

# EU as Principal-Orchestrator: Horizontal Policy Externalisation through Intermediaries

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**ABSTRACT:** Bilateral free trade agreements and nonreciprocal preferential schemes constitute the most direct market-based instruments at the European Union's disposal to lever concessions from exterior actors. Existing research on the EU as a global trade power, however, virtually ignores how EU institutions engage proxies to peddle policy prescriptions in third markets through the decentralised mechanisms of delegation and orchestration. As intermediaries possess built-in governance capabilities on the ground, the EU manages to indirectly nudge non-EU targets to accommodate its policy preferences where the "fungibility" of EU political clout may be untenable. Nested within the "market power Europe" thesis, this paper analyses how EU intermediaries frame policy issues and elevate policy recommendations at the political and regulatory levels in foreign markets deemed economically significant for EU enterprises. In the context of the European Commission's *Support to European Business in Southeast Asian Markets* (SEBSEAM) framework, a number of implemented or proposed reforms in foreign investor protection, fair competition, food standards, and pharmaceutical ethics could be traced back to the advocacy actions of EU intermediaries in the Philippines. These preliminary findings shine a light on the EU's mediated power to promote its commercial policy preferences in distant markets as well as the role of non-state actors in an increasingly complex and diffuse exercise of EU external economic diplomacy.

**Keywords:** European Union, Philippines, SME internationalisation, policy intermediaries, delegation, orchestration.

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## Introduction

Despite fierce headwinds in contemporary global trade politics, the European Union remains an indefatigable defender of open market arrangements. In its "Trade for All" strategy, the European Commission avows to secure better market access and regulatory conditions for EU small and medium enterprises (SMEs) abroad not least because 90 per cent of economic growth in the next decade is projected to stem from non-EU regions.<sup>1</sup> While new-generation preferential trade arrangements enable the EU to directly externalise its commercial policy preferences,<sup>2</sup> I contend that the EU also deploys a less legalistic and more subtle means of policy entrepreneurship

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1 European Commission, *Trade for All: Towards a more responsible trade and investment policy* (Luxembourg: Publications Office of the European Union, 2015), 8.

2 A prime example of this is the dedicated chapter on SMEs in the recently ratified EU-Japan free trade agreement. See: [http://trade.ec.europa.eu/doclib/docs/2018/august/tradoc\\_157228.pdf#page=503](http://trade.ec.europa.eu/doclib/docs/2018/august/tradoc_157228.pdf#page=503).

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by “subcontracting” its preferences to intermediaries overseas. Yet a mainstream view resists viewing the EU as a regime shaper, let alone an effective one, beyond its own membership area and in the outer circles of its external governance.<sup>3</sup> This perspective, however, fails to fully capture the EU’s organisational logic “to propagate a ‘neoliberal’ economic model, which reflects the EU’s internal commitment to market-building and economic liberalisation.”<sup>4</sup> More importantly, it marginalises other ways of ontologically and empirically exploring the EU as a contemporary commercial policy actor. Indeed, the EU’s fevered fetishism in and of neoliberal ideals reflects its post-2008 trade policy discourse that has presented, legitimated and codified “trade as the only possible source of growth for the EU-in-crisis.”<sup>5</sup> In succumbing to what Freudian followers may invoke as the “pleasure principle” in modern capitalism, does it not drive the “adults in the room”<sup>6</sup> in Brussels to co-opt abled proxies in faraway markets where the EU’s staying power may not readily lubricate its commercial policy ambitions? No other than Eurochambres<sup>7</sup> and BusinessEurope<sup>8</sup> agree that such a policy should form part of an overarching European economic diplomacy on enhancing EU businesses’ long reach to new foreign markets.

In what follows, I locate a decentralised manner of policy entrepreneurship in the broader debate surrounding the EU as a market power. Conventional wisdom demarcates two sites of EU actorness when it comes to external rule projection. One relates to traditional foreign policy analysis: the emphasis here hinges on the EU’s ability to leverage other state actors through political conditionality and legal authority.<sup>9</sup> The other suggests a less hierarchical and more functionalist logic, shifting the focus away from “high politics,” which is typically expressed in conducting formal trade treaty negotiations and imposing economic sanctions on other international actors. This second type of external relations inaugurates a more diffuse discharge of EU power through learning and socialisation. In this case, the political space centres on the EU’s capacity to influence, not impose, rules at the level of transgovernmental interactions between sector-specific bureaucracies, regulatory agencies, international organisations, and non-state actors.<sup>10</sup>

3 Sandra Lavenex, “Concentric Circles of ‘EUropean’ Integration: A Typology of EU External Governance Relations,” *Comparative European Politics* 9, no. 4 (2011): 386.

4 Frank Schimmelfennig, “Europeanization beyond Europe,” *Living Reviews in European Governance* 4, no. 3 (2009): 10.

5 Ferdi De Ville and Jan Orbie, “The European Commission’s Neoliberal Trade Discourse Since the Crisis: Legitimizing Continuity through Subtle Discursive Change,” *British Journal of Politics and International Relations* 16, no. 1 (2013): 14.

6 I borrow the telling expression used by Yanis Varoufakis in his hit political memoir *Adults in the Room: My Battle with Europe’s deep establishment* (2017).

7 Eurochambres, “Position Paper: European Economic Diplomacy,” accessed 5 April 2019, <http://bit.ly/2VCwJNA>.

8 BusinessEurope, “Position Paper: EU Foreign Economic Diplomacy,” accessed 5 April 2019, [https://www.buinessurope.eu/sites/buseur/files/media/position\\_papers/rex/foreign\\_economic\\_diplomacy\\_final.pdf](https://www.buinessurope.eu/sites/buseur/files/media/position_papers/rex/foreign_economic_diplomacy_final.pdf).

9 Sandra Lavenex, “The power of functionalist extension: how EU rules travel,” *Journal of European Public Policy* 21, no. 6 (2014): 889.

10 *Ibid.*, 890.

This paper engages with the latter conception of EU power by exploring the understudied subject of *indirect* EU policy externalisation in foreign trade politics. More specifically, it applies the concept of “market power Europe” (MPE) to the EU’s offensive trade politics in third markets by means of new governance mechanisms beyond intergovernmentalism. To be clear, I am not the first to claim that the EU pursues external governance goals with the aid of intermediaries, policy wonks or third-party functionaries. For example, Damro and Friedman discuss how EU-facing supranational networks influence non-EU actors to adopt higher education policies aligned to Bologna Process standards.<sup>11</sup> While we need more MPE-oriented case studies in other policy areas to better understand the EU’s entanglements in modern international relations, I take a first step toward applying the MPE framework and the related notions of delegation and orchestration to study the more subtle means through which the EU articulates its policy preferences on the internationalisation of EU SMEs to growth-driven foreign markets. It should now be clear that my contribution does not take up the notion of “normative trade power Europe” as developed by Poletti and Sicurelli<sup>12</sup> whose main preoccupation is less on indirect rule promotion than on the political economy determinants of normative values in the EU’s formal trade agreements with developing countries. Informed by process tracing, the remainder of the article offers a case study analysis on the performance of EU intermediaries in inducing regulatory reforms in the Philippines in tune with EU policy preferences. The article closes with a number of implications on the EU’s offensive trade strategy in foreign markets.

