

EUROPEAN UNION'S NORMATIVE FREE TRADE AGREEMENTS WITH AUSTRALIA AND NEW ZEALAND: ARE THEY A BOOSTER FOR THE GLOBAL GATEWAY PROJECT?

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Abstract

With Lisbon Treaty, EU's trade policy, which is predominantly based on Free Trade Agreements (FTA), has gained unity in terms of normativity. In the case of Covid-19, regression of global trade norms, danger of stopping international supply chain and accompanying discussions on politicization of EU have increased the need for common norms and a safe ground in international cooperation. In the research, FTAs normative response rate has been examined with longitudinal narrative method. In addition, the presence and usage of EU norms and principles in official documents were as observed in a sample of population from Australia and New Zealand. One of findings of this research is that normativity is instrumental in EU institutions' emphasis on common identity and partner countries' instrumentality in providing legitimacy before public opinion. Other is potential of EU, which can follow global sanctions on the basis of human rights in post Covid-19 period, to realise the Global Gateway project with contribution of normative FTAs. This potential ranges from normative, predictable, stable and secure grounding from increasing compliance in partner countries to prevention of worsening of their current situation. Its content provides the ground for the limitations on the basis of human rights of government and economic actors in partner countries.

Keywords: European Union, Free Trade Agreements, International Cooperation, Human Rights

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Introduction

The European Union's (EU) normativity highlights a set of political principles that are adopted and advocated. These principles are human rights, democracy and rule of law. These principles can be subject of a legitimating discourse in legal and political reforms⁵. In addition, these principles can also guide the EU's relations with third countries. As a matter of fact, since December 2009, when Lisbon Treaty came into force, political principles of the EU gained a legal binding force in its foreign relations. Trade policy constitutes an important part of the EU's external relations. This research will focus on impact of EU norms and principles on free trade agreements (FTAs), which is most important category of EU trade policy and on Global Gateway Project (GGP) process.

There is a decline of globalization with notion of neoliberalism after 2008-2009 financial crisis and a populist rise contributed by new political cleavage⁶. In addition, discussions on regression of the World Trade Organization (WTO) norms and post covid-19 period left their mark on specified period. These facts can provide some opportunities and possibilities for development of international cooperation over EU norms and standards.

Therefore, necessity arises for a research to proceed through successive parts of a holistic process. For this purpose, study will proceed as a historical research and will be carried out in form of a longitudinal narrative. The scope of research is limited to EU's post-Lisbon normative foreign trade policy and, more narrowly, to FTAs. First, development of normative aspect of the EU and its position in post-Lisbon politicization debates will be discussed. In the second part, reflection on EU normativity to foreign trade policy of the EU will be discussed. Thus, focus will be on EU's normative claims that has political appearance, which is gradually increasing in its new status. In addition, literature discussions in first two chapters will constitute to necessary theoretical framework for analysis in third chapter.

As sample in analysis part of study, FTA efforts, which are still in negotiations with Australia and newly concluded with New Zealand (ANZ) are discussed. Ongoing FTA's negotiation process with ANZ will be examined from perspective of EU normativity with help of the EU and ANZ official documents and discussions in literature. As a result of analysis of official documents related to EU-ANZ FTA negotiations, it can be evaluated whether normative claims of EU's external relations are really matters. For this purpose, documents of parties regarding aforementioned negotiation process

⁵ Mortan Kallestrup, "Europeanisation as a Discourse: Domestic Policy Legitimation Through the Articulation of a 'Need for Adaptation'", *Public Policy and Administration* 17, no.2 (2002): 110-124

⁶ Hanspeter Kriesi, Edgar Grande, Romain Lachat, Martin Dolezal, Marc Helbling, Dominic Höglinger, Swen Hutter and Bruno Wüest, *Political Conflict in Western Europe*. Cambridge: Cambridge University Press, 2012.

will be analyzed through theory on EU normatism based on human rights, democracy and rule of law. Due to incompleteness of EU-ANZ FTA negotiations, in analysis part, available data and secondary literature will be examined in terms of causality and in light of other FTA efforts. For this purpose, relevant official documents of the EU institutions and ANZ on the EU-ANZ FTA negotiations will be included in research for data. In addition, secondary literature on all external relations and trade policy of EU will be used. Thus, in fourth chapter, possibilities and limitations of EU norms, which are based on United Nations (UN) principles, will be revealed for development of international cooperation and GGP in post Covid-19 period. It can be argued that the measures taken against the Covid-19 pandemic and the initiation of the GGP can add ways of directly being involved, as well as the economic/commercial dimension, to the EU's human rights-based order projection. A systematic umbrella for EU norms and principles may have emerged, especially in the case of the GGP.

First of the research limitations is EU-ANZ FTAs negotiations have not turned into a final text. Therefore, place of EU normative principles in the between negotiation process and final agreed text cannot be compared. Secondly, United Kingdom (UK) may have more intense political and commercial relations with Australia and New Zealand compared to the EU member countries. Political and economic effects of UK-ANZ relationship, which has historical, sociological and cultural closeness as well as political ties, on FTA negotiation processes are excluded from scope of research. Finally, EU normative claims are interrupted by signing of final text of agreement, since institutional structure that will enable post-FTA implementation is not yet in existence. It is necessary to try to observe stated limiting issues with future specific studies on practice.

First of the research findings is the EU institutions putting forward their external policies under umbrella of discourse and attitude based on democratic and human rights principles can promise clarity, trust, predictability and sustainability for international cooperation efforts. This potential is fed by fact that it can limit partner country governments through political agreement, which are integral part of FTA. It can be added that activities of economic actors in partner country, which fall within boundaries of human rights, are negotiated within scope of human rights issues. On the other hand, this limitation can contribute to equal and common conditions for international cooperation with the worldwide standardization of norms derived from human rights and rule of law in the case of FTA negotiation chapters. Secondly, countries that are part of FTA and like-minded with EU, support their own status and policies in their own public opinion with a legitimizing discourse based on norms.

