

THE ROLE OF NON-COMMERCIAL CLAUSES IN EU TRADE AGREEMENTS IN SHAPING A PEACEFUL INTERNATIONAL ORDER

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Abstract

This article explores the role of the European Union's commercial policy in promoting peace and stability through the inclusion of non-trade clauses in international agreements. EU's common commercial policy is not, therefore, only an economic instrument, but it has evolved into an important component of the Union's external action, by integrating provisions and commitments related to human rights, democracy, the rule of law, sustainable development, and also environmental protection. The European Union's commercial policy is viewed within the broader legal and institutional framework of EU external action, being in EU's exclusive competence under Article 207 TFEU and subordinated to the principles set out in Article 21 TEU. The article also explores the classification, and practical functioning of non-trade clauses, supported by selected case studies from EU practice, referring to: essential elements clauses, political dialogue mechanisms, and conditionality provisions. The paper assesses the 'trade-peace nexus' through the lenses of its contemporary relevance in light of recent geopolitical developments. Trade agreements have the goal to contribute to stability by fostering economic interdependence and promoting normative convergence, however their effectiveness remains conditional and highly context-dependent. The findings suggest that, rather than direct guarantees of peace, the non-trade clauses function primarily as instruments of stabilization and norm diffusion. Ultimately, the findings suggest that EU trade agreements do not create peace, but they may support the legal, institutional, and economic conditions under which peace may be more likely to become a reality.

Keywords: *European Union, EU Common Commercial Policy, EU external action, non-trade related clauses, trade and peace nexus, normative power of the European Union, European Court of Justice case law.*

1. Introduction

This article examines to what extent the European Union's Common Commercial Policy (CCP), as part of its external action, can contribute to peace and stability by including non-trade clauses in its international agreements. Over time, the European Union (EU) has become one of the most influential global trade actors¹,

contributing to shaping not only the rules of international trade, but also its normative framework.

The CPP, as an exclusive competence of the Union under Article 3 of the Treaty on the Functioning of the European Union (TFEU), has evolved beyond its original economic scope and become a central component of the EU's external framework.

According to Article 21 of the Treaty on European Union (TEU), the Union's

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¹ The EU is one of the two biggest trading powers on the planet (alongside China), and still the largest when you combine goods and services.

external policies are guided by principles such as: democracy, the rule of law, human rights, and the preservation of peace and international security². This raises the question to what extent can trade policy serve as an instrument for promoting values traditionally associated with EU foreign and security policy?

This article proceeds from the premise that EU trade agreements are not currently purely commercial instruments, but a mixed legal framework, combining market access provisions with political, social, and also environmental commitments between the parties. Through this systematic inclusion of non-trade clauses, described in the literature as a 'normative power', ranging from human rights conditionality to sustainable development obligations, the EU seeks to imprint its fundamental values into its external economic relations, and to export these standards beyond its borders.

Against this background, this article pursues three objectives: to clarify the legal and institutional positioning of the Common Commercial Policy within the EU's external action, including also some mentions regarding the diversity of agreements concluded by the Union; to analyze the nature, classification, and legal effects of non-commercial clauses provided for in EU trade agreements, supported by mentions to some relevant case studies; and, finally, to critically examine the assumption that trade

fosters peace and stability, assessing whether the EU's success and limits in this area.

It's a well-known and old idea or theory saying that commerce pacifies nations. For example, Montesquieu³ held that trade softens manners and makes people less inclined to war; also, Kant⁴ talked about this idea in his vision of perpetual peace. In the early stages of the EU's history, the architects of post-war European integration used this logic to create the European Coal and Steel Community (1952), the six founding members assumed that economic entanglement could do what treaties and alliances had repeatedly failed to do, meaning: make the costs of conflict and war prohibitive.

Since then, the EU's ambition, as reflected in the successive treaty reforms (Maastricht, Amsterdam, and Lisbon), has been to project stability beyond its borders through its most powerful external instrument: trade. Thus, the Common Commercial Policy (CCP), the exclusive competence⁵ through which Brussels negotiates with the rest of the world, has evolved into a complex, multi-layered instrument of foreign policy. Today, EU trade agreements are rarely purely commercial. They provide for clauses on human rights, democratic governance, the rule of law, labour standards, and also environmental protection, therefore commitments that go well beyond the mere regulation of trade tariffs and quotas.