### **L’Europe est roi: Power in and through trade**

In political science and international relations, the EU’s actorness inextricably derives from its economic integration experiment. Well documented is its historical ability, jointly with the United States, to shape the rulebook governing the very conduct of global trade and engage in vertical policy export in key multilateral trade negotiations, most strikingly between the Kennedy and Uruguay Rounds.<sup>13</sup> As such, the EU, a single market of behemoth proportions above anything else, has been readily portrayed as a power *in* and *through* trade. In the first case, Meunier and Nicolaïdis view the EU as a bona fide force in commerce with perceived and actual capabilities to use its economic heft and win concessions from external actors in return for gaining prized access to EU markets.<sup>14</sup> Does

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- 11 Chad Damro and Yoav Friedman, “Market Power Europe and the Externalization of Higher Education,” *Journal of Common Market Studies* 56, no. 6 (2018): 1403–1406.
- 12 Arlo Poletti and Daniella Sicurelli, *The Political Economy of Normative Trade Power Europe* (Basingstoke: Palgrave Macmillan, 2018), 8–9.
- 13 Dirk De Bièvre and Arlo Poletti, “The EU in trade policy: From regime shaper to status quo power,” in *EU Policies in a Global Perspective: Shaping or taking international regimes?*, eds. Gerda Falkner and Patrick Müller (London and New York: Routledge, 2014), 20–37.
- 14 Sophie Meunier and Kalypso Nicolaïdis, “The European Union as a conflicted trade power,” *Journal of European Public Policy* 13, no. 6 (September 2006): 910.

this trade power not precisely manifest itself in one of the most consequential existential crises in the history of European (dis)integration: Brexit? Despite much fatuous and thunderous talk of a hard divorce, Leave/Eurosceptic types would, in the final analysis, find much consternation in that close regulatory alignment will be the only game in town if and when the EU grants Britain's hefty financial services sector access to continental markets.<sup>15</sup> Aside from extracting *quid pro quo* demands in its bilateral economic relations, the EU has increasingly become a power through trade by imposing structural changes in the domestic policies of third countries as a precondition for gaining access to EU markets.<sup>16</sup> For instance, the EU temporarily withholds duty-free and quota-free perks from eligible least developed countries under the Everything But Arms scheme until southern beneficiaries satiate the demands of their northern patrons.<sup>17</sup> In a world where the purchase of multilateralism wanes, international actors, including the EU, increasingly turn to trade to promote global governance norms in areas as variegated as democracy, rule of law, good governance, and human rights.<sup>18</sup> Indeed, it should come as no surprise that the EU's formal treaty obligations<sup>19</sup> firmly enshrine these core principles and norms in the EU's external relations, including international trade.

But how do lofty EU ambitions translate to concrete *externalisation* outcomes from this conjectured trade power? Any EU attempts to externalise both trade and non-trade objectives may be limited on at least two levels. First, although there is no denying that the EU is a veritable economic powerhouse, interior contradictions arguably undermine its legitimacy to project a cohesive identity internationally, thereby casting itself as a "conflicted" trade actor. The EU vigorously supports multilateral actions, but actively pursues bilateral economic deals at the same time. It also champions the development movement in the Global South, while simultaneously espousing a heavily bloated and defensive model of agriculture against the export interests of low-income countries.<sup>20</sup> As European negotiators no longer "co-dictate"<sup>21</sup> the agenda of multilateral trade liberalisation, these internal paradoxes matter in the EU's less wholesale pursuit of preferential trade deals, horizontal policy export, and trade defense measures.<sup>22</sup> Second, Young and Peterson rightly caution that the EU's capacity to flex its muscles on other actors and get what it wants is *relational*.<sup>23</sup> In other words, the extent to which EU externalisation efforts are

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15 Jim Brunsten and Philip Stafford, "EU agrees tough post-Brexit financial services rules," *Financial Times*, 26 February 2019.

16 Meunier and Nicolaïdis, "Conflicted trade power," 907.

17 For example, the EU has recently initiated the process of suspending Cambodia's special market access to the EU in light of alleged human rights and rule of law violations by the ruling regime there.

18 Axel Marx et al., "Global governance through trade: an introduction," in *Global Governance through Trade: EU Policies and Approaches*, eds. Jan Wouters et al. (Cheltenham: Edward Elgar, 2015), 3.

19 See Article 21 of the Treaty on European Union.

20 Meunier and Nicolaïdis, "Conflicted trade power," 907.

21 De Bièvre and Poletti, "The EU in trade policy," 31.

22 *Ibid.*, 34.

23 Alasdair Young and John Peterson, *Parochial Global Europe: 21st Century Trade Politics* (Oxford: Oxford University Press, 2014), 11.

effective critically hinges on who the addressees are, what preferences the opposite side holds, and whether the trade relations in question tend to be (a)symmetrical. Here, the question is not whether the EU is a trade power, but how the EU mobilises such power and why it does so with effect or otherwise. To illustrate this point, the EU nudged Bangladesh, a beneficiary highly dependent on the EU's most preferential tariff privileges, to adopt stricter standards in protecting labour rights following a calamitous garment factory tragedy there in 2013.<sup>24</sup> Instead of exporting rules via new-generation FTAs, the EU has advocated for mutual equivalence, which requires no regulatory reforms, with countries that command proportionate regulatory strengths, such as Canada and Singapore.<sup>25</sup> These differentiated outcomes demonstrate that the EU's presumed trade power may not always instigate trade and non-trade regime changes externally.

### *Wielding a blunt sword: Whither market power Europe?*

Where the power ratio does tilt in the EU's favour, applying Damro's conceptual framework of market power Europe (MPE) would help to better capture the ways in which the EU *does* attempt to exert its commercial power by externalising specific trade and social market-oriented policies and regulatory measures.<sup>26</sup> In general, this externalisation takes place at two stages. The first relates to instances where EU institutions and actors undertake to persuade external actors "to adhere to a level of regulation similar to that in effect in the European single market or to behave in a way that generally satisfies or conforms to the EU's market-related policies and regulatory measures."<sup>27</sup> The second signifies that external actors acquiesce to such EU stimuli.<sup>28</sup> By bringing the level of analysis to specific regulatory, policy and technical measures, an MPE approach escapes the methodological pitfall of establishing causality in the EU's export of a "fuzzy civilian end or norm," such as democracy or human rights, which is endemic in the broader debate about the EU as a global power.<sup>29</sup> As such, empirical studies based on the notion of MPE deliver a much clearer understanding of EU external influence as it addresses "an absence of investigations into the fungibility of [EU] power across various policy areas."<sup>30</sup> However, similar to the research agenda in the extant literature on the EU as trade power, Damro's original conception of MPE has been mostly confined to the *direct*

24 James Yap, "One step forward: the European Union Generalised System of Preferences and labour rights in the garment industry in Bangladesh," in *Global Governance through Trade: EU Policies and Approaches*, ed. Jan Wouters et al. (Cheltenham: Edward Elgar, 2015), 241.

25 Alasdair Young, "Liberalizing trade, not exporting rules: the limits to regulatory co-ordination in the EU's 'new generation' preferential trade agreements," *Journal of European Public Policy* 22, no. 9 (2015), 1270.

26 Chad Damro, "Market Power Europe," *Journal of European Public Policy* 19, no. 5 (2012): 683.

27 *Ibid.*, 690.

28 *Ibid.*

29 Chad Damro, "Market Power Europe and new EU trade policies," in *Global Governance through Trade: EU Policies and Approaches*, eds. Jan Wouters et al. (Cheltenham: Edward Elgar, 2015), 34.

