European policy diffusion and the Global South:

A constructivist institutionalist analysis of the EU-ACP Economic Partnership Agreements

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Abstract

The following paper offers a theoretical and substantive contribution to recent debates on EU policy diffusion with a specific focus on the ACP group of countries. The question we are most concerned with is why - in spite of the obvious material power asymmetries - has the EU encountered such difficulties in the attempt to translate its normative preferences for freer trade and closer economic integration into a series of binding agreements?

We take our cue from the embryonic (predominantly) constructivist literature in this area emphasising the role of transnational advocacy coalitions - but argue that these accounts do not go far enough in the exploration of non-material correlates of trade negotiations by considering the EU’s own discursive strategy. To address this oversight, we draw on Craig Parsons’ (2007) distinction between ideational and institutional logics of explanation to understand how the invocation of institutional constraints affects the impact of particular discursive strategies. We argue that the EU’s case for reform initially rested on a strong convergence between institutions and ideas, enabling the EU to discursively present desired policy reforms as necessary to satisfy multilateral trade rules. However, in due course the institutional dynamics behind the latter began to diverge from the EU’s policy preferences and blunt the EU’s discursive strategy - thus creating the space for transnational coalitions to, first, question and, ultimately, in small measure undermine the EU’s trade and development prospectus for the ACP.

Introduction

The EU model of regionalism is almost universally regarded as the quintessential case of successful integration and has traditionally served as a beacon for region-building processes in the Global South. It was only during the late 1990s and early 2000s, however, that external support for integration was promoted by EU officials as an explicit policy objective (Aggarwal and Fogarty 2004; Söderbaum and van Langenhove 2006; Telo 2007; Lombaerde and Schulz 2009). In the case of the African, Caribbean and Pacific (ACP) group of countries - the main empirical focus of this paper - the EU arguably went furthest in this direction by inserting a ‘regional reference clause’ into its Economic Partnership Agreements (EPAs), whereupon the removal of intraregional trade barriers between signatory ACP countries became a precondition for preferential access to the Common Market. This mechanism can be traced back the Cotonou Partnership Agreement of 2000 which provided the roadmap for replacing preferences hitherto granted unilaterally under the 1975 Lomé convention with a series of region-wide reciprocal free trade agreements – the EPAs - designed to comply with Article XXIV of the General Agreement on Tariffs and Trade (GATT).1 The EPAs were not, however, limited to satisfying multilateral trade rules but constituted a more ambitious attempt to redefine trade and development cooperation between the EU and ACP through the extension of free trade to areas like services, investment and competition policy, not covered by Lomé and hence subject to the original GATT ruling against it. The merits of this ‘comprehensive’ approach appeared to be underlined when CARIFORUM became the first region in the ACP to sign a ‘full’ EPA in October 2008 (Heron 2011; Bishop et al. 2013). Yet to date this agreement remains the only one of its kind. The European Commission’s response to this limited take-up was to, first, permit countries to conclude interim EPAs bilaterally in the absence of region-wide consensus and then, later, turn the screw on recalcitrant states by threatening to revoke preferential access granted temporarily by the EU while at the same time as tightening eligibility for alternative preferences. Whether or not this ‘carrot and stick’ approach will ultimately work is doubtful, but either way the final outcome of the negotiations is likely to fall a long way short of the ambitious plans laid out in 2000.

1 Article XXIV of GATT 1947 provides an exemption from the most-favoured nation (MFN) clause for customs unions and free trade areas, provided that such arrangements cover ‘substantially all trade’ and are implemented within a ‘reasonable length time’. 
As an example of North to South policy diffusion, the failure of the EPAs to make much headway in recent years presents students of European political economy with a striking analytical puzzle. That is to say, why is it that in spite of the obvious power asymmetries involved and the ostensible commitment of the ACP to the goal of freer trade and closer economic integration the EPA negotiations have met with less success than might have been expected? Much of the early EU-ACP trade literature interpreted the EPAs through the lens of the EU’s independent, political and commercial interests, focusing on questions such as the extent to which excessive policy leverage was being deployed to the desirability or otherwise of fully reciprocal free trade agreements, from the inclusion of the controversial ‘Singapore issues’ to speculation about the likely long-term development consequences of the agreements (Farrell 2005; Goodison 2007; Stoneman and Thompson 2007; Brewster et al. 2008). In other words, this literature presupposed that the EU’s preponderance of market and financial power vis-a-vis the ACP would be sufficient to bring the EPAs into being and thus the focus of the analysis was the anticipated development implications of the agreements rather than their political feasibility.