1. NORMATIVE CLAIMS OF THE EU AND CHALLENGES FACED IN THE POLITICALIZATION PROCESS OF THE EU

It can be said that Europe imagination⁷ and some features of European integration constitute normative view of the EU. This normative outlook, which rises on principles of human rights and democracy, was previously reflected in external relations through principle of conditionality. In this section, debate on politicization of the EU after Maastricht Treaty, which entered into force in early 1990s, and Lisbon Treaty, which entered into force in 2009, will be discussed. In this way, development of the EU's normative claim will also be evaluated.

The normativity of EU refers to moral and universal norms aspect of EU imagination, which also has a legitimating function. In a Habermasian perspective, universal norms of EU, agreed in a rational context, can be adopted by everyone, regardless of identity and culture difference⁸. Another aspect of legitimating function of EU refers to overcoming the internal costs of reforms made in member and candidate countries in the EU integration process⁹. This theory, which is called institutionalist discourse, focuses on process of harmonizing EU norms and principles with EU perspective, policy and functioning in ambiguous conditions¹⁰ where there is no concrete model. Thus EU influence is legitimization of policy areas less related to EU harmonization, including administrative reforms, on a discourse on EU norms and principles¹¹.

The EU, by focusing on universal moral principles and fundamental rights, fortifies this with its economic power. Thus, it can gain a normative feature¹². The normative power approach, which focuses on the external relations of the EU, is based on the adaptation of third parties to the EU norms. In other words, violation of the norms and standards of the EU can bring about 'marginalization'¹³. In the case of EU trade policy, this marginalization can be met in practice, from being excluded from

⁷ Gerald Delanty, *Avrupa'nın İcadı*. Translated by Hüsamettin İnaç. Ankara: Adres Yayınları, 2005.

⁸ Jürgen Habermas, *Truth and Justification*. Translated by Barbara Fultner. Cambridge, MA: MIT Press, 2003, p. 259-260.

⁹ Frank Schimmelfennig and Ulrich Sedelmeier, "Conceptualising the Europeanisation of Central and Eastern Europe". In: Frank Schimmelfennig and Ulrich Sedelmeier (eds.) *The Europeanisation of Central and Eastern Europe* (1-29 p.p.). New York, Ithaca-Cornell University Press, 2005.

¹⁰ Nicolas Jabko, *Playing the Market: A Political Strategy for Uniting Europe, 1985-2005*. New York, Ithaca-Cornell University Press, 2006.

¹¹ Zafer Evmez, "Türkiye'de Siyasal Elit Uzlaşmasının Halkın AB'ye Yönelik Tutumlarına Etkisi". *Avrasya Sosyal ve Ekonomi Araştırmaları Dergisi* 7, no.1 (2020): 51-73. Mortan Kallestrup, "Europeanisation as a Discourse: Domestic Policy Legitimation Through the Articulation of a 'Need for Adaptation'". *Public Policy and Administration* 17, no.2 (2002): 110-124.

¹² Henrik H. Larsen, "The EU as a Normative Power and the Research on External Perceptions: Missing Link". *Journal of Common Market Studies* 52, no.4, 896-910 (2014).

¹³ Ian Manners, "The European Union as a Normative Power in the Global Polity". Leeds: *Present to PSA Annual Conference* (2005). Thomas Diez, "Constructing the Self and Changing Others: Reconsidering 'Normative Power Europe'". *Millennium: Journal of International Studies* 33, no.3, 615-636 (2005).

the EU market to being labeled as a partner country violating universal political principles (democracy, rule of law and human rights). However, the normative power of the EU may encounter tides and limitations regarding the EU's political appearance¹⁴.

After the Lisbon Treaty, EU institutions were given more decision-making powers. Therefore, the power of EU institutions to make political decisions has increased. This brought along the fact that the public opinion of the member states focused more on the EU level as well as their own national level. This transformation of imagination, also called the politicization of the EU, is not linear in terms of the relationship between the EU and its citizens. For this reason, it has caused inconsistency between the normative claim and functioning of the EU¹⁵. However, the politicization of the EU as an entity is directly related to EU normativity. Because the universally accepted norms and principles of the EU can limit the claim of universality of the national states of the member states to their citizens. For example, in the final settlement of judicial disputes in the EU, compliance with the principles of conditionality as well as the European Convention on Human Rights (ECHR) is binding on member states. In a study on Eastern European member states, it is argued that the political demands, trust and expectations of new EU citizens often shift from the national level to the EU level. In other words, in the public imagination in these countries, the politics of the EU as a 'polity' can crystallize compared to national units¹⁶.

With the EU's 'next generation' FTAs, it is possible that the principles of political conditionality in the narrow sense and the normativity of the EU in the broad sense may gain a new and global importance. Because, it can be argued that political conditionality principles and norms, which gained legal binding in the EU's external relations, especially in trade. Thus, it may offer opportunities for the continuation of mutual relations and cooperation in the face of the debates on the decline of WTO norms, which gradually increased after the 2008 financial crisis and became chronic with 'tariff wars'.

2. NORMATIVE EU TRADE POLICY AND FREE TRADE AGREEMENTS AFTER THE LISBON TREATY

The way these normative principles exist in agreement texts that resulted with attitudes of the EU institutions on normative principles during the FTA negotiations. Thus, it can constitute nature of the EU's contribution to international cooperation. It can be said that ability to articulate EU political

¹⁴ Zafer Evmez, "Avrupa Birliđi'nin Meşrulaştırıcılığı ve Göç Krizi". In *Deđişen Dünya'da Göç*, edited by Mahir Özhan, 169-187. Bursa: Ekin, 2020.

¹⁵ Sandra Lavenex, "'Failing Forward' Towards Which Europe? Organized Hypocrisy in the Common European Asylum System". *Journal of Common Market Studies* 18, no.1, (2018).

¹⁶ Zafer Evmez, "Avrupa Birliđi'nde Siyasallaşma ve De-Politizasyon: Dođu Avrupa Üye Ülkelerindeki Kamuoyu Tahayyülü". *Akademik İzdüşüm Dergisi* 6, no.1, (2021), p. 81-90.

conditionality principles in both national and international contexts in partner countries constitutes another aspect of this quality. In addition, a benefit-based orientation can be observed in EU's FTAs with third countries, although it will be assumed that the EU has a foreign policy based on political conditionality. Of course, third countries' compliance with EU norms and principles is a prerequisite. However, commercial benefits of the EU and third countries are also among factors affecting negotiation process.