² See Mihaela-Augustina Dumitrașcu, Oana-Mihaela Salomia, "The European Union as international actor: the specificity of its external competences", Journal "Analele Universității din București", seria Drept, 2017, C.H. Beck Publishing House.

³ See Montesquieu, *The Spirit of the Laws*, 1748, Book XX, Chapter II (*Of the Spirit of Commerce*).

"Peace is the natural effect of trade."

"Two nations who traffic with each other become reciprocally dependent; if one has an interest in buying, the other has an interest in selling; and thus their union is founded on their mutual necessities."

⁴ See Immanuel Kant, *Perpetual Peace: A Philosophical Sketch*, 1795.

"The spirit of commerce, which is incompatible with war, sooner or later gains the upper hand in every state."

"For among all the powers (or means) subordinate to that of a state, the power of money is probably the most reliable, and thus states find themselves compelled to promote the noble cause of peace."

⁵ See Mihaela-Augustina Niță, Oana Mihaela Salomia, *Dreptul Uniunii Europene II*, 3rd edition, Universul Juridic Publishing House, Bucharest, 2025, pp. 96 - 100.

Trade agreements, through their mechanisms of economic interdependence and normative conditionality, could create structural conditions that may be able to reduce the possibility of interstate conflict, but only under specific circumstances, their effectiveness depending a lot on geographic proximity, on the depth and reciprocity of integration, on the institutional capacity of partner states, and also on credible enforcement. In other words, trade is a necessary, but insufficient on its own condition for peace. The EU's commercial policy can contribute to peacebuilding, but only when embedded within a broader and coherent external strategy that includes political dialogue, conditionality, and, where necessary, enforcement measures, such as the suspension of preferences or sanctions.

2. The Common Commercial Policy as a Component of the European Union's External Action

The Common Commercial Policy is one of the oldest and most integrated policies of the European Union⁶ and it serves as a primary instrument of the EU's so-called 'soft power', allowing the Union to influence other countries without relying on military force⁷.

The CCP is primarily regulated under Part Five of the Treaty on the Functioning of the European Union (TFEU), with its core legal basis found in Articles 206 and 207⁸. Article 207 TFEU explicitly provides that this policy should be conducted in the context of the principles and objectives of the Union's broader external action. These objectives include encouraging the integration of all countries into the world economy, fostering sustainable development, and contributing to free and fair trade⁹.

An significant institutional shift occurred with the Treaty of Lisbon, which strengthened the role of the European Parliament by granting it the power to approve or reject trade and investment agreements¹⁰. In terms of its evolution, the CCP has gone over time beyond mere trade in goods and came to include services¹¹, foreign direct investment, and intellectual property rights¹². According to the EU treaties, and also to the European Court of Justice jurisprudence, the CCP is now legally bound to ensure consistency with other external policies, even though these are subject to different rules and procedures¹³.

The legal basis lies primarily in Articles 3(1)(e) and 207 of the Treaty on the Functioning of the European Union (TFEU), read together with the general principles and

⁶ See Małgorzata Czermińska, *Commercial Policy and International Security*, in *European Research Studies Journal*, vol. XXIV, 2021, pp. 382–396.

⁷ See Małgorzata Czermińska, *op. cit.*, pp. 382–396.

⁸ See Luigi Lonardo, *Common Foreign and Security Policy and the EU's External Action Objectives*, in *European Constitutional Law Review*, vol. 14, no. 3, 2018, pp. 584–608; Campbell McLachlan, *The Assault on International Adjudication and the Limits of Withdrawal*, in *International and Comparative Law Quarterly*, vol. 68, no. 3, 2019, pp. 499–538.

⁹ See Tobias Leeg, *Normative Power Europe?*, in *European Foreign Affairs Review*, vol. 19, no. 3, 2014, pp. 335–356; Maryna Rabinovych, *Striving for Trade Not Peace?*, in *Journal of European Integration*, vol. 45, no. 7, 2023, pp. 1075–1098.

¹⁰ See Małgorzata Czermińska, *op.cit.*, pp. 382–396; Tobias Leeg, *op.cit.*, pp. 335–356.

¹¹ See Oana-Mihaela Salomia, "EU trade policy after Brexit. Provision of professional services", Conference Proceedings "Challenges of the Knowledge Society", 17th-18th May 2019, 13th Edition, https://cks.univnt.ro/cks_2019.html.

