preferring that the priority would be with the Mediterranean shores. Together with Spain the French formed the motor of a European Mediterranean policy (Gillespie, 1997). Fought out behind the closed doors of the European Council, the presented result entailed a victory for Germany with \$6,1 billion going to the new member states in five years (MacKinnon, 1995). “However, although the battle was lost, the south could be seen as

winning the war” according to the French, for the EU in return met their target of \$17,3 billion for aid, and a commitment to negotiating the EMP (MacKinnon, 1995). Under the presidency of Spain the Barcelona Process kicked off, a dedicated forum for European and Mediterranean countries to discuss economic, cultural and political cooperation. This ultimately led to the EMP To the disappointment of the French, Spain took the leading role in constructing the new EU-Mediterranean relationship (Gillespie, 2011).

5.2.2. International negotiation

The negotiations were henceforth triggered by the Barcelona Process. But the EMP countries arrived at the negotiation table with preferences not always similar to those of the EU. A Tunisian official was surprised by the stance of the Europeans, and a Moroccan official said that they rather saw the agreement to go in another direction: “the best way to reduce the flow of immigrants is not by repression but by development, not with aid but with investment” (Borst & Mantiri, 1995). However, they still preferred the European vision over the American one, mostly because they succeeded to turn it into a more comprehensive approach (Mideast Mirror, 1995). The European vision is composed of three levels; social, economic and political. In terms of social and economic development, the EU promised a package of aid and access to its market (Jaura, 1999). Both parties tend to agree on those areas, but more bargaining was necessary for the political level of the EMP, which includes cooperation on terrorism, peace and migration. The EMP parties appreciated the EU’s efforts to push the Middle East peace process independent of the US (Mideast Mirror, 1997), but preferred to limit the number of migration measures in the agreement (Hoekman & Özden, 2010). In order to not stall the negotiations, the Barcelona Process allowed for ‘compartmentalised’ negotiations, so progress could be made in one area while another issue might require more deliberation (Gillespie, 2011).

The fact that the EU did not negotiate with all EMP states at once meant that there was room for Mediterranean countries to negotiate some variation into their EMP Action Plan as they were called. Jordan for example has put the emphasis on the liberalisation of services, Egypt on regional political cooperation and Algeria on the peace process

(AFP, 1997; Hoekman & Özden, 2010; Middle East News, 1997). However, this also meant that they held less leverage as a group than the ACP. And there was still little room since the EU handed the EMP negotiators already a draft of the agreement and a one-year timeline, and the resulting agreement differs little from that draft (Blank, 1999). The EU succeeded in most Action Plans in obtaining agricultural and industrial market liberalisation for the cost of financial assistance (API, 1997). Additionally, the EU tied access to its own markets to antiterrorism, migration management and border measures for the EMP states (DPA, 2002). According to the Commission, this would enhance the economic welfare and security on both sides of the Mediterranean (Ghesquiere, 1998).

The first Action Plans that stem from the EMP agreement were signed in 1995 with Tunisia and Israel, the last so far in 2002 with Lebanon; the others were concluded in the 1995-1998 period. The EMP agreement is based on three principles that are derived from the Barcelona Declaration (1995):

“Establish a comprehensive partnership among the participants [of] the Euro-Mediterranean partnership through [1] strengthened political dialogue on a regular basis, [2] the development of economic and financial cooperation and [3] greater emphasis on the social, cultural and human dimension.”

Interestingly these principles do not mention trade or (private) investments, however the EMP Association Agreements (or Action Plans as they are also called) certainly have, *inter alia*, chapters on the freedom of goods, industrial products, the abolishment of tariffs, and the movement of capital. Some chapters, such as those on agriculture, only stress the opportunity for dialogue and cooperation whereas others, such as customs and industrial products have detailed explanations of timeframes, applicable products and periods of grace.

The EMP first sets out clear, short-term, goals of reciprocal market access for various sectors. On account of the compartmentalised negotiations, the EMP states are allowed by the EU to liberalise their economy on an *à la carte* basis, with the exception of agriculture (Hoekman & Özden, 2010; Kuiper & Dell'Aquila, 2004). In line with the preferences of the industrial and agricultural lobbies in the EU, manufacturing is more opened to free trade than the European agricultural market, which presence in the EMP is negligible (Kuiper & Dell'Aquila, 2004; Montanari, 2007). Secondly, the ambitious long-term goal, although littered with periods of grace brokered by the EMP states, was to have a free trade area by 2010. Noteworthy about the implementation and evaluation of the agreement and Action Plans is how little the EU (in comparison to NGOs) is criticising the EMP states of their slow progress in democratisation and human rights in contrast to its rapports on the Cotonou agreement (Usul, 2008). Criticism is more vocal on the Mediterranean efforts to secure their borders and introduce economic reforms (Usul, 2008).

In terms of migration, the EMP agreements have multiple articles dedicated to the topic. In the articles on social and cultural dialogue there is special mentioning of dialogue on migrant communities and their treatment, discrimination, and the conditions for returning illegal migrants. In the clauses on social development or justice the parties agree on measures to prevent and manage (illegal) migration. Examples are programmes to improve the living conditions of areas with high emigration rates, the readmission of nationals and other migrants travelling from one of the signatories. The EU will assist the EMP states with training and institutional capacity building to meet the standards of migration and border management. Quite obviously this is in the interest of the EU itself. The Jordanian negotiators put relative more emphasis on cross-border services (and thus people that provide services) with the result that Jordan's Association Agreement (1997) is more elaborate on migration-related matters. Besides the repatriation of Jordanian nationals, the EU will also invest in their reintegration, the treatment of migrant workers in either territory and cooperate to improve Jordan's social security system. However, like the other EMP agreements, managing the flows of (illegal) migration, and any related forms of crime is still the gist of the agreement.