The declaration of European Council of 1992 describes principles of political conditionality as basic element of EU trade agreements¹⁷. In 2006, with initiation of 'new generation FTAs' process, political conditionality, which is a part of political agreement carried out simultaneously with FTA process, has also become a prerequisite for start of the FTA process¹⁸. In this way, cooperation and dialogue are tried to be provided for protection of EU norms in FTA and other agreements, which are integral parts of the general framework texts¹⁹. Therefore, it can be argued that normative principles are tried to be secured even if they cannot be directly reflected in FTA process due to various political reasons. After Lisbon Treaty, a large part of the EU trade policy and increasingly foreign relations is constituted by FTA's²⁰. Actually, European Commission underlines that violation of EU's normative principles will lead to suspension or even termination of the FTA²¹.

The reflection of normative aspect of the EU's relations with its external partners is realized through some basic texts. The Lisbon Treaty and Treaty of European Union (TEU), constitute general framework. Article 6 of the Lisbon Treaty strengthens position of Charter of Fundamental Rights within EU. In addition, Article 24 of the Agreement has brought a new order to external relations of the Union by adding article 10/a to the TEU. In this article, "*The Union's action on the international scene shall be guided by the principles ... which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law*" provision is included. In following article 10/b, it is stipulated that strategies and targets to be determined by the European Union Council will depend on principles specified in article

¹⁷ Karen Elizabeth Smith, "The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?". *EUI Working Paper SPS 97, no.7*, Badia Fiesolana, San Domenico, (1997).

¹⁸ European Parliament, *European Parliament Resolution of 10 December 2013 Containing the European Parliament's Recommendation to the Council, the Commission and the European External Action Service on the Negotiations for an EU-Canada Strategic Partnership Agreement*. Brussels, 2013.

¹⁹ European Commission, *Commission Staff Working Document Impact Assessment: Accompanying the Document Recommendation for a Council Decision Authorising the Opening of Negotiations for a Free Trade Agreement with New Zealand*, SWD(2017) 289 Final, Brussels, 2017, p. 38.

²⁰ Claudia Hofmann, Alberto Osnago and Michele Ruta, "The Content of Preferential Trade Agreements". *World Trade Review* 18, no.3, 365-398, (2018).

²¹ European Commission, *Using EU Trade Policy to Promote Fundamental Human Rights: Current Policies and Practices*. Brussels, 2012.

10/a. In Article 21/2(b) of the TEU, there is a provision that principles of human rights and democracy form basis of the EU's foreign relations. Moreover, TEU presents an integrated world economy to EU as a duty by removing restrictions on international trade²².

The current number of FTAs carried out by EU is stated as 45²³. The number of new generation FTA negotiations that continue in 2010-2022 period, or whose approval phase has not yet been completed, is 21²⁴. It can be said that normative principles of the EU can be dictated more directly in FTAs with 'neighboring' partners in Eastern Europe (Georgia, Moldova and Ukraine)²⁵. In additionally, hope of EU membership in not-too-distant future causes the EU's normative power to gain relative effectiveness. As a matter of fact, in Lechner's²⁶ review, it is shown that human rights criteria are more involved in FTAs for the EU's Eastern European counterparts with the possibility of enlargement. However, in agreements made with commercial motives such as South Korea, South America, Singapore and Vietnam, human rights criterion remains in background.

Looking at the FTA negotiation process, it can be said that Investor State Dispute Settlement (ISDS) and Geographical Indications (Gis) protection are issues of conflict that can be encountered in almost every negotiation process. The impact of EU normativity on Gis and ISDS occurs directly and indirectly. Directly, ISDS has a special feature in terms of granting EU law the right to judge citizens of partner countries in the EU²⁷. On Gis, it has an effect with the worldwide standardization of rules derived from the rule of law. Indirectly, it can offer a cost-reducing legitimation in the eyes of the public in the implementation of norm-based ground and commercial policies. Additionally, implementation of the EU's trade policy is carried out under umbrella of its normative principles. In particular, process takes place on axis of financial aid, economic cooperation and infrastructure investments, as well as access to EU market within framework of Non-Trade Policy Objectives

²² European Commission, *Commission Staff Working Document Impact Assessment: Accompanying the Document Recommendation for a Council Decision Authorising the Opening of Negotiations for a Free Trade Agreement with New Zealand*, SWD(2017) 289 Final, Brussels, 2017, p. 4.

²³ World Trade Organisation, *RTAIS Database*, 2022. Accessed 12/06/2022. <http://rtais.wto.org/UI/publicPreDefRepByCountry.aspx>.

²⁴ European Commission Directorate-General for Trade, *Sustainability Impact Assessments*, 2022. Accessed 10/01/2022. https://policy.trade.ec.europa.eu/analysis-and-assessment/sustainability-impact-assessments_en.

²⁵ Narine Ghazaryan, "A New Generation of Human Rights Clauses? The Case of Association Agreements in the Eastern Neighbourhood". *European Law Review* 40, no.3, 1-30, (2015).

²⁶ Lisa Lechner, "The Domestic Battle Over the Design of Non-Trade Issues in Preferential Trade Agreements". *Review of International Political Economy* 23, no.5, 840-871, (2016).

²⁷ Katharina L. Meissner and Lachlan McKenzie, "The Paradox of Human Rights Conditionality in EU Trade Policy: When Strategic Interests Drive Policy Outcomes". *Journal of European Public Policy* 26, no.9, 1277-1278, (2018).

(NTPO's)²⁸. NTPO's is mainly concerned with negotiation processes of FTAs, which we can say constitute backbone of trade policy.