¹² See Małgorzata Czermińska, *op. cit.*, pp. 382–396.

¹³ See Luigi Lonardo, *op.cit.*, pp. 584–608.

objectives governing the Union's external action under Article 21 of the Treaty on European Union (TEU). Thus, as mentioned before, from the perspective of competences, the CCP is classified as an exclusive competence of the Union under Article 3(1)(e) TFEU, meaning that only the EU may legislate and adopt legally binding acts in this field, while Member States may do so only if empowered by the Union or for the implementation of Union acts. The EU Court of Justice, the 'juris-lateur' of the EU and the source of uniform interpretation of EU law, has consistently confirmed the broad scope of this competence, especially following the Lisbon Treaty, to include not only trade in goods, but also trade in services, commercial aspects of intellectual property, and foreign direct investment¹⁴. However, where international agreements cover areas that go beyond the CCP, such as non-direct investment or certain regulatory fields, mixed agreements will therefore be concluded¹⁵, requiring participation by both the EU and its Member States.

Functionally and legally, the CCP is placed within the broader framework of the Union's external action, according to Article 21 TEU, which establishes that all external policies of the Union, including trade, must be guided by a coherent set of principles, such as: democracy, the rule of law, the universality and indivisibility of human rights, respect for human dignity, equality, and solidarity, as well as the preservation of peace and the development of international law. At the same time, article 207(1) TFEU explicitly requires that the CCP be conducted 'in the context of the principles and objectives of the Union's external action.' This is why trade policy has not a purely economic dimension, but it is also an instrument for the projection of the Union's

normative agenda. This fact is reflected by the historical evolution from the Rome Treaty's simple trade liberalisation, followed by the 'Everything But Arms' initiative – a trade scheme that grants unilateral preferential access to its market for the world's poorest countries (for all products, except for arms and ammunition), then by the Generalised System of Preferences (GSP+), going to 'Global Europe: Competing in the World' (2006) - a strategy adopted by the European Commission to redefine the EU's trade policy in response to globalization, then 'Trade, Growth and World Affairs' (2010) - a Communication of the European Commission that updates EU trade policy in the aftermath of the global financial crisis, and after that: 'Trade for All: Towards a More Responsible Trade and Investment Policy' (2015) - a strategy of the European Commission that reorients EU trade policy toward greater transparency, inclusiveness, and a stronger values dimension, and also the 'Open, Sustainable and Assertive Trade Policy' (2021) - Communication of the European Commission that reframes EU trade policy in a more geopolitical and resilience-focused direction.

From the institutional framework point of view, the CCP reflects the balance of powers characteristic to the EU legal order. Thus, the European Commission plays a central role in initiating negotiations and representing the Union externally, the Council authorises the opening of negotiations, adopts negotiating directives, and concludes agreements (Article 218 TFEU), and the European Parliament, whose role has been significantly strengthened after the Lisbon Treaty, must give its consent to most international trade agreements. This institutional configuration reinforces the

¹⁴ Article 207(1) TFEU.

¹⁵ Shared (EU + member states) or supporting (EU) competence.

democratic legitimacy, but also the supranational character of EU trade policy, within the EU, as international organization based on integration and a supranational legal order.

In terms of legal instruments used by the EU, it is apparent that the CCP is implemented through a wide range of international agreements for which the EU Treaties do not establish an exhaustive typology. As a result, the classification of such agreements is primarily doctrinal and practice-based, this flexible framework allowing the typology of agreements to evolve continuously in response to new economic and geopolitical realities (as illustrated by the growing inclusion of digital trade provisions and sustainability-focused commitments in recent EU agreements).

The main categories of agreements include the following: free trade agreements (FTAs), association agreements (Article 217 TFEU), partnership and cooperation agreements, and agreements concluded within multilateral frameworks such as the World Trade Organization. We can notice that many of these documents include, aside from tariff reductions or market access provisions, also: regulatory cooperation, investment protection mechanisms, and, increasingly, non-trade commitments relating to sustainable development, labour standards, environmental protection, and also human rights. It has become the EU's way to shape not only economic exchanges, but also the legal and institutional frameworks of its international partners.

We may conclude that the Common Commercial Policy cannot be correctly

understood if it is considered in isolation from the EU's external action as a whole, the European Union using its competences to project influence beyond its borders, by aiming to combine trade with the promotion of its fundamental values¹⁶.