6. The double-edged sword of civil society

The empirical case descriptions already briefly mentioned the lack of involvement of NGO, this contrasts with the EU's consideration of civil society as a necessary contributor to bottom-up democratisation (Jünemann, 2002, p. 87). In the case of the EMP the EU's preferences were bound to the issue of security. The democratisation of those countries might lead to (short-term) destabilisation, and stabilisation was exactly what the EU pursued in the EMP agreement (Jünemann, 2002, p. 88). It was only after the EMP was concluded that NGOs were heard and the Commission released a statement that human rights and democracy are important, too (Jünemann, 2002, p. 102). As such engaging with civil society has both favourable and unfavourable consequences for the EU. But in the case of the ACP the double-edged sword is less apparent. At first one might believe that NGOs were less organised or experienced to influence EU policies in the 1990s. However, at the times of the revisions they were also regarded as 'agents of development' that could support and be tasked with putting the agreement into practice, but not influence the texts itself. Furthermore, the stability of places far away in the Caribbean or Pacific is less of a security concern to the EU than the Mediterranean. The ACP actively pursued this depiction of NGOs with the publication of a *Cotonou Agreement user's guide for non-state actors* in which the role of these non-state actors are described as being advocates for development or "service providers (or implementing agencies)" of that development (ECDPM, 2003). In the end, all participating NGOs should inform decision makers on "the impact and efficiency of ACP-EU cooperation" (ECDPM, 2003). One possible explanation for this practice might be the role NGOs traditionally play in the ACP countries, indeed as agents of development. The emphasis on the fight against poverty gives NGOs the opportunity to engage, and in certain instances they did criticise the EU's approach. But since the Cotonou agreement leaves the details and implementation to additional agreements (such as the EPAs) the NGOs could rather assert influence on that level. On a final note, for the second revision the NGOs did become more vocal, mainly because "the [EU's] proposal [is] driven by Europe's internal focus on security and not by the fight against poverty" (Sapp, 2005). This brings us to the analysis of the migration-trade nexus in the agreements.

In a critical reflection of European decision-making Moravcsik (2005) writes that there is little “interest in efforts to include ‘civil society’” (p. 35). Some of the apathy of European voters to engage in the preference formation is explained by the lack of salience for topics such as trade liberalisation as opposed to e.g. social welfare policies (Moravcsik, 2005, p. 35). While this might be applicable to the Cotonou and EMP cases, contemporary stories on large multilateral FTAs and migration might show that these topics have gained priority. For the old cases however, the cases of the Cotonou and EMP agreements fit with Moravcsik’s reflection of the misfit between his theory and the empirical involvement of civil society in European decision-making. This misfit affects the conceptual model for this research (figure 3.3 in §3.4), the formation dialogue did not necessarily involve Putnam’s classic societal groups and Moravcsik’s societal interests were not the result of salient societal pressure. Much more emphasis is thus to be placed on the political institutions that too are part of the formation dialogue. In practical terms the European preference was mainly defined by heads of government and officials of European institutions. While Moravcsik criticised the EU’s lack of democratic civil engagement, it is in these cases not very surprisingly taking into account the position of the European institutions to not involve NGOs (among others) in preference formation or letting them attend (passively) international negotiations.

7. Case discussions

Whereas the previous chapter described the cases, the chapter before you discusses the cases by going over some of the empirics again and placing it into a context that is explanatory rather than descriptive. The (European) win-sets will be stated and the role of the explanatory variables clarified. Because win-sets are never published by the European Commission, they are the subject of academic scrutiny. For this reason they are not written down in the previous descriptive chapter but rather in this chapter bridging the empirical description and the hypothesis assessments and synthesis. The Cotonou agreement takes a different angle to the migration-trade nexus than the EMP. The former sees migration as subservient to the free trade agreement, while the latter places migration measures at an equal footing or above trade liberalisation. Both sections of this chapter elaborate on both levels of the agreements after which the chapter will make way for the assessment of the hypotheses.

7.1. Trade and migration in the Cotonou agreement

Ever since the kick-off of the preference formation process in the 1990s the focus of the Cotonou agreement was put on trade and development and less so on security and migration. The following sections reveal how the operationalised causal mechanisms of the hypotheses are reflecting the empirical findings for the Cotonou agreement.

In short, the referring back to previous agreements dating all the way to the origins of the EU placed the European preference in a path-dependent frame of facilitating and regulating the movement of goods and people between the EU and ACP. Secondly, the ACP were geographically dispersed and the Commission's outlook on this meant that here was no strong narrative on conflicts 'close to home'. The approach of the agreement to not go into specifics leaves the implementation of this geographical context of both trade and migration to EPAs and implementation agreements. On the second level, the EU preferred to divide the ACP up into regional blocs, which would increase the EU's power leverage. The ACP however stuck together as well as intensified regional cooperation. A combination of ACP pressure as well as internal EU

pressure to favour development over security allowed the EU to agree on migration clauses of a regulative nature.