The EU normative claims took place in two types in FTAs. The first consists of 'elementary elements'. These require compliance with the EU's principles of political conditionality. The other is in the context of 'not performing'. Here, appropriate restrictive measures are taken in proportion to the violation of the fundamental element of the opposing party²⁹. In FTA negotiation processes, there are clear examples where political and economic aspects of the EU and its normative context compete or are balanced. For example, as in FTA process with Canada, FTA process with Japan is also 'appropriate measure' weighted³⁰. In other words, focus is on not violating these principles rather than directly accepting and implementing EU normative principles. Here, Canada can be considered as a country that respects human rights. Therefore, rather than acceptance of normative principles, there is a provision that these principles should not be violated symbolically. Thus, on the one hand, the EU normative claim is put forward, on the other hand, it can be ensured that a precedent can be set for other partners with whom the EU may interact with FTA in the future. However, in cases of Japan and even Singapore, death penalty is legal in these countries. Moreover, a number of human rights issues are observed in Singapore. Therefore, conclusion of FTA agreements with these countries means that the EU normativity is also restricted. However, it can be argued that focus is on ensuring that there is no further deterioration in existing situation regarding human rights. In addition, the FTA with Singapore did not include conditionality principles in either the final declaration or the Strategic Partnership Agreement (SPA) texts. However, compliance with the Lisbon Treaty was achieved through secondary official document (side letter), that related FTA agreement³¹.

EU foreign policy is stated in Lisbon Treaty and TEU to be built on human rights, democracy and rule of law. However, it is mentioned in this section that political and economic interests cannot be ignored in practice. On the one hand, there are efforts for political and economic power, such as the existing 'tariff wars' and discussions on the regression of WTO norms. Simultaneously, there are debates on whether neoliberal globalization has regressed and whether China-centered or multi-regional globalization has risen³². One can argue that the network of relations brought by the EU's

²⁸ Ingo Borchert, Paola Conconi, Mattia Di Ubaldo and Cristina Herghelegiu, "Trade in Culture: International Legal Regimes and EU Constitutional Values". *The EU and the WTO: Legal and Constitutional Issues*. (2018). Doi:10.5040/9781472562630.ch-010

²⁹ Ingo Borchert *et al.*, "Trade in Culture: International Legal Regimes and EU Constitutional Values".

³⁰ César de Prado, "Towards a Substantial EU-Japan Partnership". *European Foreign Affairs Review* 22, no.4, 2017. Ingo Borchert *et al.*, "Trade in Culture: International Legal Regimes and EU Constitutional Values".

³¹ Katharina L. Meissner and Lachlan McKenzie, "The Paradox of Human Rights Conditionality in EU Trade Policy: When Strategic Interests Drive Policy Outcomes".

³² Peter Záborský, "De-Globalisation, Populism, and the Future of Europe". *New Zealand Journal of Research on Europe* 13, no.1 (2019).p. 1-14.

political and economic policies in the perspective of universal norms, which can enable mutual reconciliation, can have a function in overcoming the two-way dilemma mentioned. Here, it was helpful to shed light on the EU's GGP that launched in December 2021. It has the GGP mission that "... demonstrate how democratic values offer certainty and fairness for investors, sustainability for partners and long-term benefits for people around the world."³³ which transforms worldwide regional efforts into an integrated and global platform. Such as 2018 EU-Asia Connectivity Strategy, Connectivity Partnership (Japan and India) with Economic and Investment Plan (Western Balkans, Eastern Partnership and Southern Neighborhood). Indeed, in this research, ability of universal norms to provide a transparent, secure and sustainable basis for international trade and cooperation through a global network of particular FTAs can also be promised by EU institutions for the GGP, which is a comprehensive framework³⁴. A framework will be able to provide cohesion between EU's other economic and political cooperation efforts and normative FTA efforts. Thus this project may also be necessary for carrying an upper umbrella potential to networks established from particular FTAs and a normative umbrella feature compatible with new generation -normative- FTAs. The following section will examine whether this functional potential is encountered in concrete operation in sample of FTA negotiations with ANZ.

3. REFLECTION OF NORMATIVE EU TRADE POLICY ON THE EU – AUSTRALIA AND NEW ZEALAND FTA NEGOTIATION PROCESS

In this section, we will be examined EU-ANZ FTA process. The universe of research is related to the EU's post-Lisbon FTA relations. There is an intense process of FTA, which continues with Indonesia in Asia-Pacific region of the EU. There are some aspects that distinguish ANZ FTA negotiations from other ongoing FTAs. Because, these countries 'like-minded' and shared common values with the EU. And bu iki ülke ile olan FTA müzakere sürecinin Lizbon Anlaşmasının yürürlüğe girişi, WTO normlarının gerilemesi üzerine tartışmalar ve Covid-19 pandemisinin ortaya çıkışıyla çakışan bir zaman çizelgesinde olmasıdır. It can addition that EU's GGP as an alternative model for international cooperation on a global scale. Moreover, these two countries were both parties to Trans-Pacific Partnership (TPP), which was previously supported by United States of America (USA). They are also already affiliated with China-backed Regional Comprehensive Economic Partnership (RCEP) organizations. On the other hand, economic and political power that supports EU normativity is almostly obvious in the ANZ example. In addition, preparation of negotiations with ANZ started

³³ European Commission and High Representative of The Union For Foreign Affairs And Security Policy, *Joint Communication to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank The Global Gateway*, Brussels. JOIN(2021) 30 final, 2021.

³⁴ European Commission, *Global Gateway: Up to €300 Billion for the European Union's Strategy to Boost Sustainable Links Around the World*, Brussels. European Commission-Press Release, 2021.

before both Lisbon Agreement and Covid-19 pandemic. Additionally, one of them continued while the other resulted after emergence of these cases. Therefore, choosing ANZ as a sample is useful for measuring normative outlook in EU trade policy, on the one hand. On the other hand, it is convenient to understand effects of this on international cooperation. It will be helpful for research purposes that developing content to these two extreme dimensions.

First, we will try understood to chronological development of the EU-ANZ FTA process, current situation and approach of the parties. In the following subsection, the official documents that constitute the scope of the research will be discussed. For this purpose, in order, official documents published jointly by EU institutions, ANZ governments and these two parties will be examined. Thus, status and function of normative principles in FTA process will be tried to be understood.