3. Non-Trade Clauses in EU Trade Agreements

The non-commercial clauses, which have been widely associated in the literature with the EU's role as a 'normative power' can be understood along several dimensions. A first distinction is between so-called WTO-plus provisions, which deepen existing commitments under the multilateral trading system, and WTO-extra (WTO-X) provisions, which extend beyond the current WTO framework to areas such as competition policy, environmental regulation, and broader governance concerns¹⁷. At the same time, the evolution of EU trade agreements reflects a shift from first-generation agreements, primarily focused on tariff reductions in trade in goods, to new-generation agreements and Deep and Comprehensive Free Trade Agreements (DCFTAs), which incorporate extensive provisions on services, investment, intellectual property, and Trade and Sustainable Development (TSD) chapters¹⁸.

Within this broader framework, several categories of non-trade clauses can be identified, and we will summarize them in the following paragraphs. Thus, central among these are the human rights and democratic principles clauses, commonly referred to as 'essential elements clauses',

¹⁶ See Lindani Mhlanga, *The African Continental Free Trade Area Agreement: A Catalyst for Human Rights*, in *African Human Rights Law Journal*, vol. 25, No. 1, 2025, pp. 37–58; Nicolas Hachez, "Essential Elements" Clauses in EU Trade Agreements, Working Paper No. 158, KU Leuven, 2015, p. 5.

¹⁷ See Małgorzata Czerwińska, *op. cit.*, pp. 382–396.

¹⁸ See Andzelika Kuznar, Jerzy Menkes, "New Conditionality" in the EU's "New Generation" Agreements with Asian Countries, in *Review of European and Comparative Law*, vol. 48, 2022, pp. 67–84; Małgorzata Czerwińska, *op. cit.*, pp. 382–396.

which establish respect for human rights, democracy, and the rule of law as fundamental conditions underpinning the agreement¹⁹. Their legal significance lies in their capacity to trigger ‘appropriate measures’, including suspension or termination of the respective agreement, in the event of serious breaches²⁰.

In connection with the above mentioned type of clauses are the ‘non-execution’ ones, which define procedural responses to violations. Historically, these mechanisms have evolved from more immediate suspension models, the so-called ‘Baltic clause’, to more structured approaches, like the ‘Bulgarian clause’, which requires prior consultations, except in cases of special urgency²¹.

Another category is represented by ‘rule of law and good governance clauses’, which target more specific institutional aspects, such as: judicial independence, anti-corruption measures, transparency, and administrative capacity, aiming to create predictable and stable legal environments, thereby supporting economic activity and also expand stability of the society as whole.

There are also ‘sustainable development clauses’ typically incorporated in dedicated Trade and Sustainable Development (TSD) chapters. These clauses do not directly address security concerns, but they contribute indirectly to stability by approaching social and environmental tensions. They usually address labour standards²², as well as environmental protection, including biodiversity and climate commitments. Their enforcement mechanisms are generally softer, relying on

dialogue, monitoring, and expert panels. However, recent developments suggest a gradual strengthening of compliance tools.

The ‘peace, security, and regional stability clauses’ are the ones which explicitly situate trade agreements within broader geopolitical and stabilisation objectives. These are often found in association or stabilisation agreements and may include commitments relating to: conflict prevention, regional cooperation, and also political dialogue. They are often used alongside with ‘political dialogue clauses’, which establish structured and continuous engagement between the EU and its partners on issues such as: foreign policy, governance, and security. These mechanisms are meant to function as tools of early warning and de-escalation, reducing the risk of conflict arising either from misperception, or lack of coordination.

Another category is related to ‘conditionality and suspension, often linked to essential elements provisions. These clauses provide for mechanisms such as: consultations, the adoption of appropriate measures, and, where necessary, the suspension of benefits, thereby creating incentives for stability-oriented behaviour.

In addition, we must mention ‘social and labour rights clauses’, which address issues such as: workers’ rights, non-discrimination, and occupational health and safety and which aim to prevent ‘social dumping’²³ and to promote convergence of standards between partners.

Similarly, ‘environmental and climate clauses’ have become increasingly prominent, incorporating commitments

¹⁹ See Nicolas Hachez, *op. cit.*, pp. 15.

²⁰ See Joyce De Coninck, Peter Van Elsuwege, *Human Rights Respectful Trade*, in *Berkeley Journal of International Law*, vol. 42, no. 2, 2024, pp. 247–315.