30 Chad Damro "Market power Europe: exploring a dynamic conceptual framework," *Journal of European Public Policy* 22, no. 9 (2015): 1339.

mechanisms of new-generation preferential commercial policies.<sup>31</sup> For example, Croquet investigates the extent to which EU soft and hard legal measures related to climate change find expression in its FTAs,<sup>32</sup> while Yap explores the EU's leverage in nonreciprocal trade-as-development schemes vis-à-vis less developed countries.<sup>33</sup> With this lacuna in mind, this paper presents a first attempt at extending the focus of MPE to more *indirect* modes of governance on which the EU increasingly relies to articulate its policy preferences abroad in parallel to, or in the absence of, more immediate conduits of externalisation.

***If power-less, delegate and orchestrate!***

Partly due to the bloc's relational trade power, not in spite of it, the EU engages third-party collaborators to advance its policy preferences in external markets through the logics of delegation and orchestration. While the principal-agent theory is already widely applied in various disciplines, including EU studies,<sup>34</sup> the notion of orchestration has emerged as a relatively nascent line of inquiry, hitherto explored, for example, in relation to the role of international organisations in global climate governance<sup>35</sup> and the European Commission's mediated implementation of regulatory rules in telecommunications and competition.<sup>36</sup> While it is not an oddity to claim that the EU at times governs as a principal and orchestrator in several policy streams, the literature on the EU as a trade power has not yet juxtaposed the concepts of indirect governance with MPE.

In this paper, I apply the notions of delegation and orchestration to the politics of MPE, more specifically the EU's policy on the internationalisation of SMEs to foreign markets. Delegation describes a contractual agreement wherein the EU (principal) outsources a pre-agreed set of governance objectives to external intermediaries (agent). The principal remunerates the agent for performing its mandate, oversees the agent's performance, and sanctions the agent for lousy performance. Given this structured relationship, delegation empowers the principal to "rein in" the agent and ensure its governance targets are met.<sup>37</sup> In contrast, orchestration connotes a voluntary arrangement wherein the EU cooperates

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31 Damro, "Market Power Europe and new EU trade policies," 27.

32 Nicolas A.J. Croquet, "The climate change norms under the EU-Korea Free Trade Agreement: between soft and hard law," in *Global Governance through Trade: EU Policies and Approaches*, eds. Jan Wouters, Axel Marx, Dylan Geraets, and Bregt Natens (Cheltenham: Edward Elgar, 2015), 124–157.

33 Yap, "European Union Generalised System of Preferences and labour rights".

34 See, for example, Tom Delreux and Johan Adriaensen, *The Principal Agent Model and the European Union* (Basingstoke: Palgrave Macmillan, 2017); Hrant Kostanyan, "The Rationales behind the European External Action Service: The Principal-Agent Model and Power Delegation," *Journal of Contemporary European Research* 10, no. 2 (2014): 166–183.

35 See, for example, David J. Gordon and Craig A. Johnson. "The orchestration of global urban climate governance: conducting power in the post-Paris climate regime," *Environmental Politics* 26, no. 4 (2017): 694–714; Thomas Hale and Charles Roger, "Orchestration and transnational climate governance," *Review of International Organizations* 9, no. 1 (2014): 59–82.

36 Michael Blauburger and Berthold Rittberger, "Orchestrating policy implementation: EU governance through regulatory networks," in *International Organizations as Orchestrators*, ed. Kenneth W. Abbott et al. (Cambridge: Cambridge University Press, 2015), 39–64.

37 Kenneth W. Abbott et al., "Two Logics of Indirect Governance: Delegation and Orchestration," *British Journal of Political Science* 46, no. 4 (2016): 721.

with “intermediaries to shape state preferences, beliefs and behaviors in ways that enhance state consent to and compliance with [EU] goals, policies and rules.”<sup>38</sup> As an orchestrator, the EU offers material and ideational reinforcements to intermediaries in lieu of formal carrots and sticks in a delegated agreement. By doing so, orchestration boosts the intermediaries’ operational capabilities and legitimacy to pursue common goals.<sup>39</sup> Although the acts of delegating and orchestrating governance goals differ notionally, governors often deploy a “mixture of hard control *ex ante* and soft nudging *ex post*” in practice.<sup>40</sup> This means that the EU may resort to softer and less hierarchical measures to back and prod intermediaries although it officially delegates top-down governance targets to agents.

Why does the EU choose to farm out its trade-related governance objectives to outside intermediaries? A triumvirate of what precisely constitutes the EU’s actorness as a market power explains this phenomenon: sheer economic size, regulatory reach, and interest group contestation.<sup>41</sup> Given this mutually reinforcing constellation and self-aware that its political imprint in faraway markets may not always be “fungible,” the EU seeks to build up its pockets of power and on-the-ground performance by working with proxies. This policy practice, increasingly becoming *au courant* in the operations of international organisations, generally conforms to what Abbott and Snidal refer to as “transnational new governance.”<sup>42</sup> As a principal-orchestrator, the EU benefits functionally from indirect methods of policy externalisation because intermediaries pursue governance goals “more effectively, efficiently or legitimately than the [governors] themselves.”<sup>43</sup> This unique advantage naturally flows from the governance capacities of intermediaries, such as local knowledge, technical competence, enforcement capability, institutional legitimacy, and direct access to targets,<sup>44</sup> which the EU inconveniently does not always possess.

### Horizontal policy externalisation through intermediaries

Drawing on the MPE thesis, this section unpacks an empirical tracing of the EU’s indirect governance of third-country economic and regulatory reforms based on its policy concerning the internationalisation of EU SMEs to new poles of growth-driven global markets, particularly in Southeast Asia. More specifically, I argue that the EU has pursued a blended exercise of delegation and orchestration to collaborate with intermediaries that

38 Kenneth W. Abbott et al., “Orchestration: global governance through intermediaries,” in *International Organizations as Orchestrators*, ed. Kenneth W. Abbott et al. (Cambridge: Cambridge University Press, 2015), 11.

39 Ibid., 14.

40 Abbott et al., “Two Logics of Indirect Governance,” 722.

41 Damro, “Market Power Europe,” 689.

42 Kenneth W. Abbott and Duncan Snidal, “International regulation without international government: Improving IO performance through orchestration,” *Review of International Organizations* 5, no. 3 (2010): 316.

43 Abbott et al., “Two Logics of Indirect Governance,” 720.

44 Abbott et al., “Orchestration: global governance through intermediaries,” 6.

advocate cross-sectoral and industry-specific regulatory reform, norm-setting, and rule implementation that ultimately correspond to EU policy preferences. Although on-going free trade negotiations and conditional unilateral market access schemes provide the EU with parallel and unmediated channels to leverage its market size and regulatory reach, the EU multiplies, as it were, its SME governance capabilities by tapping into the status, prestige, and know-how of intermediaries as “epistemic communities.”