3.1. Overview of the EU – Australia and New Zealand FTA Process

The EU is trade partner of Australia and New Zealand, which ranks in top 3 in both exports and imports³⁵. However, for the EU, these two countries are relatively medium-sized trade partners³⁶. It is predicted that FTA with the EU could increase foreign trade by 36% in the case of NZ³⁷. The EU's FTA negotiations with the ANZ simultaneously started in 2018. In 2018, these two countries are among the 6 WTO member countries that could not provide preferential access to EU market³⁸. However, ANZ is key to distribution of EU's development aid in Asia-Pacific region³⁹.

EU-Australia 'Framework Agreement' signed in 2015 that lays groundwork for political cooperation aspect of the FTA process. Previously, political cooperation process was carried out within framework of the 'EU - Australian Partnership Framework' mechanism. FTA negotiations continue over themes of Gis Protection, Agriculture and ISDS⁴⁰. On the other hand, idea of FTA, which emerged with proposal of the New Zealand Government to the EU in 2009, became concrete with first round of negotiations held in Brussels in June 2018. EU-New Zealand trade, which FTA is

³⁵ Australian Government Department of Foreign Affairs and Trade, *Australia-European Union Free Trade Agreement*, (2021). Accessed 17/10/2021, <https://www.dfat.gov.au/trade/agreements/negotiations/aeufta/default>. New Zealand Foreign Affairs & Trade, *New Zealand-European Union Free Trade Agreement*, (2021). Accessed 15/10/2021, <https://www.mfat.govt.nz/tr/trade/free-trade-agreements/free-trade-agreements-under-negotiation/european-union-eu-new-zealand-free-trade-agreement/eu-nz-free-trade-agreement-overview/>.

³⁶ European Commission, *Extra-EU trade by partner*, 2022. Accessed 14/08/2022, <https://ec.europa.eu/eurostat/databrowser/bookmark/df30bb44-2e02-4001-9213-e4622cf651d1?lang=en>.

³⁷ European Commission Directorate-General for Trade, *Towards an EU-New Zealand Trade Agreement*, 2021. Accessed 17/10/2021, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement_en.

³⁸ European Parliament, *Negotiating Mandater for Trade Negotiations with New Zealand*, P8_TA(2017)0420. Strasbourg 2017.

³⁹ Kevin Rudd and Catherine Ashton, *Australia-European Union Ministerial Consultations*. Present to Parliament of Australia, 31 October 2011.

⁴⁰ Lachlan McKenzie, "Overcoming legacies of foreign policy (dis)interests in the negotiation of the European Union-Australia free trade agreement". *Australian Journal of International Affairs* 72, no.3, (2018), p. 6-9.

envisaged to promote, relies heavily on EU exports of drugs, vehicle, aircraft to New Zealand. And imports of wine, fruit and meat on return⁴¹. The EU's political cooperation agreement with New Zealand was signed one year after mutual declarations of intent on the FTA in 2015. The 'Declaration on Relations and Cooperations' mechanism, introduced in 2007, is resulted in text named 'Partnership Agreement for Relations and Cooperation' (PARC) in 2014. This text provides basis for especially political and commercial cooperation efforts.

Both countries have some reservations against the EU in the FTA process. Issues reserved for New Zealand include indigenous (Maori) rights, regulation of health and education, and application of EU law to New Zealand citizens in resolving investor-government conflict⁴². The last mentioned area is also a reason for Australia's reservation against the EU⁴³.

3.2. Reflection of EU Normativity on the EU – Australia and New Zealand FTA Process

EU-ANZ FTA negotiations, like all other FTAs of the EU, have two legs. On the one hand, there is a commercial agreement, and simultaneously, on the other, there is an effort to reach a political agreement. It is expected that these two agreements will rise on human rights-based norms and principles of the EU, with the contribution of institutionally being put on agenda in example of undertaking role of advocating for human rights or normative aspect in the EU.

3.2.1. Normative Principles in EU Official Documents

EU's official documents contain official written notifications of EU institutions on the FTA process, especially EU commission, EU Parliament and EU Council. Since EU Council is approval authority in the FTA process, observance of EU normative principles in its official documents can only be followed from the EU Commission and Parliament documents in background. On the other hand, Sustainability Impact Assessment (SIA) reports do not express views and approaches of EU institutions, as they are created by independent external consultants during negotiation process. For this reason, although FTAs include human rights dimension, such reports were excluded from scope of research.

The European Commission has two advisory texts on initiation of FTA negotiations with Australia and New Zealand. In addition to these texts, there is an 'impact assessment' and an 'annex' text in

⁴¹ New Zealand Foreign Affairs & Trade, *Key Facts on EU-NZ Trade*. 2021, Accessed 26/10/2021, <https://www.mfat.govt.nz/tr/trade/free-trade-agreements/free-trade-agreements-under-negotiation/european-union-eu-new-zealand-free-trade-agreement/key-facts-on-eu-nz-trade/>.

⁴² New Zealand Foreign Affairs & Trade, *Key Facts on EU-NZ Trade*.

⁴³ Lachlan McKenzie, "Overcoming legacies of foreign policy (dis)interests in the negotiation of the European Union–Australia free trade agreement".

nature of 'accompanying the document'. In the mentioned texts, in addition to FTA themes, Australia and New Zealand are analyzed in terms of the EU's political conditionality principles. In the Annex, only technical elements are examined. Thus, before starting negotiations, normative criteria can be clarified as well as commercial and technical aspects of the FTA.

In the introduction to recommendation texts of the European Commission, it is mentioned that political, commercial and investment relations between the EU-ANZ are based on human rights and democracy values⁴⁴. Moreover, Commission aims to strengthen commercial cooperation as a 'like-minded' partner. Thus, efforts are made to create integration through a value chain in the Asia-Pacific area. FTA negotiated within this framework is also tried to be realized in line with EU policies and EU Fundamental Rights Chart⁴⁵.

In the Commission's Impact Assessment⁴⁶ texts, Australia's human rights record and democratic processes are seen as positive. It also praises its efforts to protect human rights. However, absence of a Bill of Rights text that clearly emphasizes human rights is considered as a deficiency. In addition, there are criticisms about some international legislation on torture, indigenous rights, refugee policy has not yet been approved⁴⁷. While Commission praised New Zealand's human rights record and efforts, it was'nt anyone critics in this area⁴⁸.