²¹ See Nicolas Hachez, *op. cit.*, p. 20; Andzelika Kuznar, Jerzy Menkes, *op. cit.*, pp. 67–84.

²² Often through reference to core International Labour Organization (ILO) conventions.

²³ Social dumping is a term used in EU law and international trade to describe a situation where a company or a state gains a competitive advantage by lowering labour standards or exploiting weaker social protections.

related to the Paris Agreement²⁴, sustainable resource use, and environmental governance.

The Union could also integrate in trade agreements ‘anti-corruption and transparency clauses’, which focus on public procurement transparency, integrity standards, and the fight against corruption.

Some examples of agreements containing non-trade clauses are the following: The EU–Vietnam Free Trade Agreement (2020) includes significant commitments on labour rights and environmental standards, including prohibitions on forced and child labour²⁵. The Comprehensive Economic and Trade Agreement (CETA) with Canada (2017) introduces a new model for investment protection and emphasises the role of civil society in monitoring compliance with labour and trade standards²⁶. The EU–Singapore Agreement (2019) contains a dedicated chapter on sustainable development, addressing issues such as forestry, fisheries, and social justice²⁷. By contrast, negotiations with India have long been affected by resistance to the inclusion of non-trade issues, such as human rights in a commercial framework²⁸. The EU–South Korea Agreement (2011) is notable for its TSD chapter and the use of formal consultations to address non-compliance

with international labour standards²⁹. The EU–Ukraine Association Agreement includes essential elements clauses and extensive governance provisions. Similarly, the EU–Moldova Agreement combines trade liberalisation with structured political dialogue, linking economic integration to broader stabilisation objectives. In the Western Balkans, Stabilisation and Association Agreements explicitly connect trade concessions to regional cooperation and reconciliation, embedding economic relations within a long-term peacebuilding framework.

Further evidence can be found in the application of conditionality mechanisms under agreements with Africa Caraipe Pacific (ACP) countries, where procedures allowing the adoption of measures in response to serious human rights violations have been used in practice, for example in relation to Zimbabwe or Fiji³⁰. Likewise, the EU–Georgia Association Agreement shows how can commitments to judicial reform and anti-corruption contribute to statal consolidation within geopolitically sensitive contexts.

At the same time, we must admit that the effectiveness of these clauses is highly context-dependent, varying according to the institutional capacity of partner states, the

²⁴ The Paris Agreement is a global treaty on climate change adopted under the United Nations Framework Convention on Climate Change. It was adopted in 2015, entered into force in 2016, and its has ~195 countries + the EU as parties. Its core objective is to limit global warming to well below 2°C, and preferably to 1.5°C, compared to pre-industrial levels.

²⁵ See Eva Jancikova, Janka Pasztorova, “Promoting EU Values in International Agreements”, in *Juridical Tribune*, vol. 11, No. 2, 2021, pp. 203–218.

²⁶ See Eva Jancikova, Janka Pasztorova, *op.cit.*, pp. 203–218.

²⁷ See Eva Jancikova, Janka Pasztorova, *op.cit.*, pp. 203–218.

²⁸ See Tobias Leeg, *op.cit.*, 2015.

²⁹ See Andzelika Kuznar, Jerzy Menkes, *op.cit.*, pp. 67–84; Andzelika Kuznar, Jerzy Menkes, *op.cit.*, pp. 67–84.

³⁰ Source: chatgpt.com. Zimbabwe (early 2000s). Context: electoral fraud, repression, and human rights violations under Robert Mugabe. EU response: suspension of political cooperation under the Cotonou Agreement, targeted sanctions (travel bans, asset freezes). Trade impact: not a full trade embargo, but restrictions linked to conditionality; EU used legal clauses to react to systemic violations. Fiji (2007–2014). Context: military coup in 2006, suspension of democratic institutions. EU response: suspension of development aid and cooperation, pressure for return to democracy. Outcome: measures lifted after elections were restored, therefore conditionality used to encourage political normalization.

enforcement mechanisms, and the geopolitical environment. Enforcement is also uneven across different types of clauses, with stronger legal effects in the case of essential elements provisions and more limited impact in areas, such as sustainable development or corporate social responsibility. Moreover, no single clause is capable of ensuring peace in isolation; rather, their impact derives from their interaction within a broader framework of EU external action. Ultimately, EU trade agreements do not create peace directly. Instead, they embed partner countries within a legal, institutional, and economic framework that increases the costs of instability and enhances the incentives for cooperation. In this sense, non-trade clauses function as instruments of stabilisation and norm diffusion, forming part of a broader external policy toolkit rather than constituting self-sufficient guarantees of peace.