In more recent times, however, limited progress in the EPA negotiations has prompted scholars to focus less on economic imperatives and more on political contingencies (Siles-Brugge 2011; Del Felice 2012; Hurt et al. 2013; Trommer 2013). One variant of this literature - which is of particular relevance to this paper - draws attention to non-material aspects of the EPAs and, more particularly, the role of transnational coalitions (ACP governments, sceptical member states, NGOs and activists) in rebutting the EU’s depiction of the EPAs as ‘non-coercive’ and ‘development-friendly’ and to, instead, portray them as coercive, driven by commercial self-interest and potentially deeply damaging to the ACP. In this vein, both Celina Del Felice (2012) and Stephen Hurt and his colleagues (2013) claim that the discursive tactics employed by these actors had a significant bearing on the EPAs by persuading EU policymakers to look again at the more controversial aspects of the negotiations and the legitimate reasons ACP governments had for not signing the proposed agreements. Similarly, in a recent paper Silke Trommer (2013) highlights the way that ACP governments in the West African regional configuration were able to challenge the EU’s agenda by seizing on ambiguities in the legal frameworks governing the international trading system. Again, the argument is this counter-strategy enjoyed a degree of success, through facilitating and justifying a market access offer that was significantly lower than what the EU originally argued was necessary to comply with multilateral trade rules.
In this paper, we argue that these recent contributions reflect an important dynamic in the EPA negotiations - namely, the role played by transnational coalitions in discursively presenting counter narratives of the EPAs and the viability of alternative policy options - but do not go far enough in the exploration of non-material correlates of the negotiating dynamics. In other words, what is neglected by approaches that highlight transnational activism in explaining the limited realisation of the EU’s EPA strategy is consideration of the other side of this equation. That is to say, the material determinism implicit in the early EPA literature has proven an inaccurate guide to the course of the negotiations, but if non-material factors provide the answer we are inclined to ask why the EU’s own rhetorical action appears to have - at least in most cases - failed to persuade the ACP of the merits of comprehensive EPAs.

In addressing this question, we situate the present case in the context of recent economic constructivist scholarship concerned with the causal role of ideas in political analysis or, put more succinctly, when do ideas matter? (Walsh 2000). Here we are most interested in what has been labelled the ‘path of uncertainty’ (Abdelal et al. 2010) strand of the literature, which highlights the fundamental uncertainty of the social world in which actors are positioned and the crucial role played by ideas in enabling agents to pursue interests. But whereas the main applications of this approach have been in determining the circumstances in which ideas might bring about institutional change (Blyth 2002; Hay 2002; 2011; Schmidt 2002; 2008; Widmaier 2004; Woll 2008), we turn this puzzle on its head to consider how the strategic invocation of institutional constraints might affect the impact of particular discursive strategies. In order to do this, we make use of Craig Parsons’ (2007) distinction between ideational and institutional logics. In How to Map Arguments in Political Science, Parsons encourages political scientists to make a clear analytical distinction between four different types of causal explanation, which he characterises as structural, institutional, ideational and psychological. He argues that the first two types of explanation follow a ‘logic of position’, in which actor behaviour is read off from their placement within a particular landscape, while the latter pair follow a ‘logic of interpretation’, in which behaviour of actors is seen to be determined by particular understandings of what is possible or desirable (Parsons 2007: 13). While Parsons stresses the importance of the methodological differences between these alternative logics, he suggests they can be combined to provide more comprehensive explanations of political outcomes.
In this paper, we are most interested in Parsons’ distinction between ideational and institutional logics, which - when combined - provide the key to understanding why the EU has largely failed to persuade the ACP of the merits of comprehensive EPAs. Put simply, we argue that the promotion of the EPAs by EU policy actors rested on a strong convergence between intersubjective institutional norms and the EU’s normative preferences - the first referring to the legal imperatives for reciprocity created by WTO rules and the second the EU’s desire to recast its relationship with the ACP in line with a neoliberal development vision - which was initially present but then began to dissipate. Although the presumed necessity of WTO compliance initially enabled EU actors to conflate the desirability of the EPAs with the requirements of WTO trade law, in due course path-dependent institutional practices associated with the former served to blunt the effectiveness of this discursive strategy. Once the institutional landscape and the EU’s discursive strategy were revealed to be at odds with one another, the EU’s norm-based advocacy of the EPAs had limited reach - thus creating the discursive space for transnational activists to, first, question and, ultimately, in small measure undermine the EU’s development prospectus for the ACP.