Unlike the FTA negotiations with Canada, European Parliament (EP) prioritized commercial and technical aspects of the FTA in its 2021 texts on Australia and New Zealand. In these texts, EU normativity refers only to the Commission's SIA report. Here, in a way, it can be mentioned that EU norms and values are taken into account by Parliament while examining FTA⁴⁹.

In the EP's resolution dated 25/02/2016 on the opening of FTA negotiations with the ANZ, " *A. Whereas Australia and New Zealand are among the EU's oldest and closest partners, sharing common values and committed to promoting prosperity and security within a rules-based system*

⁴⁴ European Commission, *Recommendation for a Council Decision Authorising the Opening of Negotiations for a Free Trade Agreement wit New Zealand*. COM(2017) 469 final, Brussels, 2017.

⁴⁵ European Commission, *Trade for All – Towards a More Effective, Transparent and Responsible Trade and Investment Policy*, 2015. Accessed 21/09/2021, http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf .

⁴⁶ European Commission, *Commission Staff Working Document Impact Assessment: Accompanying the Document Recommendation for a Council Decision Authorising the Opening of Negotiations for a Free Trade Agreement with Austraila*, SWD(2017)293 Final, Brussels, 2017.

⁴⁷ European Commission, *Commission Staff Working Document Impact Assessment: Accompanying the Document Recommendation for a Council Decision Authorising the Opening of Negotiations for a Free Trade Agreement with Austraila*.

⁴⁸ European Commission, *Commission Staff Working Document Impact Assessment: Accompanying the Document Recommendation for a Council Decision Authorising the Opening of Negotiations for a Free Trade Agreement with New Zealand*, SWD(2017) 289 Final, Brussels, 2017, p.39.

⁴⁹ European Parliament, *6A a Balanced and Progressive Trade Policy to Harness Globalisation: EU-New Zealand Free Trade Agreements*, Legislative Train 05.2021, Strasburg, 2021.

globally ...” is indicated. Also, later in text, phrase “... *Australia and New Zealand are two countries which are fully characterized by the rule of law and ...protection for the environment and for human, social and labor rights...*” is included. These statements fill 'like-minded' attribute assumed between universal norms of the EU and the ANZ. In addition, text repeats emphasis on human rights, democracy and rule of law. In addition, human rights, labor standards and environmental protection are mentioned as an integral part of FTA process⁵⁰. Finally, importance of these FTAs for the EU, which focuses on deep cooperation in the Asia-Pacific region, is embodied in the phrase “... *envisages ... can act as a template for future free trade agreements*”⁵¹.

In the Negotiation Mandate Text in 2017, after repeating above-mentioned approaches, it is emphasized that the regional and bilateral cooperation strategy in Asia-Pacific will only be based on rules and value-based trade. In addition, in case of TTIP (Transatlantic Trade and Investment Partnership) with the USA (which then continues through a different FTA process), it is requested from the Commission - which is authorized to carry out negotiations - that different FTA negotiation processes do not conflict with existing or emerging commitments⁵².

3.2.2. EU Normative Principles in Australian and New Zealand Official Documents

The fact that EU's FTAs with ANZ countries are still in the negotiation process causes that texts expressing opinions by parties regarding content and approval of ongoing negotiations do not appear as EU documents. For this reason, the written statements and texts of the Governments or official institutions of this country will be referenced in this subsection.

The Ministry of Foreign Affairs and Trade of the Australian Government underlines that the FTA, which is planned to be concluded with the EU, will provide economic opportunities and aid in post-pandemic period. Subsequently, it tries to ground this FTA in the context of natural partnership based on values such as rule of law and commitment to universal norms. Moreover, the Australian Government expects a strong EU to be key to a rules-based international order⁵³. On the other hand, there is no mention of human rights-based norms or values in texts regarding technique and objectives of the FTA negotiations with ANZ, except for issues of working life, environment and sustainable development⁵⁴.

⁵⁰ European Parliament, *Opening of FTA Negotiations with Australia and New Zealand*, P8_TA(2016)0064, Strasburg, 2016.

⁵¹ European Parliament, *Opening of FTA Negotiations with Australia and New Zealand*.

⁵² European Parliament, *Negotiating Mandate for Trade Negotiations with New Zealand*.

⁵³ Australian Government Department of Foreign Affairs and Trade, *Australia-European Union Free Trade Agreement*.

⁵⁴ Australian Government Department of Foreign Affairs and Trade, *Australia-European Union Free Trade Agreement: Objectives*, 2021. Accessed 17/10/2021, <https://www.dfat.gov.au/trade/agreements/negotiations/aeufta/Pages/australia-european-union-fta-objectives>. Australian Government Department of Foreign Affairs and Trade, *Australia-EU Free*

In FTA, the New Zealand Government emphasizes environmental and socio-economic rights as well as human rights such as climate change, gender inequality, indigenous rights, labor standards and sustainable growth. In addition, principles of human rights, democracy and rule of law are among common values shared with the EU. However, in the same text, it is underlined that this time right of the Government to regulate will be protected in areas such as health and education, as well as working life, environment and water⁵⁵.

3.2.3. EU Normative Principles in Bilateral Documents

It can be said that bilateral documents are mostly composed of political agreement texts and FTA negotiation texts, which are an integral part of it. Apart from these, there may be some common documents for internal public opinion or for the world. The EU – Australia Framework Agreement of 2015 and the EU – New Zealand Partnership Agreement on Relations and Cooperations of 2016 constitute a framework for human rights view of bilateral relations. The fact that these agreements assume EU norms as basic element constitutes an assurance of implementation of human rights and democracy principles in FTAs, which are integral parts of agreements⁵⁶.

There is no reference to human rights-based norms of the EU in negotiation round texts, which are last bilateral documents and constitute core of the FTA. As examined in above sections, EU norms have been encountered in official documents belonging to EU institutions and related written or website documents belonging to the Australian and New Zealand Governments and relevant public institutions. This may mean that EU norms accompany FTA processes in pre-negotiation and parallel processes.