Consistent with a key determinant of MPE, EU public and private interest groups are aligned on the question of externalisation concerning EU firms’ enhanced market access to Southeast Asian markets. The European Commission and the European External Action Service prefer a more strategic EU-ASEAN partnership by, *inter alia*, “improving the regulatory environment, access to finance, intellectual property rights and market access (including public procurement), and developing corporate governance” in Southeast Asia.<sup>45</sup> As for the business sector, Eurochambres has advocated for the establishment of a European economic diplomacy (EED) framework. EED refers to the application of political weight and policy instruments to reinforce European economic interests overseas, eliminate barriers to foreign trade and investment, negotiate trade agreements bilaterally and multilaterally, and provide efficient support to European businesses to reach foreign markets. Eurochambres envisions that the proposed EED strategy will not only require the involvement of EU institutional actors but a broad-based participation at the EU, member state, and private sector levels, including chambers of commerce and trade councils.<sup>46</sup> Given that the EU has not concluded preferential trade deals with all of its trading partners, including those in ASEAN, BusinessEurope believes that more effective ways of removing market access hurdles through existing business support outfits in third countries become increasingly more important in a future EED strategy.<sup>47</sup>

Methodologically, this paper follows a within-case process tracing approach to explain the causal mechanisms of horizontal policy externalisation linking the policy preferences of the EU as principal-orchestrator and the policy feedback from non-EU targets, while crucially highlighting the role of intermediaries in the process. The main empirical challenge was two-fold: (1) to explore how EU-oriented intermediaries stimulate domestic policy change in accordance with principal-orchestrator preferences and (2) determine whether and to what extent the targets of externalisation respond to the intermediaries’ interventions. Applying this rubric, I traced the externalisation of policy preferences through a historical reconstruction of policy decision-making processes at the legislative,

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45 European Commission and High Representative of the Union for Foreign Affairs and Security Policy, “Joint Communication to the European Parliament and the Council: The EU and ASEAN: a partnership with a strategic purpose,” JOIN(2015) 22 final, 18 May 2015, accessed 18 March 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=JOIN:2015:22:FIN&from=EN>.

46 Eurochambres, senior policy officers, interview by author, Brussels, 21 April 2016.

47 BusinessEurope, “EU Foreign Economic Diplomacy,” 6.



regulatory or administrative level.<sup>48</sup> I attempted to detect, whenever possible, “smoking gun” evidence as a foolproof method to prove that targets clearly adopt policy language exactly as formulated by EU intermediaries.

To meet the challenge of establishing the causal significance of the MPE thesis particularly in policy areas where EU stimuli are not legally binding nor directly exerted, I applied the process-tracing technique developed by Moumoutzis and Zartaloudis. Emphasis was given to the specific intervening steps in the policymaking process: (1) framing the policy problem, (2) presenting alternative courses of action, and (3) assessing the policy alternatives.<sup>49</sup> First, we could postulate that if EU intermediaries effectively induced policy externalisation, national policy elites would begin to consider, identify or frame policy issues raised by the intermediaries as problems that should receive appropriate policy attention. Second, we could assume that if EU intermediaries effectively induced policy externalisation, national policy elites would begin to consider EU policy preferences as alternative courses of action to national policy choices. Third, establishing whether national policy elites made cost-benefit calculations with respect to the intermediaries’ policy alternatives would reveal which probable causal mechanisms may have been at work. For example, explanations based on emulation<sup>50</sup> suggest that non-EU targets adopt, replicate or mimic EU policies or standards based on legitimacy or normative considerations. On the other hand, explanations based on policy externalities<sup>51</sup> indicate that non-EU targets accept the intermediaries’ proposed policy adjustments in anticipation of positive gains, particularly to secure preferential access to EU markets.

### *Preliminary evidence from the Philippines*

Scouting untapped commercial opportunities in the rapidly expanding economies in Southeast Asia, the EU has commissioned third-party actors to help elevate and diversify EU exports and investments in the region under the *Support to European Business in Southeast Asian Markets* (SEBSEAM) framework. Like parallel SEBSEAM outposts in six neighbouring countries,<sup>52</sup> EU intermediaries in Manila, set up in 2014 as the EU-Philippines Business Network, implement policy actions that would result in an “enhanced analysis and advocacy for better market access for European companies and improved level playing field.”<sup>53</sup>

48 Peter Starke, “Qualitative Methods for the Study of Policy Diffusion: Challenges and Available Solutions,” *The Policy Studies Journal* 41, no. 4 (2013): 573.

49 Kyriakos Moumoutzis and Sotirios Zartaloudis, “Europeanization Mechanisms and Process Tracing: A Template for Empirical Research,” *Journal of Common Market Studies* 54, no. 2 (2016): 346.

50 Gerda Falkner and Patrick Müller, *EU Policies in a Global Perspective: Shaping or taking international regimes?* (Abingdon and New York: Routledge, 2014), 11–13.

51 Ibid.

52 Under the SEBSEAM programme, the EU has also concluded collaborative ties with intermediaries in Cambodia, Indonesia, Malaysia, Myanmar, Thailand, and Vietnam since 2014.

53 European Commission, Directorate-General for International Cooperation and Development, “Annual Work Programme for Grants of the Delegation of the European Union to the Philippines: Support to European Business in the South East Asian markets – Philippines Component (SEBSEAM-P),”

SEBSEAM merits scrutiny for at least three reasons. First, SEBSEAM intermediaries are contractually obligated to further EU policy preferences with a general view to make the domestic business climate in host countries more accommodating to EU export and investment interests. Legally, they work *for* the EU under a principal-agent model: the intermediaries get remunerated for their advocacy and internationalisation support services. As such, SEBSEAM differs from other related EU-funded schemes, namely the EU-Asia Business Link and the EU Business Avenues in Southeast Asia, as the former does not merely offer business support services, but also deliberately participates in the policy reform process across Southeast Asia. Second, SEBSEAM intermediaries adopt ‘a bottom-up, industry-driven approach’ to debate relevant policy issues and forge common advocacy positions through various sectoral committees and technical working groups led by European industry captains and stakeholders already established in-country.<sup>54</sup> Operationally, they also liaise *with* the EU to align their advocacy actions and positions with the preferences and priorities of the EU Market Access Team (MAT) in the Philippines.<sup>55</sup> This deliberative forum serves as a privileged channel for the EU to nudge the intermediaries into adopting positions that generally correspond to the EU’s broader use of decentralised offensive trade policy instruments in third markets.<sup>56</sup> Arguably, many issue areas prominent on the agenda of the EU and its intermediaries tend to be highly contentious. For the EU, subcontracting policy preferences to intermediaries with built-in domestic access to targets and social reputation, thus, bodes well as “the most convenient strategy to avoid more political attention being drawn on the MAT when the issue is very prominent.”<sup>57</sup> Third, SEBSEAM intermediaries have been operating as commercial organisations<sup>58</sup> representing the European business community in the Philippines long before their formal contract with the EU started. Quite artfully, the EU’s provision of material and ideational support lends an extra dose of capacity-building and legitimacy to its chosen intermediaries as an EU-affiliated consortium of recognised trade and investment institutions, some of which are well-seasoned in domestic advocacy coalitions.<sup>59</sup> Thus, the Philippine intermediaries under the SEBSEAM programme fit the scope conditions of

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January 2013, accessed 8 April 2019, [https://ec.europa.eu/europeaid/sites/devco/files/awp-philippines-increase-diversify-exports-investment-eu-smes-business-2013\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/awp-philippines-increase-diversify-exports-investment-eu-smes-business-2013_en.pdf).

54 EU-Philippines Business Network, “Advocacy Papers: EU business in the Philippines: Supporting sustainable and inclusive economic growth,” Annex I, accessed 8 April 2019, <http://epbn.ph/storage/app/media/publications/epbn-advocacy-paper.pdf>.

55 Ibid.

56 Anne Tiedemann, “EU Market Access Teams: New Instruments to Tackle Non-tariff Barriers to Trade,” EU Diplomacy Papers 9/2009, accessed 8 April 2019, [http://aei.pitt.edu/12166/1/EDP\\_9\\_2009\\_Tiedemann.pdf](http://aei.pitt.edu/12166/1/EDP_9_2009_Tiedemann.pdf).