4. Assessing the Effectiveness of Non-Trade Clauses in Promoting Stability and Peace

The idea that international trade can act as a catalyst for peace, often encapsulated in the formula ‘change through trade’, has long been a central element of the European Union’s external economic philosophy³¹. Historically, thinkers such as Montesquieu described peace as a ‘natural effect of commerce’ suggesting that economic exchange fosters mutual dependence and reduces incentives for conflict³².

Contemporary approaches argue that trade creates interdependencies which increase the material costs of war and thereby discourage it³³.

However, critics underline that trade may also generate tensions, particularly where benefits are unevenly distributed, where economic shocks occur, or where trade involves so-called ‘conflict resources’ such as blood diamonds³⁴. More recently, the 2022 Russian invasion of Ukraine has been interpreted as a failure of the ‘change through trade’ approach, urging reassessment of the EU’s economic engagement with authoritarian regimes³⁵.

Therefore, such clauses have largely aspirational character and are often designed to promote dialogue and cooperation rather than to impose sanctions³⁶. For example, with regards to the EU–Mexico Free Trade Agreement, commitments in the field of human rights lacked robust enforcement tools³⁷. At the same time, sanctions remain exceptional. The EU has generally treated suspension or restrictive measures as a last resort measure³⁸. Nevertheless, there are instances, such as the suspension of Sri Lanka’s GSP+ status in 2010, where economic leverage has been used in response to serious violations, showing that these mechanisms are not purely symbolic³⁹.

At the same time, in more conflictual geopolitical contexts, particularly in EU–Russia relations between 2014 and 2022, the EU has moved away from liberal peace assumptions toward a combination of ‘bargaining’ and ‘restrictive’ logics. In this

³¹ Oli Brown et al., *Regional Trade Agreements: Promoting Conflict or Building Peace?*, IISD, 2005, p. 8; Alan Wolff, *Trade for Peace: Can Trade Be an Effective Tool to Support Peace?*, Peterson Institute, 2023, pp. 9-10.

³² Oli Brown et al., *op.cit.*, p. 8.

³³ Alan Wolff, *op.cit.*, pp. 9-10.

³⁴ Oli Brown, *EU Trade Policy and Conflict*, International Institute for Sustainable Development (IISD), 2005, p. 13.

³⁵ Alan Wolff, *op.cit.*, p.9.

³⁶ Joyce De Coninck, Peter Van Elsuwege, *op.cit.*, pp. 247–315; Nicolas Hachez, *op.cit.*, pp. 20-21.

³⁷ Joyce De Coninck, Peter Van Elsuwege, *op.cit.*, pp. 247–315.

³⁸ Joyce De Coninck, Peter Van Elsuwege, *op.cit.*, pp. 247–315; Nicolas Hachez, *op.cit.*, pp. 20-21.

³⁹ Lindani Mhlanga, *op.cit.*, pp. 37–58.

approach, trade benefits are linked to political commitments, while access to strategic resources is limited in order to constrain conflict-related activities⁴⁰.

Therefore, the practical effectiveness of these types of clauses remains contested, because they are rarely activated and are considered a measure of last resort⁴¹. Their use has been limited mainly to cases involving ACP countries following coups or electoral irregularities⁴². Moreover, both academic doctrine, and the Court of Justice of the European Union have noted their largely political and discretionary character, allowing the EU considerable flexibility in deciding whether to act⁴³. This has led to persistent criticism regarding inconsistency and perceived double standards, particularly in relations with major economic partners⁴⁴.

The conclusion that emerges is therefore that trade does not have, on its own, the capacity to create peace. At most, it can contribute to the conditions under which peace and stability become more likely. This contribution is neither automatic, nor sufficient. It depends on the broader political, institutional, and strategic context in which trade operates. In this sense, EU trade agreements function not as instruments of peace in themselves, but as components of a wider framework of external action aimed at stabilisation and normative influence.

5. Key European Court of Justice Case Law on Non-Commercial clauses

As we have mentioned before, the idea that the Union's trade policy may serve objectives beyond the exchange of goods and

services is not merely a political aspiration. It is anchored in the legal structure of the Union and, more concretely, in the case law of the Court of Justice and in the drafting practice of EU agreements.