Thus, the EU's relations with third partners can be maintained on basis of norms. In the example of ANZ negotiations, commercial interests are technically discussed in negotiation rounds. Compliance with normative principles constitutes a condition in beginning and conclusion of negotiation and in the accompanying political text. Considering that FTAs have an important dimension of EU external relations, it can be argued that this may cause a serious accumulation in formation of a global normative network with particular FTAs. On the other hand, from documents of EU institutions on the ANZ and FTA process, it can be said that EU norms, principles and values serve as an outward expression of an EU identity.

Trade Agreement: Summary of Negotiating Aims and Approach. 2021. Accessed 21/10/2021, <https://www.dfat.gov.au/trade/agreements/negotiations/aeufta/summary-of-negotiating-aims-and-approach> .

⁵⁵ New Zealand Foreign Affairs & Trade, *New Zealand-European Union Free Trade Agreement*.

⁵⁶ European Commission, *Commission Staff Working Document Impact Assessment: Accompanying the Document Recommendation for a Council Decision Authorising the Opening of Negotiations for a Free Trade Agreement with New Zealand*.

In the FTA negotiation process, direct emphasis is placed on compliance with EU norms, principles and standards. In this respect, practice of ‘not worsening the existing situation’ seen in FTAs with other countries in the Asia-Pacific region such as Japan and Singapore is not seen in FTAs made with ANZ countries considered ‘like-minded’. Here – although out of the scope of research – it should be taken into account that Brexit as an independent variable may limit facilitation brought by the UK-ANZ relations and therefore the commonwealth's like-mindedness between EU and ANZ. EU normativity, which is frequently used by Governments interacting with the EU to overcome internal political costs, can also be included in their official documents by ANZ Governments. Legitimizing discourse can also benefit the partner Government by using normative principles in trade agreements to legitimize its own public status, agreement or trade policy. Finally, it can be said that EU normativity seems relatively more dominant in FTA negotiations between EU and ANZ countries -compared to Canada, which can be assumed as ‘like-minded’-. In a way, Canada's political and economic power is relatively close to main countries of the EU can also contribute to this situation. The stated political and economic influence scale cannot be found in ANZ countries.

4. CONTINUED EFFORTS FOR EU NORMATIVITY AND INTERNATIONAL COOPERATION IN THE POST COVID-19 PERIOD

The Covid-19 pandemic has emerged at a time when there are various indications that EU normativism has made its mark on EU external policy in a burgeoning way. The measures against pandemic, which has a global nature, are meaningful in terms of position of the EU against current norms and principles on the one hand, and an element that is compulsory added to its external policy on the other hand. Pandemic measures can also be used as a turning point for research on contribution of normativity to international cooperation by focusing on the post-covid period. Although they may be partially excluded from the research sample, these facts are important in understanding what the EU-ANZ FTA relationship means in the new period. Because, it can be said that besides the human rights-based demands, which are largely based on economic incentive, direct human rights-based demands have become evident. Also, in this new era, the EU's GGP has emerged as a new normative umbrella for international cooperation efforts. It can be stated that all these new phenomena can act as an accelerator for the conclusion, implementation and effectiveness of normative FTAs on the one hand and for the GGP on the other.

4.1. Human Rights-Based Measures Taken by the EU Against Covid-19

EU countries have taken extensive measures to prevent the spread of the Covid-19 pandemic in order to ensure the basic rights (such as right to life and health) of their citizens. In addition,

restrictions arising from measures taken must comply with international law standards. Severity of the Covid-19 pandemic justifies decision of governments to restrict certain rights and freedoms (restriction of free movement of citizens due to quarantine or isolation), as it poses a high threat to public health. In addition, in connection with spread of the Covid-19 pandemic, Human Rights Watch⁵⁷ focuses on most emergency issues for protection of human rights in new conditions, in an advisory manner.

ECHR contains special provisions on emergencies that allow states to take various measures to protect health of their citizens. For example, according to Article 15 of the ECHR, it is possible for Council of Europe member states to temporarily deviate from their contractual obligations. In addition to right of States to deviate from their Covenant obligations, Article 15 of the Covenant also sets the States' margin of appreciation. In particular, States cannot violate the provisions of Article 2, Article 3, paragraph 1 of Article 4 and Article 7 of the Convention, which guarantee respect for fundamental human rights and freedoms⁵⁸. It is possible to see this article playing an important role in protecting human rights in an emergency, such as during the Covid-19 pandemic, as it helps to strike a balance between urgent need for action and protection of fundamental human rights.

However, in during Covid-19 pandemic, many EU countries have restricted citizens' freedom of movement to contain spread of coronavirus. For example, some EU countries have imposed restrictions on intercity and international travel. Of course, it can be said that these decisions violate freedom of movement of persons guaranteed in Article 2 of the ECHR. That is, according to Article 2 of the ECHR, freedom of movement and choice of place of residence are granted to anyone legally located on territory of any state. However, according to Article 2, paragraph 3 of same Convention, it is stated that this freedom may be restricted in certain circumstances.

For this reason, Covid-19 pandemic has brought up question of choosing between protecting human rights and ensuring public safety, and it is possible to see that the EU has taken important decisions to protect human rights. In response to crisis stemming from the Covid-19 pandemic and to ensure shared values, the Council of Europe has provided its member states with instruments on human rights, democracy and rule of law during Covid-19 crisis⁵⁹. Throughout 2020, EU countries have taken a number of measures restricting human freedom, guided by ECHR and other provisions

⁵⁷ Human Rights Watch, *Human Rights Dimensions of COVID-19 Response*, 2020. Accessed 26.11.2021, <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>.

⁵⁸ Sanja Jovičić, "COVID-19 Restrictions on Human Rights in the Light of the Case-Law of the European Court of Human Rights". *ERA Forum* 21, 545–560, (2020).