7.1.1. Domestic preference formation

The European Commission's win-set for the Cotonou agreements consists of a compromise between the German, French-British, and Nordic positions. The new agreement had to be WTO-compatible, but still continue the special EU-ACP relationship and secure the development of LDCs (Forwood, 2001, pp. 428–432). In its Green Paper on the subject, the European Commission summarised the possible outcomes as one of these four:

1. The status quo, also the preferred option for (many) ACP states but not that of most European states. This is not WTO-compatible but would secure the interests of the LDCs.
2. A generalised system of preferences (GSP), this would take out trade of the agreement, after which the EU unilaterally decides which country gets what kinds of access to its market. Since it is not reciprocal by definition, WTO-compatibility might be an issue. The interests of the LDCs are secured depending on their exports to the EU, since the EU tends to protect its agricultural production. As the language of this paragraph already indicates, it is an option of uncertainties.
3. Uniform reciprocity, this is the full free trade area pursued by some European states and DGs. It is also the option that is most resisted by other European states.
4. Differentiated reciprocity, this would lead to several regional trade agreements, each targeting different sectors with different measures. As the case description showed, this was the compromise that the Commission took to the second level.

From the moment the 2010 review of the Cotonou agreement started the discussion on migration matters were ramped up. Analogous to the four aforementioned options, the EU this time preferred a GSP-like approach where it would be able to define which migrants could get access; the ACP again preferred the status quo. Interestingly, with the Europeanisation of migration policies, and linking it to justice and home affairs,

the preference of the EU seemed to change from regulation to restriction. However, due to the factors of track record (path-dependency) and geography, this preference of restriction did not come to full fruition and article 13 of the Cotonou agreement remained of regulative nature.

Track record

An effective track record seems to be a key component of the European preference to regulate migration from the ACP states. Seeing the new agreement as a successor to the Lomé *acquis* framed the expectations and behaviour of all involved parties. Both states favouring a special EU-ACP preferential relationship and those favouring free trade did so by referring to the previous agreements (Forwood, 2001, p. 438). This comes explicitly forward in the EC's Green Paper: "an objective assessment [...] of [the] Lomé cooperation will identify guidelines, objectives and policies that should be retained and reinforced" (European Commission, 1996). The historical context of the agreement is reaffirmed, "cooperation [...] dates back to the origins of the Community" (European Commission, 1996). Underlying this is the European realisation that the development targets of the previous agreements did not meet the expectations, and the majority believed this should be fixed (Hurt, 2003, p. 175).

The pressure of a group of European states to maintain a derivation of the special relationship with the ACP led to a softened trade agreement than it would be if it was solely based on the WTO structures. Calling to mind the inductive path of process tracing (figure 4.2) the concept of path-dependency could be of consideration. This clearly is intertwined with the already deliberated concept of track record, but still is worth mentioning. According to Forwood (2001, p. 438) this kind of path-dependency is lowering transaction costs for both parties, as information about the other's preferences becomes easier and more regularly to obtain. An empirical example of this are the numerous EU-ACP forums where dialogue on migration matters take place, or the presence of the ACP secretariat in Brussels. This results in statements such as: "the new agreement is believed to retain the Lomé *acquis*, established over four generations of cooperation agreements, with its well rooted respect for social, economic, political and human rights and aid and trade concessions" (Africa News, 2000b). By reaffirming

the existing track record the EU is locking itself in with the ACP, but also the ACP with its preferred mode of global (migration) governance (Nunn & Price, 2004, p. 207). The locking in dates back to the Treaty of Rome of 1957. Already there the EU-ACP relationship was based on trade and development (Nunn & Price, 2004, p. 211). This has evolved over time (in line with WTO developments) but still focuses on trade and poverty reduction. This debate on trade and development involved different actors than the migration and security debate, therefore there is little room for the JHA narrative on migration and the preference becomes less probable of being restrictive. Moreover, the longstanding regime lead to the expectation that there was no possibility of preferring no agreement after Lomé expired (Forwood, 2001, p. 438).

Geography

Geography also played a role in the European preference to regulate migration from the ACP states. The Commission from the start wanted to take into account the geographical context of the ACP states (European Commission, 1996). Originally this implied that a GSP-like setup would look at the economic development of the ACP states and treat the LDCs differently from the more developed countries. However, one could draw a parallel to the EU preference of regulating migration, preferring migrants from certain categories or countries over others. The Cotonou agreement is designed as a general agreement, covering numerous topics but, at the request of the EU, leaves the implementation and details to smaller multilateral or bilateral agreements, such as the EPAs for trade.

Some of the more vocal ACP states include Ghana and the Southern African Development Community (SADC)⁴. They all have a European language as their official (working) language, which lowers the barriers of access to the European preferences, and thus increases the opportunity to adequately present counter statements. From the European perspective, this increases the (cultural) proximity to those countries. However, geographically the south of Africa is not close to the EU to immediately speak of neighbours, something the operationalisation had put forward. In the times

⁴ Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe

the EU formed its preference, some of these countries suffered from (neighbouring) conflicts, which should lead to an EU preference of restriction. The fact that this did not happen means that either track record has had more influence or geographical proximity is itself only part of a larger concept that also includes cultural proximity. Another possibility is that the partner state should not only be close to conflictual areas, but itself also close to the EU for a preference of restriction to develop. Since the EU did not see the ACP states as both geographically close to conflict and at the same time close to the EU, the preference became more probable of being regulative.