57 Ibid., 24.

58 The SEBSEAM consortium in the Philippines is comprised of the European Chamber of Commerce of the Philippines and partner organisations representing Belgian, British, French, German, Italian, Nordic, and Spanish businesses locally.

59 Small wonder the official policy positions of the Philippine intermediaries refer in most cases to the European Chamber of Commerce of the Philippines. See: EU-Philippines Business Network, “Advocacy Papers,” 2.

indirect EU policy externalisation through delegation and orchestration.

Focusing on the EU's horizontal policy impact through the SEBSEAM initiative matters because the EU is curiously "not perceived as a very significant actor in the Philippines" by domestic political elites.<sup>60</sup> This obsolete view is at odds with the latest bilateral trade picture. Today, the EU is the fourth largest trading partner of the Philippines. In 2017, EU exports and imports in goods amounted to EUR 6,6 billion and EUR 7,6 billion, respectively. In 2016, EU exports and imports in services reached 2,1 billion and EUR 2,5 billion, respectively. In both cases, the balance of trade tips in the Philippines' favour. The EU has also become the most dominant foreign investor in the country with a total foreign direct investment stock recorded at EUR 9,1 billion in 2018.<sup>61</sup> This level of EU market interest becomes even more sanguine given the recent vitriolic attacks against EU institutions by Mr Rodrigo Duterte, the Philippine president often criticised in Western liberal circles for his autocratic tendencies. While the following case study analysis zeroes in on four cross-cutting and sector-specific policy cycles under the previous Aquino Administration, it remains even more relevant to study how the EU expresses its commercial policy preferences in the Philippines.

### **Smoking gun: Pending legislation on foreign investor facilitation and protection**

Foreign investors enjoy relatively weak institutional safeguards on their capital in the Philippines, making the country one of the top 20 worst jurisdictions when it comes to investor protection according to a World Economic Forum study.<sup>62</sup> Indeed, this became one of the key protestations of EU intermediaries during high-level political dialogues with Philippine legislators. Together with a broad church of foreign<sup>63</sup> and local<sup>64</sup> business organisations, EU intermediaries led a loud chorus of calls on legislative measures that would strengthen the level of investment protection granted to foreign investors. A high-level meeting with parliamentary leaders in February 2014 provided a platform for the allied local and foreign business sector to present an ensemble of proposed economic

60 Alma Maria Salvador, Leslie Advincula-Lopez, and Manuel Enverg, "Orientalism Reversed: Images and Perceptions of the EU in the Philippines," in *The EU through the Eyes of Asia Volume II: New Cases and Findings*, ed. Natalia Chaban, et al. (Singapore: World Scientific, 2009), 49.

61 See: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/philippines/>

62 Klaus Schwab (ed), *The Global Competitiveness Report 2015–2016*, Geneva: World Economic Forum (2015): 297.

63 Other members of the Joint Foreign Chambers include the American, Australian-New Zealand, Canadian, Japanese, and Korean Chambers of Commerce, and the Philippine Association of Multinational Companies Regional Headquarters.

64 The Philippine Business Groups include the Makati Business Club, Management Association of the Philippines, Foundation for Economic Freedom, Philippine Chamber of Commerce and Industry, Financial Executives of the Philippines, Information Technology and Business Process Association of the Philippines, Tax Management Association of the Philippines, Wallace Business Forum, *Alyansa Agrikultura* (Agriculture Alliance), Export Development Council, and Philippine Independent Power Producers Association.

policy measures and reforms for the 16th Congress, including the establishment of an executive agency tasked to facilitate and protect investments in the country. After Senator Sergio Osmeña III's open invitation for a legislative proposal from the local and foreign business delegation, EU intermediaries seized this policy window and took the lead in drafting a bill for submission to both congressional chambers.<sup>65</sup>

In May 2014, EU intermediaries transmitted their proposed legislation to the Senate and the House of Representatives for potential parliamentary endorsement.<sup>66</sup> In a supplementary policy brief,<sup>67</sup> the policy issue was framed in two ways. First, EU intermediaries pointed out that domestic judicial mechanisms on investor protection should be improved as bringing investment-related conflicts before the courts is notoriously time-consuming, tedious and costly. They also opined that Philippine courts tend to pronounce judicial decisions with mutable readings of rules and regulations, thereby effectively exposing foreign investors to capital losses or unwanted investment restructuring. Second, EU intermediaries invoked judicial cases where (1) the Supreme Court invalidated the ruling of the Court of Tax Appeals to grant the claims of more than EUR 9,2 million in value-added tax (VAT) refunds of a Japanese-led power generation joint venture and (2) the Court of Appeals nullified the license to operate granted by the Civil Aeronautics Board to international forwarding firm FedEx for the period 2011–2016.

A high official on behalf of EU intermediaries lamented that the high court's decision, by extension, affects "a string of other VAT refund seekers' since the aggrieved Japanese energy consortium was 'just the tip of the iceberg'."<sup>68</sup> Indeed, other foreign companies had pending VAT refund claims at the time. One was the Philippine subsidiary of the Anglo-Dutch multinational oil and gas firm Royal Dutch Shell. In 2012, the Supreme Court scrapped Shell's claim for tax refunds of over EUR1,8 million, which it had previously disbursed to the Bureau of Internal Revenue.<sup>69</sup> Although it is somewhat intriguing why the proposal did not make any explicit reference to this case in an effort to bring a stronger European dimension to the argument since certain EU best practices on foreign investment protection, particularly in Cyprus and Belgium, were also cited in the policy brief, it is clear that EU intermediaries presented a policy language that does not only single out aggrieved European investors. By presenting the issue of investor protection not as an exclusively European concern, EU intermediaries successfully mustered a widespread

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65 European Chamber of Commerce of the Philippines, Investment and Business Environment Committee Meeting Minutes, 28 May 2014, Makati City.

66 Louella Desiderio, "ECCP finalizing draft bill on investor facilitation," *The Philippine Star*, accessed 20 May 2016, <https://www.philstar.com/business/2014/05/18/1324333/eccp-finalizing-draft-bill-investor-facilitation>.

67 EU-Philippines Business Network, "A Proposal for the Creation of the Office for Investor Facilitation and Protection," May 2014.

68 Daxim Lucas, "Groups seek clearer VAT refund rules," *Philippine Daily Inquirer*, accessed 21 May 2016, <https://business.inquirer.net/155027/groups-seek-clearer-vat-refund-rules>.

69 Jerome Aning, "SC junks Shell's bid for P95-M tax refund," *Philippine Daily Inquirer*, accessed 21 May 2016, <https://business.inquirer.net/58977/sc-junks-shell's-bid-for-p95-m-tax-refund>.

acceptance from, and stronger negotiating clout in concert with, an informal but influential alliance of Philippine and foreign business groups.

The draft bill called for the creation of a cabinet-level Office for Investor Facilitation and Protection (OIFP). Attached to the Office of the President, the proposed OIFP shall exercise dual functions as an investor facilitator and investor protector. As a state agency tasked to facilitate investments, the OIFP shall serve as the lead coordinator for local and foreign investors with various investment promotion agencies (IPAs) across the archipelago. Its coordinating role concerns accelerating business registration processes, setting up of strategic businesses, and securing all permits, certificates and endorsements required to register and entitle qualified investors to available investment incentive schemes offered by the state. In addition, the OIFP's authority as an investor facilitator shall be limited to state-identified strategic investments and those economic activities identified in the government's biannual Investment Priorities Plan. As a special agency tasked to protect investments, the OIFP shall promptly resolve investment-related controversies and disputes initially through consultations between affected investors and concerned IPAs before resorting to alternative dispute resolution mechanisms. This proposed agency, therefore, could act as a fit-for-purpose institution to which disgruntled foreign investors could turn instead of reconciling their grievances through often protracted judicial means.