The Court has made clear that trade instruments cannot be isolated from the requirements of international law. In *Front Polisario* case, when asked to determine whether the EU–Morocco liberalisation agreement applied to Western Sahara, the Court did not limit its analysis to the text of the agreement or to its economic purpose. Instead, it relied also on principles of international law, notably the right to self-determination, to conclude that the agreement could not extend to a distinct territory without the consent of its people. This reasoning was reaffirmed in *Western Sahara Campaign UK*, where the Court affirmed that the application of EU trade and fisheries agreements must respect the status of the territory under international law.

What emerges from these judgments is not a general theory of 'trade for peace', but a more modest yet significant point: EU trade agreements are subject to legal constraints that reflect values and principles external to the logic of market integration. They cannot be interpreted or implemented in ways that disregard the rights of affected populations or the broader framework of international law. In that sense, the Court introduces a normative layer that conditions the scope and effects of trade liberalisation.

A different perspective on the same phenomenon can be found in the Court's opinions on the compatibility of trade agreements with the EU legal order. Opinion

⁴⁰ Maryna Rabinovych, "Striving for Trade Not Peace? Revisiting Trade-Peace and Trade-Security Nexuses in the EU's Trade Policy Strategy Amidst the Russia-Ukraine War", in *Journal of European Integration*, vol. 45, No. 7, 2023, pp. 1075–1098.

⁴¹ See Joyce De Coninck, Peter Van Elsuwege, *op.cit.*, pp. 247–315; Nicolas Hachez, *op.cit.*, pp. 20–21.

⁴² See Joyce De Coninck, Peter Van Elsuwege, *op.cit.*, pp. 247–315; Nicolas Hachez, *op.cit.*, pp. 22.

⁴³ See Joyce De Coninck, Peter Van Elsuwege, *op.cit.*, pp. 247–315; Nicolas Hachez, *op.cit.*, pp. 22.

⁴⁴ See Nicolas Hachez, *op.cit.*, pp. 22.

2/15 on the EU–Singapore Free Trade Agreement (May 16, 2017)⁴⁵ clarifies the division of competences between the Union and the Member States and shows that modern trade agreements extend well beyond the traditional boundaries of the common commercial policy. Provisions on investment protection or dispute settlement, for example, do not fall exclusively within EU competence and therefore require a broader institutional involvement. This finding highlights the fact that contemporary agreements integrate elements that are not purely commercial, thereby opening the door to provisions that reflect political or normative concerns.

Opinion 1/17 on CETA (30 April 2019)⁴⁶ confirms this interpretation by referring to the Union's ability to maintain its own standards and objectives in the context of international commitments. Trade agreements are thus evaluated not only in terms of their economic content, but also in light of their potential impact on the constitutional structure of the Union.

The *Kadi* (C-402/05 P, *Kadi*, 2008)⁴⁷ case law, although not directly concerned with trade agreements, completes this picture, by holding that international obligations cannot override the fundamental rights protected within the EU legal order. Thus, the Court establishes a principle that valid for all external action, trade included. Even in the context of international agreements, the EU must respect its own

constitutional requirements enshrined by the EU treaties. This provides legal basis to the inclusion of value-based clauses in trade agreements and, at the same time, limits the extent to which economic considerations may prevail over fundamental rights.

Against this background, the practice of including human rights clauses in EU trade and association agreements as a structural feature of the Union's external action. The effectiveness of such conditionality remains, however, open to question. In practice, the activation of suspension clauses has been rare and politically sensitive. Trade agreements are part of broader relationships that include strategic, economic and diplomatic considerations, and the Union has often preferred to maintain dialogue rather than resort to formal sanctions. This cautious approach may preserve short-term stability, but it also raises doubts about the credibility of conditionality as a tool for promoting values. While the Court has not directly ruled on the suspension of agreements on human rights grounds, its insistence on compliance with international law and fundamental rights, illustrated in *Front Polisario* and *Western Sahara Campaign UK*, limits the extent to which the Union can overlook the normative implications of its agreements. What can be said with greater certainty is that, from a legal perspective, trade agreements have become instruments

⁴⁵ Source of the summary: chatgpt.com. The European Court of Justice ruled that the EU-Singapore Free Trade Agreement (EUSFTA) is a "mixed" agreement. While the EU holds exclusive competence for most of the FTA, including goods, services, and sustainable development, it shares competence with member states over portfolio investment and the Investor-State Dispute Settlement (ISDS) mechanism.