7.1.2. International negotiation

The ACP countered the EU's position with a preference to stay as close as possible to the *status quo* of the Lomé agreements as possible. As a consequence, every negotiation round of the Cotonou agreement involved a (heated) debate on the role of EPAs. For the revisions, similar to the 1990s there was a standstill over the scope of the EPAs (in terms of which countries) and whether trade liberalisation or poverty reduction should be at the top of the preferences. However, since the debates mainly focused on trade and development, migration issues tended to be viewed less in the light of security and home affairs.

While the Commission wanted the EPAs to be as similar as possible, it did not prefer a single EPA for the entire ACP group, but rather wanted to split it up into several subgroups (European Commission, 1996). This would mean that in terms of market size, the EU would prevail over any sub-regional ACP group. However, no matter the lack of bureaucratic capacity, the ACP stuck together and intensified regional cooperation: "the SADC announced a strategic plan that sets out measures and time frames for the economic integration of the region including a free trade area by 2008, a common market by 2012 and a single currency by 2016" (Kirk, 2004). This might be because they continuously wanted to maintain the status quo, and this entailed sustaining their position as one group the EU has to deal with. The Commission argued it could not give in on this point, for its position was already the result of an internal EU compromise and it had to comply with the WTO. The Commission thus played the 'our hands are tied' card (Forwood, 2001, p. 436). Remarkably, by playing

this way, it went beyond the conception that the EU and ACP together would quite possibly have the power to influence WTO rules, but instead the EU used the WTO as a scapegoat (Hurt, 2003, p. 174).

In terms of article 13 of the Cotonou agreement this had the implication that the ACP were able to successfully maintain their position against the European preference to alter the migration provisions to more restrictive ones. The ACP put forward some proposals for migration on its own, but a lack of homogeneity and bureaucratic infrastructure in the ACP prevented proposals that were backed by all members (Forwood, 2001, p. 436). Perhaps the proposals did serve the ACP's interest though, for they made the status quo more attractive for the EU, which ACP trade proposals previously did not for the EPAs. Moreover, this was the issue where the EU badly needed the help from the ACP instead of the other way around (Koebe & Hohmeister, 2010, p. 5). In conclusion, the EU did not have the overwhelming market power to impose its preferences.

7.2. Migration and trade in the EMP agreement

In sharp contrast to the Cotonou agreement, security and migration were the initiating issues for the EMP agreement. Trade was the narrative vessel to accomplish that agenda. This chapter reveals how the operationalised causal mechanisms of the hypotheses are reflecting the empirical findings for the EMP agreement.

Summarised, the EU preferred security and migration management over trade and development, partly because of the closeness of conflictual areas. The EMP was the first FTA in the EU-Mediterranean sphere, thus lacking any track record. This led to a European preference of restricting migration clauses. The European Commission considered the mandate given by the member states already a compromise, and convinced the Mediterranean states it had little room to move. That rhetoric, combined with its economic leverage, administrative capacity, and bilateral negotiations gave the Commission its overwhelming bargaining power. As a result, the EU had the preference and leverage to impose restrictive migration clauses.

7.2.1. Domestic preference formation

The European Commission's win-set for the EMP was defined by *inter alia* a contrast between Northern and Southern Europe. The northern member states stressed that aid should not be as substantial as the financing packages for the ACP or the prospective members in Eastern Europe, likely because Northern Europe would contribute more to the aid financing than Southern Europe. Since countries such as Spain, Italy and France had a larger interest in negotiating the EMP, the northerners had a strong bargaining position to delimit the EU's win-set (Montanari, 2007, p. 1020). Likewise, the agricultural lobby succeeded in maintaining its protectionist position within the EU. The findings by Montanari (2007) show how the Northern countries, even while they had less interest in a European Mediterranean policy, were able to push their preference more than the Southern member states. In 1994, the Commission summarised the rationale behind its mandate as follows:

“There are many areas of Euro-Mediterranean interdependence, notably environment, energy, migration, trade and investment. The Community has a vital interest in helping Mediterranean countries meet the challenges they face” (European Commission, 1994, p. 2)

The wording of this rationale diverges from the Cotonou's one, where the Commission trade first and migration only later on. Its rationale for the EMP places migration in front of trade, along with other non-trade issues. Figure 5.2 already charted this rationale, and showed how the EU ties migration to security with economics in the backseat. Underlying this rationale is the desire to lock in the Mediterranean states in the EU's preferred mode of global governance, and the assumption that political liberalisation will follow from economic liberalisation; which would be the objective of the PTA (Gillespie, 1997, p. 71). This has the complication that the agreements do not specify to great lengths reforms on democracy or human rights, as they would follow from the economic liberalisation. This assumption helped to get doubting member states on board and retain political stability in the region, because there was a fear that immediate political liberalisation would endanger the stability of the region and

benefit “the Islamic resurgence” (Usul, 2008, p. 386). This line of reasoning extends to migration. The economic liberalisation would stimulate manufacturing, increase wages and thus reduce the incentive for labour migration to the EU (Kuiper & Dell’Aquila, 2004, p. 28). However, research has already shown that this economic equilibrium does not necessarily exist, but that might be in hindsight (De Haas, 2005, p. 1271). The following subsections will elucidate how the European Commission’s rationale works out in the formation of the EU’s preferences.