Three months after the proposal had been sent to prospective congressional champions, House Bill No. 4833 or the Office for Investor Facilitation and Protection Act of 2014 was introduced and mirrored the policy provisions exactly as articulated by EU intermediaries.<sup>70</sup> In addition to the favourable reception that the OIFP measure garnered in the lower chamber, the Senate Committee on Trade, Commerce, and Entrepreneurship supported the proposal to create an overarching government unit that will streamline procedures related to the registration of foreign investments in the country.<sup>71</sup>

Coinciding with this legislative development, an outfit called the Investment Ombudsman Team (IOT) was created to take action on alleged violations of service commitments or corrupt practices by IPAs.<sup>72</sup> The establishment of the IOT in mid-2014 chimed in with the flurry of private sector concerns over the state's failure to deliver on major VAT refund settlements and, therefore, dovetailed with public deliberations on the creation of an executive investment protection agency. A few months after its formation, the IOT considered "expanding its mandate to include policy mediation and dialogue between the government and private sector, in a bid to improve investor protection in the

70 Philippine Congress, House of Representatives, Office for Investor Facilitation and Protection Act of 2014, Sixteenth Congress, Second Regular Session, Bills and Index Division (7 August 2014): House Bill No. 4833.

71 Ailyn Galura, "ECCP bats for simpler investment registration process," *BusinessWorld*, accessed 21 May 2016, <http://www.bworldonline.com/content.php?section=Economy&title=eccp-bats-for-simpler-investment-registration-process&id=93468>.

72 Organisation for Economic Co-operation and Development, "OECD Investment Policy Reviews: Philippines 2016," Paris: OECD Publishing, 2016, 165.

country.”<sup>73</sup> While the private sector generally lauded the government’s move to root out IPA corruption through the IOT, the proposal to create an OIFP did not lose steam and apparently became even more valid as the two agencies, though related, assume different functions. EU intermediaries explained that the IOT should not be confused with the OIFP. While the former “looks at incidents of corruption and grievances in the delivery of permits and approvals by government,” the latter “facilitates investment processes and sees to it that government incentives are delivered.”<sup>74</sup> Although the proposed bill still stands a long way to go before it becomes a law,<sup>75</sup> EU intermediaries successfully shaped the policy narrative on investor facilitation and protection in the Philippines as part of a broader effort to level the playing field for existing and potential EU businesses. Not only did EU intermediaries participate in direct policy consultative dialogues with Philippine legislators, they also presented a concrete policy solution to enhance the legal certainty for existing and future capital owners, including European ones, and minimise any real or perceived risks to invest due to the somewhat blemished reputation of the Philippine state to make good on its promises in granting due incentives to investors.

As an observable “smoking gun” evidence, the fact that national policymakers adopted the policy proposal by EU intermediaries *verbatim* strongly suggests that the stimulus for policy change in the Philippine investment protection landscape did not come about independently. One could argue that legislators in support of the proposal emulated and considered the policy prescription offered by EU intermediaries as a legitimate solution to help improve the domestic investment climate. As stated in the explanatory note of the OIFP measure, the bill sponsors argue that in order to “attract foreign investments into the country, stimulate the growth of local investments, and meet investors’ expectations of fiscal and non-fiscal incentives, the government must protect and safeguard investors and their investments by providing a mechanism to avoid protracted and tedious litigation in courts.”<sup>76</sup>

### **Enough foot-dragging: It’s competition, not anti-trust**

Until recently, the Philippines was one of the few jurisdictions in the world left without a comprehensive national legal framework on unfair business practices. Although efforts to enact an antitrust law had begun in the 1980s,<sup>77</sup> political inertia prevented any successful

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73 Melissa Lopez, “Investment Ombudsman: A policeman for business,” *BusinessWorld*, accessed 21 May 2016, <http://bworldonline.com/content.php?section=Weekender&title=investment-ombudsman-a-policeman-for-business&id=94363>.

74 Daryll Saclag, “Corruption woes to be addressed,” *BusinessWorld*, accessed 21 May 2016, <http://www.bworldonline.com/content.php?section=TopStory&title=Corruption-woes-to-be-addressed&id=87444>.

75 The same bill was re-introduced in the 17th Congress as House Bill No. 7564 on 8 May 2018. See: [http://www.congress.gov.ph/legisdocs/basic\\_17/HB07564.pdf](http://www.congress.gov.ph/legisdocs/basic_17/HB07564.pdf).

76 Philippine Congress, *Office for Investor Facilitation and Protection Act of 2014*.

77 Editha Hechanova, “Philippines: Proposed fair competition law,” *Managing Intellectual Property* (11 May 2015): 23.

bill to pass due to the strong influence of business oligarchs controlling key Philippine sectors, such as telecommunications, banking, and property development. In July 2015, President Benigno Aquino III signed the Philippine Competition Act (PCA) or Republic Act No. 10667. This law creates the Philippine Competition Commission and prohibits anti-competitive agreements, abuse of dominant market positions, and anti-competitive mergers and acquisitions.<sup>78</sup> The author and champion of the landmark measure, Senator Paolo Benigno Aquino IV, explained that his team had made careful policy comparisons with other advanced jurisdictions like the EU and the US, studied how they could be applied in the Philippine context, and made sure that the right provisions were in place. The lawmaker enthused that “we really tried our best to pick the best parts of competition policies from abroad.”<sup>79</sup>

In their expert analysis of R.A. 10667, UK competition policy specialists Mark Jephcott and Adelaide Luke suggest that the PCA, to a great extent, has been modeled after EU policy paradigms on fair competition:

Whilst previous bills of the Act sought to cherry-pick concepts from each of the US and EU models, the enacted version of the Act has aligned itself much more closely to the EU model. For example, in earlier [versions of the bill], there were provisions on “combinations, or conspiracies in restraint of trade” and “monopoly or attempt to monopolize,” which are concepts drawn heavily from the US model. However, the finalized version of the Act prohibits “anti-competitive agreements” and “abuse of dominant position”: an EU-leaning approach that is common to many other regimes in Asia such as Singapore, Malaysia, China, Hong Kong, and Myanmar.<sup>80</sup>

While EU paradigms on the legal definition of anti-competitive agreements, prohibition of abusive dominant market positions, and non-prosecutorial model for legal enforcement may have been emulated by Philippine policymakers,<sup>81</sup> EU intermediaries also played a visible role in the passage of PCA. For a long time, EU businesses found it difficult to compete in the Philippines as few unopposed domestic players traditionally wielded entrenched market dominance in key sectors, such as telecommunications, utilities, and retail.<sup>82</sup> The EU’s position, therefore, was to “ensure a level playing field for businesses, protect consumer welfare, and make the Philippine economy more competitive.”<sup>83</sup> In their advocacy representations, EU intermediaries:

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78 Philippine Congress, Senate and House of Representatives, Philippine Competition Act, Sixteenth Congress, Second Regular Session (21 July 2015): Republic Act No. 10667.

79 Paolo Benigno Aquino IV, interview with Maria Ressa, RapplerTalk, accessed 22 May 2016, [https://www.youtube.com/watch?v=afqTLZgh\\_RA&feature=youtu.be](https://www.youtube.com/watch?v=afqTLZgh_RA&feature=youtu.be).