⁵⁹ Council of European Union, *Respecting Democracy, Rule of Law And Human Rights in the Framework of the COVID-19 Sanitary Crisis. A Toolkit For Member States*, Information Documents SG/Inf(2020)11, Accessed 10.11.2021, <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>.

of other Conventions. Despite epidemic and spread of infection around world, EU trying to find a balance between legitimate aims and burdens endured by person whose rights are curtailed. The stated efforts of the EU could also be seen concretely in some examples in 2021. For example Union Digital Green Certification Initiative (Digital Green Certificate), in 2021, the EU established a joint system to present the EU's digital immunity certificate against Covid-19 to facilitate safe free movement within the EU during the Covid-19 pandemic⁶⁰.

On the other hand, the EU's human rights-based intervention within the scope of Covid-19 can also have meaning in a more general phenomenon. Thus, normative efforts of the EU during pandemic period have simultaneously developed in its external relations. One of the most visible EU measures to combat human rights violations in 2020 is adoption of a specific EU Global Sanctions Regime for human rights violations⁶¹. With this document, EU was now able to impose sanctions for grave human rights violations occurring around world, and sanctions could be imposed not only on those who directly perpetrate these violations, but also on those who support or are linked to them. Therefore, in a way, it can be underlined that the measures regarding Covid-19 can be an accelerator of an emerging process. It can be stated that a systematic course of action on the basis of the political norms and principles of the EU, as in the example of the pandemic measures and the global sanction regime operating on the basis of human rights, is simultaneously in question in trade policy and international cooperation efforts.

4.2. EU Normativity and International Cooperation Efforts in the Post-Covid-19 Era

One of main tools of the EU normativity for the international cooperation is the EU's normative foreign trade policy. Here is the EU's network of relations that can spread to global arena through FTAs based on EU norms. Simultaneously with the Covid-19 pandemic period, EU's starting to follow a global sanction policy on basis of human rights is another main tool. The political agreement, which is an integral part of FTAs, ensures that governments of partner countries are limited on basis of human rights. Headings such as Gis and ISDS within the FTA or socio-environmental topics can facilitate restriction of economic actors in the partner country on basis of human rights. Add to this

⁶⁰ European Commission, *Regulation of the European Parliament and of the Council*. Brussels, 17.03.2021, Accessed 24.11.2021, https://ec.europa.eu/info/sites/default/files/en_green_certif_just_reg130_final.pdf.

⁶¹ Council of the European Union, *EU Action Plan on Human Rights and Democracy 2020-2024: Outcome of Proceedings*, Brussels, 18 November 2020, Accessed 23.11.2021, <https://www.consilium.europa.eu/media/46838/st12848-en20.pdf>. Council of the European Union, *EU Adopts A Global Human Rights Sanctions Regime*, Press release, 7 December 2020, Accessed 24.11.2021, <https://www.consilium.europa.eu/en/press/press-releases/2020/12/07/eu-adopts-a-global-human-rights-sanctions-regime/#>. Council of the European Union, *Council Approves Conclusions on the EU Action Plan on Human Rights and Democracy 2020-2024*, Press Release, 19 November 2020, Accessed 24.11.2021, <https://www.consilium.europa.eu/en/press/press-releases/2020/11/19/council-approves-conclusions-on-the-eu-action-plan-on-human-rights-and-democracy-2020-2024/>.

the worldwide standardization of standards derived from human rights and rule of law, and the observance of human rights by EU law, especially in the case of ISDS. Again, the EU can provide cost-reducing legitimacy in the eyes of the public in the completion and implementation of these negotiation chapters with the norm-based order it has brought. Thus, on the one hand, in the context of EU-partner country relations, there may be a standardization process between human rights white (increasing harmonization) or gray (no worsening of situation). On the other hand, political principles and values of the EU are an integral element for its economic conditionality. In other words, there is a worldwide spread of structural standards and normativity in economic functioning of the EU through FTAs. As a result, conditions of increased trust, stability and predictability can be achieved on basis of norms.

It can be said that a comprehensive projection for this network of relations has finally been put forward through the GGP, which was announced in December 2021. This network of countries that interact with each other and comply with the EU norms to a minimum or a large extent constitutes core of contribution to international cooperation. In the statements of EU Commission President von der Leyen and High Representative/Vice President Borrell, this global network, which is stated to be developed in axis of democratic values and international norms and standards⁶². In the FTA negotiation process, direct emphasis is placed on compliance with EU norms, principles and standards. In this respect, practice of 'not worsening the existing situation' seen in FTAs with other countries in the Asia-Pacific region such as Japan and Singapore is not seen in FTAs made with ANZ countries considered 'like-minded'. EU normativity, which is frequently used by Governments interacting with the EU to overcome internal political costs, can also be included in their official documents by ANZ Governments. Legitimizing discourse can also benefit partner Government for legitimize its public status, agreement or trade policy by using normative principles in trade agreements.

Finally, it can be said that EU normativity seems relatively more dominant in FTA negotiations between ANZ countries -compared to Canada, which can be assumed as 'like-minded'-. In a way, Canada's political and economic power is relatively close to the main countries of the EU can also contribute to this situation. The stated political and economic influence scale cannot be found in ANZ countries.

⁶² European Commission, *Global Gateway: Up to €300 Billion for the European Union's Strategy to Boost Sustainable Links Around the World*.

CONCLUSION

EU's human rights-based conditionality is a prerequisite for the initiating, completing, or even suspending FTA processes and can provide the necessary confidence and clarity for economic cooperation. On the other hand, it is possible to offer a values and mind analogy that is not mandatory for a military or commercial relationship. Therefore, universal, shared norms and principles can provide trust, certainty and sustainability through standardization for cooperation in areas that are becoming more visible or grayed out in the world. On the one hand, normative FTAs provide the necessary material, foundations and facilitation for the EU's global cooperation efforts. On the other hand, the EU's function of direct intervention on the basis of human rights, as in the example of pandemic measures and the global sanction regime, and the new global cooperation projection will enable the implementation of FTAs in a holistic manner and consistent with their normative character. Finally, it will be able to form the basis for institutionalization of cooperation at the institutional level (e.g., GGP). Moreover, EU norms and principles can also be instrumental in legitimizing their status and policies in the face of target publics by both EU institutions and FTA partner country governments.

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