Track record

The case of the EMP does not reflect the presence of an effective track record. For example, the preamble of the Jordan EMP Association Agreement (1997) it is stated that the agreement “will create a new climate for their economic relations.” The ‘effective’ part is essential. Bicchi (Bicchi, 2011) demonstrates that although the EU did have existing policies regarding the Mediterranean (but no trade agreements) there was no successful common cross-Mediterranean platform or one European vision. Initiatives such as the Western Mediterranean Security Forum, Mediterranean Dialogue programme, Conference on Security and Cooperation in the Mediterranean and the EU’s Global Mediterranean Policy all tried to promote liberalisation, but none of these resulted in trade agreements (Bicchi, 2011; Volpi, 2004). The Barcelona Process was the first forum, agreement and negotiation in one that encapsulated a single European vision. Most communications released by the Europeans after this also tended to refer back to the Barcelona Process and the EMP statements that resulted from the Barcelona Process platform. This means that the EMP in itself might be the first step towards a track record, but there were no successful agreements on beforehand that lowered the transaction costs for cooperation. Montanari (2007, p. 1015) concurs that the EMP is the first step in locking in the EMP states with the EU and its preferred mode of global (migration) governance. In sharp contrast to the Cotonou agreement, the EU perceived the EMP as a shade to project itself against, othering as it were (Bicchi, 2006, p. 201). By assuming that the EMP countries are “unified by its perennially conflictual character” the EU-EMP relationship cannot be fostered in an atmosphere of amiability (Bicchi, 2006, p. 203). Furthermore, as elaborated in §3.3.1, a peaceful environment has to be in place before trade can be

fostered. The framing of the EMP as an area eternal conflict seems to hamper regional cooperation; because of a lack of trust the transaction costs are not lowered as much as they could be by a FTA.

Geography

Continuing on the framing of the EMP as an area of conflict, there were several conflicts either in EMP countries (such as Algeria and Egypt) or in countries bordering the Mediterranean states. Because the EMP were geographically close to the EU, the Europeans felt the need to prefer security from any spill over of conflicts onto European “civic order” (Blank, 1999, p. 128). This indicates that geographical neighbours do not automatically cooperate and foster trade, for there has to be a settled peace first. To a certain extent this also has to do with the European polity, in which “immigration is a source of conflict and instability just because the European states are unable to agree on common policies” (Blank, 1999, p. 130). The geographical need of EU member states to put migration and security before trade and development is also demonstrated by the Maltese prime minister proclaiming that illegal migration from the EMP countries is a threat to Europe (Mantiri, 1995).

While not related to the hypotheses posed at the beginning of this thesis, it turned out that geography played a role in the preference formation in another way as well. The EMP was desired by France, Spain and Italy to counterbalance the prospective member states in Central and Eastern Europe: “the shadow of enlargement was one of the triggers of the EMP” (Bicchi, 2011, p. 5). Whereas Germany put its weight behind the eastern enlargement, France emphasised that the EU should not lose sight of its southern neighbours. While this might not affect the difference between restrictive or regulative migration provisions, it does reflect the different stances between Northern and Southern Europe and the previously mentioned framing of by the EU itself against the EMP.

7.2.2. International negotiation

The European Commission already considered the mandate given by the Council already a compromise, and convinced the Mediterranean states it had little room to

move. Whereas the ACP were able to withstand both this argument and the pressure to support the restriction of migration, the EMP were far less organised to withstand the EU's pressure. Therefore the Commission's rhetoric, combined with its economic leverage, administrative capacity, and bilateral negotiations gave the Commission its overwhelming bargaining power (Montanari, 2007, p. 1015). The EU had that power due to its choice of a compartmentalised approach and bilateral negotiations with each EMP state on its own instead of one multilateral EU-EMP negotiation round. This leverage is exemplified by the fact that the EU set the terms from the beginning by handing out drafts of the agreements on beforehand, the final outcomes were only slight modifications of those drafts (Blank, 1999, p. 144; Volpi, 2004, p. 158). While the EMP states were marginally able to place the US as an alternative to the EU, they preferred access to EU markets and funds (Kuiper & Dell'Aquila, 2004, p. 13).

The European approach of compartmentalised agreements lead to a situation referred to as the 'hub-and-spokes' model. This means that economic activity is likely to be concentrated in the hub, the EU in this case (Kuiper & Dell'Aquila, 2004, p. 29). This situation is most beneficial for businesses in the hub, for they have access to all the spokes, whereas a firm in one spoke does not necessarily have access to the others (Hoekman & Djankov, 1996, p. 21). As a consequence, investment from the hub remains limited because their competitive position is most optimal in the hub. The presumed economic equilibrium inciting reduced migration is therefore undermined by the European approach itself (Kuiper & Dell'Aquila, 2004, p. 29). Overall, the EU negotiated agreements that are beneficial for their corporations, but not enhancing its security or improving the economic development of the Mediterranean countries.

8. Synthesis: difference between European trade agreements

There are some sharp differences in the EU's preferences and leverage between the Cotonou and EMP agreements. This is reflected in the EU's approach to migration and trade in both cases. As previously mentioned, the EU pursued a compartmentalised *à la carte* approach in the EMP (see also Gillespie, 2011, p. 1207). In the Cotonou case the Commission explicitly stated that the outcome "should not lead to a

compartmentalised approach” (European Commission, 1996). The scope of both agreements reflects the different approach to the migration-trade nexus. The Cotonou agreement is supposed to focus on the categories economy, society and environment; institutions; trade and investment (European Commission, 1996). The EMP is supposed to focus on a political and security partnership; economic and financial cooperation; developing social, cultural and human resources (*Barcelona Declaration*, 1995). This wording demonstrates that the essence of the Cotonou agreement different from that of the EMP, trade and migration get different priorities in each case. Another difference between the agreements is the European stance to the ACP’s and EMP’s political liberalisation and human rights. This appears from accounts such as this:

“Fraudulent elections failed to elicit the kind of expression of concern with which the EU frequently greeted similar irregularities in other regions, and the incremental tightening of political space in countries such as Egypt and Tunisia met with no substantive response” (Youngs, n.d., in: Usul, 2008, p. 383).