80 Mark Jephcott and Adelaide Luke, “President of the Philippines signs long-awaited Competition Act into law,” Herbert Smith Freehills LLP, accessed 22 May 2016, <https://www.lexology.com/library/detail.aspx?g=3bf6ce84-bde0-4527-a1dc-f2a2e15a702d>.

81 Ibid.

82 Lauren Skarkou, EPBN advocacy officer, e-mail message to author, 15 May 2016.

83 EPBN, “EU business in the Philippines,” 26.

worked closely with some of the decision-makers who were not supportive of a Competition Law in the last months in order to gain enough support to pass the measure. Arguments focused on the benefits for increased FDI into the country, the benefits on the Filipino consumer and the necessity of a legislative framework for competition for a possible EU–Philippine FTA were used during individual meetings with legislators, roundtable discussions and participation in Congressional hearings to gain support for the measure. As we have promoted these strong arguments through various mediums of communication, legislators seem to have eventually come round to the necessity of a national competition law to further ambitions being pursued in terms of the Philippines’ foreign trade policy (e.g. through the conclusion of an EU–Philippines FTA) and the competitiveness and investment policy (e.g. by means of increased FDI inflows).<sup>84</sup>

While competition was on the agenda of most commercial organisations, some interest groups vocally opposed the enactment of PCA, whereas others lobbied for the passage of a more watered down version of the bill with lower and less strict penalties for violators.<sup>85</sup> However, as the Philippines pursues a path of increased economic growth, the policy externalities of successfully concluding the scoping and negotiation process for a future EU–Philippines FTA bolstered the argument for PCA. Philippine policy elites saw the need to legislate a robust competition policy in anticipation of potential economic gains from a future trade deal with the EU. This specific consideration was highlighted by the law’s author himself at a public business event<sup>86</sup> and also received solid support from the Aquino Administration given the willpower of the Department of Trade and Industry to conclude a trade deal with the EU in the next few years.<sup>87</sup> Trade officials understood that the absence of a comprehensive competition policy would negatively affect Manila’s negotiating position vis-à-vis Brussels. Given their extensive engagement and relationship-building with policymakers, EU intermediaries cultivated relationships of trust and cooperation with domestic actors, which meant that their positions were taken into higher consideration during the policymaking process.<sup>88</sup>

### **When a friendly FDA listens: Simplification of regulatory standards on imported liquor**

A thicket of clunky regulations on technical specifications, product classification, labelling, and safety standards often cause bottlenecks in the flow of imports. This is typically true for food and beverage (F&B) traders in the Philippines. When foreign products

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84 Lauren Skarkou, EPBN advocacy officer, e-mail message to author, 15 May 2016.

85 Ibid.

86 Senator Paolo Benigno Aquino IV, ECCP Luncheon Meeting, Makati Shangri-La Hotel, Manila, 21 October 2014.

87 Louella Desiderio, “Phl eyes free trade deal with EU in 4–5 years,” *The Philippine Star*, accessed 22 May 2016, <https://www.philstar.com/business/2015/01/15/1412933/phl-eyes-free-trade-deal-eu-4-5-years>.

88 Lauren Skarkou, EPBN advocacy officer, e-mail message to author, 15 May 2016.



cross Philippine customs, full compliance to cumbersome regulatory standards imposes unnecessary transaction costs and complicates commercial procedures for locally-based European businesses engaged in import activities. Another important advocacy for EU intermediaries in the Philippines was to convince the Food and Drug Administration (FDA), which regulates the import-dependent segment of the domestic F&B sector, to accept internationally recognised standards and “to facilitate market access for reputable brands which meet high international standards ... [and to relieve them of unnecessary] additional financial and administrative burden.”<sup>89</sup>

In early 2014, an opportunity arose for the private sector to provide input to an important policy overhaul as the FDA publicly solicited comments on its draft rules and regulations on food licensing and registration. EU intermediaries seized this policy window and discussed relevant issues with European wine and spirits companies in a number of committee meetings. Industry players unanimously agreed that the lengthy and demanding FDA product registration process effectively acted as a technical barrier delaying or hindering the entry of goods from the EU. Specific issues included the risk-based categorisation of alcoholic products and the extensive list of documentary requirements for FDA product registrations.<sup>90</sup> Taking these regulatory concerns and other specific technical issues into consideration, EU intermediaries officially submitted proposals to the FDA on lowering the risk assessment for alcoholic products in line with internationally accepted standards and on streamlining its administrative procedures on product registrations. The group argued that their recommendations would reduce unwarranted face-to-face interaction with FDA inspectors, increase output through speedier issuances of product registration certificates, and increase productivity by having a less stringent philosophy on the risk-based assessment of alcoholic products.<sup>91</sup>

In a written letter to a Dutch commercial attaché in Manila in August 2014, the then-FDA director general confirmed himself that key comments of EU intermediaries had been duly taken into account in the draft rules and regulations.<sup>92</sup> The draft FDA policy categorised alcoholic products as low-risk in accordance with Food and Agriculture Organization guidelines and significantly reduced low-risk product registration requirements from fifteen to only four documentations.<sup>93</sup> A review of the approved FDA Administrative Order No. 2014-0029 confirms that these changes have indeed taken into effect.<sup>94</sup> This

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89 EU-Philippines Business Network, “EU business in the Philippines,” 52–53.

90 European Chamber of Commerce of the Philippines, Wine and Spirits Committee Meeting Minutes, 6 December 2013 and 7 March 2014, Makati City.

91 European Chamber of Commerce of the Philippines, Letter to Dr. Kenneth Hartigan-Go, FDA Director General, 27 February 2014.

92 Dr. Kenneth Hartigan-Go, FDA Director General, e-mail message to Patricia Sarmiento-Alvencia (with carbon copy to author), Senior Commercial Officer, Embassy of the Kingdom of the Netherlands to the Philippines, 11 August 2014.

93 The shortened list of requirements includes the following: electronic application form, product label, product photo, and processing fee.

94 Food and Drug Administration, “Rules and Regulations on the Licensing of Food Establishments and

important policy reform brings the Philippines closer to fulfilling its commitments under WTO rules that “any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence.”<sup>95</sup> On paper, the fact that the FDA now recognises alcoholic beverages as low-risk products should minimise the regulatory burden on European alcoholic beverage importers on food safety controls. However, as it is often the case with government bureaucracy, resolving one policy issue usually means battling another afterwards.

The bureaucratic nightmare for European F&B companies dragged on as importers continued to deal with issues with the Bureau of Customs (BOC) concerning discrepancies in the declared alcohol content and wine vintages indicated on FDA-issued certificates of product registration (CPR). Customs officials issued penalties and declared alcohol shipments with inconsistent vintage and alcohol content information as “NO CPR.”<sup>96</sup> This practice contradicted existing FDA policy<sup>97</sup> waiving requirements for wine importers to re-register their products containing changes in vintage and/or alcohol content, on the proviso that the wines were not reformulated. Through official dialogue involving European industry stakeholders, EU intermediaries, again, enjoined the FDA leadership to take action.<sup>98</sup> They later acknowledged that the wine vintage issue had been resolved.<sup>99</sup> Following a discussion with former FDA chief Dr. Kenneth Hartigan-Go, it was confirmed the BOC took a policy volte-face on wine vintage shipments after the FDA, on the EU intermediaries’ prodding, coordinated with relevant customs officials to swiftly address the issue in April 2015.<sup>100</sup> Since then, no new reports of issues with the importation of wines by European beverage companies have been reported.<sup>101</sup>

## **Pharma ethics, please: Full implementation of the Mexico City Principles**

EU pharmaceutical companies are governed by stringent ethical policies on the marketing of pharmaceutical products, as prescribed by codes of conduct under the aegis of the

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Registration of Processed Food, and Other Food Products, and for Other Purposes,” Administrative Order No. 2014-0029.