⁴⁶ Source of the summary: chatgpt.com. The Court of Justice of the European Union ruled that CETA's Investment Court System (ICS) is compatible with EU law, ensuring the treaty's investor-state dispute settlement mechanism does not violate the autonomy of the EU legal order.

⁴⁷ Source of the summary: chatgpt.com. The *Kadi* case concerned EU measures implementing UN Security Council sanctions against individuals suspected of terrorism. Mr. *Kadi* was listed by the UN and, as a result, his assets were frozen within the EU without prior hearing or judicial review. The central legal question was whether EU courts could review EU acts that give effect to binding UN Security Council resolutions. The Court held that EU law is an autonomous legal order, and EU measures must comply with its fundamental principles, even when implementing international obligations. It ruled that fundamental rights form an integral part of EU law.

through which the Union articulates and tests the reach of its normative identity.

6. Conclusions

Considering all the above, we can notice several structural limits of the non-trade clauses that emerge from our analysis, and we will summarize them below.

It appears that these non-trade clauses are more effective in addressing governance failures than military or geopolitical threats. At the same time, their effectiveness depends on power asymmetry: they seem to work better where partner states are strongly dependent on access to the EU market. What we have noticed from the practice realm, enforcement is usually inconsistent or selective, weakening their deterrent effect. And of course, not all clauses are equally binding: while essential elements clauses may lead to suspension, others, especially in sustainable development, rely on less effective, softer mechanisms. All these findings conduce us to conclude that peace itself is a multidimensional concept which requires institutions, legitimacy, and security, and these are important factors that trade by itself cannot generate.

The analysis has show that EU trade policy operates within a broader framework defined by Articles 21 TEU and 207 TFEU, which integrate not only economic objectives, but also normative commitments, such as the promotion of: democracy, the rule of law, human rights, and international peace. As we've seen, the EU trade agreements systematically incorporate a range of non-trade clauses, particularly essential elements clauses, political dialogue mechanisms, governance provisions, and conditionality framework, which are meant to help support stability and to prevent conflict.

We consider this article a step to clarify the realistic (beyond the overly optimistic

assumptions regarding the positive effects of economic interdependence) role of EU trade agreements within the Union's external action toolkit. We consider this research to contribute to a closer to reality understanding of the EU as a global, international actor. It remains an undeniable fact that there is a broader framework to be considered and that is combining legal conditionality, institutional dialogue, financial support, and, where applicable, accession perspectives. This has, we think, both academic and practical implications. From the academic point of view, it brings more light to the concept of the EU as a 'normative power', by highlighting the conditional and context-dependent nature of its influence in practice. From the practicality perspective, this article may inform policymakers about the need to strengthen enforcement mechanisms, and ensure greater consistency in the application of conditionality.

Also, the analysis opens several paths for further research on the empirical measurement of the effectiveness of non-trade clauses across different regions and types of agreements, including quantitative assessments of governance or stability indicators. Another research direction would be a comparative analysis between the EU and other comparable global actors (such as the United States or China) in the use of trade as a tool of external influence. Additionally, the evolution of enforcement mechanisms could be studied, particularly in light of recent developments strengthening sustainability and compliance provisions in EU trade agreements. Of course, interdisciplinary research combining the legal analysis with political science and international relations, would bring even more light on the complex relationship between trade, law, and peace in an geopolitical landscape that nowadays we experience to be increasingly fragmented.

So, if we are to give a final answer to the question: 'Does Trade Equal Peace?', the answer would be probably 'no.' Trade does not equal peace. At most, within the EU model, trade can support peace under specific conditions. The above mentioned case studies demonstrate that positive effects appear when trade is part of a broader framework, including political conditionality, institutional dialogue, financial support, and, in some cases, the incentive of an accession perspective.

Consequently, a more accurate, realistic conclusion would be that EU trade agreements do not create peace, but they can contribute to building the legal, institutional, and economic conditions under which peace and stability become more likely. This type of non-trade clauses are therefore instruments of stabilisation, and not guarantees of peace; they are multipliers of order, and not substitutes for foreign and security policy; so, their effectiveness has definitely its limits.

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