While chapter six showed that the EU underplayed the role of civil society in the negotiations with the ACP, it neglected them in the negotiations, implementation and evaluation of the EMP agreements. For the sake of stability across its borders the EU tolerates corruption and suppression. In fact, the EU seeks to establish a *cordon sanitaire* around itself called ‘Wider Europe’ that ranges from Morocco to the Balkans and Eastern Europe (Usul, 2008, p. 380). Within this region the EU wants to create an area of prosperity and stability, but in the case of the EMP this means that political continuity is prioritised above foreign investment. For the ACP, the EU is not only more vocal, but also provides (financial) stimulus for political liberalisation and the respect of human rights. These are however differences that played out after the agreements were reached. The differences that arose from the preferences and power of the EU are to be synthesised next. Finally, the chapter will present once again the hypotheses and argue based on the synthesis whether they are confirmed for the time being or rejected.

8.1. Domestic preference formation

On level I the variables track record, and to a certain extent geography, explain why the EU does not focus on migration in the Cotonou agreement as it does in the EMP. While both were initiated in the 1990s, there was until 2005 no policy coherence in the field of migration policies and to this day policy fields within the European institutions hardly communicate (Groenendijk, 2015). Each policy field, such as development, migration, trade and foreign affairs have different policy frameworks within which issues are framed (Koebe & Hohmeister, 2010, p. 2). Due to the institutional legacy of the Cotonou agreement, the talks were placed within the policy frameworks of development, and since the turn of the century also that of trade: “the existing *acquis* of Lomé was a crucial element of the negotiations” (Forwood, 2001, p. 348). The EMP had no such track record so the fields of security and home affairs were able to leave their mark on the negotiations.

According to Moravcsik geography and geopolitics “tended to matter most where the costs and benefits of cooperation were uncertain, balanced, or weak” (Moravcsik, 2005, p. 9). Furthermore, “geopolitical considerations tended to be most important where issues had no immediate economic impact, [...] [predicting] the predominance of concerns about security and sovereignty” (Moravcsik, 2005, p. 9). Hence the Cotonou agreement had a more certain and strong basis for cooperation than the EMP. The Cotonou agreement also focuses on development and its economic impact, whereas in the EMP security is predominating.

Moravcsik (Moravcsik, 2005) writes that path-dependency as described by historical institutionalists is not appropriate, or empirically founded, in the case of the EU. The stability and continuity of preferences are not unforeseen or unintentional, but rather an intentional lock-in of regional cooperation (Moravcsik, 2005, pp. 20, 23–24). Therefore we could argue that the notion of path-dependency as mentioned in §7.1 should be seen as a weak version of it according to Liberal Intergovernmentalism (Moravcsik, 2005, p. 24). The stability of preferences, the locking-in of EU-ACP cooperation all play ball with LI as an extension of the track record concept. Taken together this explains why the European preference in the case of the Cotonou

agreement was not adapting to restriction. There was no clear exogenous change that would require the member states to alter their preference. The EMP lacked an effective track record that got reaffirmed by the EU, and with the conflicts occurring in the region the EU had an impetus to form a preference of restriction. This also shows that LI as a theory of European integration needs some revision if one attempts to rigorously apply it to the EU's foreign policies.

8.2. International negotiation

On level II, and in the field of migration, the ACP had a better bargaining position than the EMP. Figure 8.1 below shows that the ACP and EMP countries have a roughly equal bargaining power in terms of their market sizes. Both are however trumped by the EU's GDP of \$ 16,398 trillion. The assumptions made in the theoretical framework seem to stand for this situation as well; the countries closer to the EU (EMP) are trading more than those further away (ACP). The figure also illustrates the hub-and-spokes model for the EMP, the trade balances show that the EU exports far more to the EMP than it imports, meaning that more investments will take place in the European hub. The ACP have a much more balanced relationship with the EU. However, as their total trade volume is roughly half that of the EMP, explanations for why the ACP were able to withstand the European power have to be sought elsewhere. This thus strengthens the explanations given in the previous chapters. The ACP had a better negotiation position than the EMP because the EU had a great interest in revising article 13 on migration of the Cotonou agreement. The EU wanted to turn it into a self-executive provision, with binding readmission for all signatories and the burden of proof of the country of origin of the migrant placed on the country of transit, which would be the ACP in nearly all cases (Koebe & Hohmeister, 2010, p. 7). The ACP were able to formulate clear interests, which entailed legal migration measure (Koebe & Hohmeister, 2010, p. 5). This made the status quo for the EU more attractive. The EMP on the other hand were not able to withstand the European pressure, partly because the EU pursued matters of security and migration before trade and development and because the EU strategically negotiated with each state independently so they were less likely to group together and form a bloc against the EU.

	GDP in 2016	Total trade with the EU in 2016 (imports and exports)	Trade balance with the EU in 2016	Share in EU trade
ACP countries	\$ 1,874 trillion ⁵	€ 146,739 million	€ 6,864 million	4,2 %
EMP countries	\$ 1,898 trillion	€ 318,186 million	€ 54,302 million	9,2 %

Figure 8.1. Basic economic figures for the ACP and EMP (source: European Commission, 2017).