95 World Trade Organization, “Agreement on the Application of Sanitary and Phytosanitary Measures,” article 2, paragraph 2, 1 January 1995, accessed 22 May 2016: [https://www.wto.org/english/tratop\\_e/sps\\_e/spsagr\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm).

96 European Chamber of Commerce of the Philippines, Letter to Atty. Nicolas B. Lutero III, FDA Officer-in-Charge, 25 March 2015.

97 Food and Drug Administration, “Notification of Registered Imported Wines with New Vintage,” Circular No. 2014-022, 22 September 2014.

98 ECCP–FDA Dialogue, 6 February 2015, FDA Office, Muntinlupa City.

99 Lauren Skarkou, EPBN advocacy officer, e-mail message to author, 13 May 2016.

100 EU-Philippines Business Network, Joint Meeting with BOC and FDA, Minutes of the Meeting, 15 September 2015, Manila.

101 Lauren Skarkou, EPBN advocacy officer, e-mail message to author, 13 May 2016.

European Federation of Pharmaceutical Industries and Associations (EFPIA).<sup>102</sup> Until recently, this was not the case for all drug companies operating in the Philippines. Effectively, EU pharmaceutical firms were facing a competitive disadvantage from non-EU companies deploying aggressive marketing campaigns.<sup>103</sup>

A comparable alternative to the EFPIA regulation is the Mexico City Principles for Voluntary Codes of Business Ethics in the Biopharmaceutical Sector (MCPs). The MCPs “define how companies in the biopharmaceutical sector shall market, distribute, promote and advertise their products in the Asia-Pacific region.”<sup>104</sup> While President Aquino had signed in 2011 “an APEC Leader’s declaration of the Mexico City Principles, signifying the support of the Philippines to the standardization of business ethics,”<sup>105</sup> the regulatory authorities did not take subsequent steps to implement the MCPs. Given this policy gap, EU intermediaries urged the government to adopt “embedded standards of integrity and ethical pharmaceutical marketing conduct through the widespread adoption of the Mexico City Principles.”<sup>106</sup>

With strong and visible support from major European pharmaceutical companies,<sup>107</sup> EU intermediaries engaged in numerous formal and informal meetings with key decision-makers within the Department of Health—more specifically the Office for Health Regulation and the FDA—in a bid to highlight the benefits for the healthcare sector and Filipino patients by passing the implementing rules and regulations of the MCPs. As explained by a SEBSEAM policy official, the decision-makers were already supportive of the measure and, thus, considered the intermediaries’ policy recommendation as a legitimate course of action.<sup>108</sup> By cooperating closely with EU intermediaries and getting direct private sector input and support, the country’s health regulators were able to gather the political leverage necessary to finally pass DOH Administrative Order No. 2015-0053<sup>109</sup> promulgating the much-awaited implementing rules and regulations of the MCPs.

## Discussion

This paper has extended the application of the “market power Europe” thesis to the indirect externalisation of EU policy preferences through the mechanisms of delegation and orchestration. In the context of the EU’s market access strategy for SMEs in Southeast

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102 Monet Loquias et al., “Alternative Regulatory Models for Pharmaceutical Promotions Involving Civil Society and Other Non-Government Stakeholders,” Medicines Transparency Alliance, accessed 23 May 2016, <http://apps.who.int/medicinedocs/documents/s22327en/s22327en.pdf>.

103 One typical example is sending Filipino doctors and their families on holidays.

104 Loquias, “Alternative Regulatory Models for Pharmaceutical Promotions,” 17.

105 *Ibid.*, 41.

106 EU-Philippines Business Network, “EU business in the Philippines,” 77.

107 The likes of Sanofi, GlaxoSmithKline, Roche, and Vamed actively participated in this policy initiative.

108 Lauren Skarkou, EPBN advocacy officer, e-mail message to author, 15 May 2016.

109 Department of Health, “Implementing Guidelines on the Promotion and Marketing of Prescription Pharmaceutical Products and Medical Devices,” Administrative Order No. 2015-0053, 21 December 2015.

Asia, a number of implemented and proposed market-building reforms could be traced back to the advocacy actions of EU intermediaries in the Philippines. On the one hand, emulation was most evident in the “smoking gun” introduction of a lower house bill on creating an Office for Investor Facilitation and Protection as proposed *verbatim* by EU intermediaries. National food and health regulators also accommodated the policy preferences advocated by EU intermediaries with regards to (1) the simplification of regulatory standards related to imported alcoholic beverages and (2) the enactment of implementing rules and regulations of the Mexico City Principles, which effectively adhered to comparable EU standards on business ethics in the pharmaceutical sector. On the other hand, while Philippine lawmakers had evidently modeled key components of the landmark national competition policy from the EU model, the policy externalities of satisfying a fair competition chapter within a future EU-Philippines FTA served as one of the most compelling arguments articulated by EU intermediaries to convince national policymakers that continued parliamentary foot-dragging on the long overdue passage of a competition law could erode the Philippines’ international competitiveness.

While successful delegation and orchestration outcomes could be conditioned by many factors, the Philippine case illustrates that targets tend to respond with positive feedback if the intermediaries’ intervention “allows them to achieve a satisfactory level of governance at low sovereignty costs.”<sup>110</sup> As for politically salient and contentious horizontal policy issues, such as foreign investor protection and fair competition, EU intermediaries held back from advancing visibly European concerns and interests, which could alienate other allies crucial in forming powerful commercial advocacy coalitions. In contrast, EU intermediaries enjoyed greater freedom in highlighting Eurocentric industry concerns and policy prescriptions more prominently when it came to less politically salient and technical issues, such as imported food regulation and pharmaceutical ethics standards.

Without going into the merits of whether neocolonialism camouflages itself in this case under a different name, the acts of delegation and orchestration should not be seen as “a hegemonic conceptualisation of the EU.”<sup>111</sup> As Meunier and Nicolaïdis rightly point out: “Since the EU is itself a system of market liberalization, its external efforts are about replication more than domination.”<sup>112</sup> Nevertheless, the jury is still out on whether and how the EU’s *modus operandi* of delegating and orchestrating policy proxies to influence regulatory and policy outcomes in third markets on its behalf could be democratically legitimated.

Finally, this paper lends strong support to the policy advocacy of prominent European

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110 Kenneth W. Abbott et al., “Orchestrating global governance: from empirical findings to theoretical implications,” in *International Organizations as Orchestrators*, ed. Kenneth W. Abbott et al. (Cambridge: Cambridge University Press, 2015), 350.

111 Chad Damro, “Market power Europe: exploring a dynamic conceptual framework,” *Journal of European Public Policy* 22, no. 9 (2015): 1336.

112 Meunier and Nicolaïdis, “Conflicted trade power,” 912.

business organisations on the implementation of an overarching EU economic diplomacy framework that stresses the pivotal role of EU-oriented actors in co-shaping market access agenda and outcomes in foreign markets. Although negative feedback mechanisms through policy rejection and resistance were well beyond the scope of this paper, my findings confirm the EU's *indirect* market power to articulate its commercial policy preferences through intermediaries in distant markets and lend evidence to the increasingly complex and multi-layered nature of EU offensive trade politics.

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