8.3. Assessment of hypotheses

At this point, it should be clear that there is some ambiguity in the European free trade policies and migration clauses. On the one hand the EU maintains a liberal outlook on trade and migration, but on the other hand it also pursues policies and measures that undercut that same liberal outlook (see chapter 2 on this ambiguity in the migration-trade nexus). In section 4.4 the hypotheses were put forward and the following sections will assess those hypotheses and argue to which extent they hold in the cases of the Cotonou and EMP agreements.

Hypotheses on level I

The first hypothesis (H1) stated that a restrictive trade agreement is probable if the EU has the preference to restrict migration. This preference is probable if (H1.1) the EU and the other party do not share a track record and this preference is also more probable if (H1.2) the other party is close to conflictual areas. In the case of the EMP the parties did not share a track record, and the (perceiving of the) Mediterranean countries being close to conflictual areas means that the EU preferred to restrict migration in its agreements with the EMP countries. Therefore H1 and its sub-hypotheses hold within the scope of the EMP agreement. The second hypothesis (H2) asserts that a regulative trade agreement is probable if the EU has the preference to regulate migration. For this preference to be probable, the EU has to (H2.1) share a track record with the other party and (H2.2) be geographically close to the other party to foster regional cooperation. In the case of the Cotonou agreement the EU preferred

⁵ Faroe Islands, Djibouti, Eritrea and Papua New Guinea are not included due to a lack of data.

to regulate migration, and indeed they shared a track record, which means that H2.1 holds; a regulative preference is more probable if the EU shares a track record with the other party. However, the ACP were geographically very dispersed, which renders H2.2 false; geographical closeness does not necessarily foster a regulative preference. Furthermore, the EMP states were geographically concentrated alongside the EU's borders, but the European preference became not less restrictive, in fact it might have become more restrictive because of the closeness to the EU. Geographical closeness might however influence the context of sharing a track record, since the dispersion of ACP members also means that some of them were close to (or in) conflictual areas, but not close to the EU. This complicates geographical closeness, because being neighbours affects not only friendly cooperation (see the argumentation of figure 8.1) but also possible spill over of conflicts. This in turn reaffirms existing research outcomes that a peaceful environment has to be in place in order for trade to foster.

Hypotheses on level II

The third hypothesis (H3) states that a restrictive trade agreement is probable if the EU has the leverage to impose its restrictive preference. Accordingly, the fourth hypothesis (H4) states that a regulative trade agreement is probable if the EU has the leverage to impose its regulative preference. For the EMP the EU was able to use its market power to impose restrictive migration clauses. In the case of the Cotonou agreement the EU was not able to impose its preference because it did not have the leverage to do so. Strictly speaking this means that H3 stands but H4 is false, the EU did not have the leverage over the ACP as it did over the EMP. However, in the Cotonou case the ACP did not have the leverage themselves to impose a facilitative preference, but since they strongly opposed restrictive clauses (something the EU would be amenable to), the outcome of regulation can be seen as a compromise both parties can work with. Especially in the last revision of the Cotonou agreement, when the European delegation was flirting with a restrictive preference comparable to its old preference in the EMP negotiations.

9. Conclusions

This thesis tried to understand what is explaining the difference in migration clauses in trade agreements signed by the European Union, taking the Cotonou and EMP as cases of these differing agreements (being either regulative or restrictive of migration). The theoretical framework set apart possible explanatory variables and hypotheses derived from Liberal Intergovernmentalism. The subsequent chapters put these to the test and ultimately we can conclude that the variables indeed add some explanatory power to the narrative of Liberal Intergovernmentalism and the migration-trade nexus (see figure 9.1 for the assessment overview). The difference in migration clauses is *inter alia* explained by the (effective) track record of agreements between the EU and the third party. Sharing such an institutional legacy increases the probability that the EU prefers regulative migration clauses. Likewise, not sharing such a track record increases the probability of a preference for restrictive migration provisions. Furthermore, such a restrictive preference is more probable if the third party is close to conflictual areas. It turns out that parties do not have to be close together in order for the EU to prefer regulation. In fact, the aforementioned closeness to conflictual areas is more likely to put a mark on the preference if the negotiating parties are close together themselves. This is exemplified by the Cotonou, which were geographically dispersed and sometimes in conflictual areas whereas the EMP is geographically concentrated along the European borders and close to conflictual areas as well. Lastly, on the level of international negotiation it became clear that the EU needs leverage to impose migration clauses of a restrictive nature but does not need a similar leverage to be able to impose migration clauses of a regulative nature. Regulation itself might be a compromise of preferences of restriction/regulation and facilitation such as in the last revision of the Cotonou agreement.

Discussion

The objective of this research was to analyse the migration-trade nexus and provide preliminary knowledge on migration clauses in European trade agreements as well as the applicability of Liberal Intergovernmentalism on European foreign affairs. For Liberal Intergovernmentalism this research has shown that it could (loosely) be applied to European foreign affairs. Friction only exists with the use of the two-level

game on situations with as many negotiation tables as in the cases of multilateral region-to-region trade agreements. Section 8.1 argued that in traditional LI the variable path-dependency would be disregarded, but its more adaptive sibling track record is a viable variable to add explanatory power. Regarding the migration-trade nexus, the previous assessment of the hypotheses has shown that an institutional legacy in the form of a track record of trade agreements can make a difference between regulative and restrictive migration clauses in FTAs. Geography has shown to be a more complicated matter, the reflections below will elaborate more on this. Lastly, a power asymmetry makes it more likely that an agreement becomes restrictive. If the EU's preference were to be charted along a continuum from facilitative to restrictive, it would be located between regulative and restrictive, whereas countries from the ACP and EMP would rather be placed between regulative and facilitative. This means that when the EU has an overwhelming leverage over the other party, as in the case of the EMP, the FTA would probably be restrictive. The EU did not have such leverage (on the issue of migration) over the ACP, so the Cotonou agreement turned out regulative.

	Hypothesis	Assessment
1	A restrictive trade agreement is probable if the EU has the preference to restrict migration.	Confirmed
1.1	An EU preference for restriction is more probable if the parties do not share a track record of agreements.	Confirmed
1.2	An EU preference for restriction is more probable if the other party is close to a conflictual area.	Confirmed
2	A regulative trade agreement is probable if the EU has the preference to regulate migration.	Mixed
2.1	An EU preference for regulation is more probable if the parties share a track record of agreements.	Confirmed
2.2	An EU preference for regulation is more probable if the parties are geographically close together.	Rejected
3	A restrictive trade agreement is probable if the EU has the leverage to impose its restrictive preference.	Confirmed
4	A regulative trade agreement is probable if the EU has the leverage to impose its regulative preference.	Rejected

Figure 9.1. Hypothesis assessment overview.

9.1. Global migration governance

For societal implications of this research, global migration governance can be considered. A part of the theoretical framework described global migration governance (§3.1.1.) and stated that migration has no dedicated international governance regime for various economic or political reasons. The cases of the Cotonou and EMP agreements show that there currently are numerous forums on migration but these do not take global decision-making to the next level. In fact, despite the attempts of the EU to ‘hijack’ political dialogue forums with the ACP for ‘migration missions’, the ACP succeeded in withstanding the EU from imposing a revision of the migration clauses (Koebe & Hohmeister, 2010, pp. 4–5). A possible explanation for the lack of governance is given by the Global Public Goods Theory (see §3.1.1.). As part of the European preference to restrict migration from the Mediterranean countries, states such as Spain

and Italy depicted the (unskilled) migrant workers as “a drain on the welfare system” (Volpi, 2004, p. 156). Referring back to figure 2.1, the EU is regionally (with the EMP) agreeing on migration governance to restrict migration in order to safeguard its domestic labour market. To ease the migration of highly-skilled job seekers, the EU is again following figure 2.1 and came up unilaterally with policies such as the European Blue Card. In contrast, the EMP countries prefer to retain their skilled labour and send their unskilled labour abroad. Interestingly, the tactic they use is to argue that their migration management is inefficient (Volpi, 2004, p. 156).

Up to this point it became clear that the difference between the agreements is based on the European preference as well as its leverage. The limitedness of a global migration governance regime is possibly influenced by the same factors, although future research should look into this more specifically. The European preference lacks meaningful coherence, and it might only have the leverage to impose measures in a hub-and-spokes model (Farrell, 2010). It seems difficult to initiate a new track record due to geopolitical and economic considerations. Thus a governance regime *à la* the WTO is for the time being unlikely to come into existence. Rather, a plethora of forums, platforms and bilateral agreements is more likely to shape the international rules surrounding migration.

9.2. Reflections for future research

Looking back on the research process, I would argue that LI is a fruitful theoretical endeavour to explore further for its applicability to European foreign affairs. In this research it has been made fit for the Cotonou and EMP cases, so there is now the opportunity to create a more substantial LI theory of European foreign affairs instead of a slightly modified theory of European integration. Unfortunately the development of such a theory was beyond the scope of this research project. Future research should also certainly look into the variable of geography. The analysis of the hypotheses on geography turned out complicated since it appears that geographical proximity is tied to cultural proximity. The assumption can be made that parties that are geographically or culturally close to each other are more probable of cooperating and thus regulating (or facilitating) migration. This goes with the presumption that there are no conflicts,

since peace precedes trade. The research considerations in section 4.5 already mentioned that insights from this research would invest in a new phase in the nascent field of the migration-trade nexus. Existing research mainly entails statistical research, but this research focused on within-case analyses to contribute to the opening of black boxes. The explaining-outcome process tracing turned out an appropriate method for such an analysis into black boxes. The deductive versus inductive paths to find explanatory variables was briefly touched upon in the discussion of the empirics in §7.1, although most variables were distilled through the deductive path, the inductive path came to the same conclusions for the track record variable. Just like this project was the next step in my personal understanding of migration, the concluding insights also proved to be the next step in the understanding of the relation between migration and trade.

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EUROPEAN APPROACHES TO MIGRATION AND TRADE

ABSTRACT

Among academics there is a strong critique of the European Union's strategy to include migration measurements within trade agreements. While some trade agreements facilitate migration in accordance with liberalism, this thesis looks at two agreements that do not. In the Cotonou agreement with African, Caribbean and Pacific states the EU agreed to regulate migration. In the Euro-Mediterranean Partnership with countries from around the Mediterranean the EU agreed to restrict migration.

What explains this difference? That question is answered in this thesis through a Liberal Intergovernmentalist case study of the two agreements. In short, within the scope of the case studies it appears that sharing a track record of agreements increases the likelihood of a European preference for regulation. However, if the other party is geographically close to conflictual areas the likelihood of a restrictive preference increases. Lastly, when the EU prefers restriction, power asymmetry affects the possibility to impose this preference on an often unwilling third party.