The separate but interconnected logic of institutions and ideas
Attempts to incorporate ideas into institutionalist political analysis vary in both terminology - ‘ideational institutionalism’ (Hay 2001), ‘discursive institutionalism’ (Schmidt 2002; 2008), ‘constructivist institutionalism’ (Hay 2006) and so on - and the ways in which ideas are deployed as explanatory or constitutive variables. What these approaches share is a commitment to ‘take ideas and discourse seriously’ and to set them within an institutional context (Schmidt 2008: 303). A common motivation for incorporating ideas into institutionalist analysis has been to address a perceived problem that other varieties of institutionalism (rational choice, historical and sociological) have in explaining institutional change over time. Scholars following the constructivist ‘path of uncertainty’ (Abdelal et al. 2010) - in which the space for ideas in political processes is created by the complexity and ambiguity of the social world - have dominated attempts to ‘bring “ideas” back in’ to the study of institutional change. Much of the work of constructivist institutionalists, then, has been dedicated to understanding when and why ideas matter - that is, when ideas reconstitute actors’ goals and strategies in ways that lead to institutional change rather than continuity (Schmidt 2008: 311). For example, important contributions to this literature have sought to understand the role of ideas in guiding political actors’ decisions during periods of crisis (Blyth 2002) and of the role of communicative and coordinative types of discourse in
promoting change in different types of institutional context (Schmidt 2002; 2008). Some
constructivist institutionalist research has been criticised for a latent materialism that results
from falling back on material factors to explain why certain ideas gain purchase more than
others (for example, see Hay’s (2004) critique of Mark Blyth’s (2002) *Great
Transformations*). We aim to avoid this pitfall by making a clearer methodological distinction
between institutional and ideational logics of explanation. The paper is not, at least primarily,
concerned with the causal or constitutive role of ideas; nor for our purposes is it necessary to
determine whether the ideas in question are coordinative or communicative in nature. Rather,
our task is to explore the interconnection between institutions and ideas, and more
specifically to investigate how far the strategic invocation of institutional constraints might
affect the impact of particular discursive strategies.

To do this, we make use of Parsons’ distinction between institutional and ideational logics of
explanation. On the one hand, under Parsons’ institutional logic ‘the setting-up of certain
intersubjectively present institutions channels people unintentionally in certain directions at
some later point’ (p. 67). In this logic of explanation, institutions represent path-dependent
structures that shape the environment in which actors are placed in a relatively unambiguous
fashion and to which actors respond in accordance with rationalist expectations. On the other
hand, the crux of Parsons’ ideational logic is that, ‘it explains actions as a result of people
interpreting their world through certain ideational elements’ (Parsons 2007, 96). Under this
logic, then, actors must employ ideas and understandings in order to form preferences and
strategies for action within any given institutional landscape. Although, at first glance,
institutional and ideational logics of explanation appear incommensurate, Parsons suggests
that they can be fruitfully combined. He states:

> If practices, norms, symbols, and so on can relate to action in different ways, then the
> same practice, norm, or symbol might affect some people in an institutional way and
> others in an ideational way [… and] these dynamics could run parallel to each other
> vis-à-vis the same individual (Parsons 2007: 100-1).

The suggestion is that an institutional norm might be intersubjectively present and exhibit a
path-dependent logic, while at the same time providing enough ambiguity to allow
contrasting interpretations by different actors; and indeed - as we will argue - strategic
invocations in pursuit of particular ends-oriented discursive strategies. In the following
paragraphs, we delineate a theoretical frame designed to show how Parsons’ institutional and ideational logics of explanation can be applied to understanding the success - or otherwise - of particular discursive strategies.

The approach taken here shares something in common with Mitchell Orenstein’s (2008; see work Béland 2010) work on social security reform, which draws on institutional and ideational logics of explanation to analyse the role of transnational actors in spreading the idea and practice of pensions privatisation around the world. Here Orenstein (2008: 5) rejects the “‘norms” versus “incentives” debate’ found in the literature on policy transfer (Kelley 2004; 2006; Schimmelfennig and Sedelmeier 2004; Vachudova 2005) in favour of ‘discerning specific mechanisms of influence that may combine both norms and incentives’. He argues that the primary mode of influence for transnational actors is through shaping national policymakers’ perceptions of self interest -and that this is most effective when these actors are able to work with domestic interlocutors to change the preferences of domestic ‘veto players’, which occupy institutionally privileged positions in the policymaking process (Orenstein 2008). Although this explains why certain discursive strategies might succeed or fail in particular national jurisdictions - that is, due to the support or obstruction of veto players - it tells us less about why a particular strategy for policy diffusion might succeed or fail across a range of national jurisdictions, as has been the case with the EPAs. We therefore deploy Parsons’ ideational and institutional logics in a different manner, exploring the interaction between these two logics as a result of actors’ strategic appeals to institutional constraints. In order to do this, we combine and extend arguments made by Colin Hay and Ben Rosamond (2002), on the one hand, and Frank Schimmelfennig (2001; 2003), on the other.

In a central contribution to the economic constructivist literature, Hay and Rosamond (2002) discuss the ‘discursive construction of economic imperatives’ (p. 147). The authors build on the constructivist insight that the context in which actors are placed is fundamentally uncertain and that actors must interpret and develop strategies for action in this context through the use of discourse. They take this argument one stage further by contending that, while actors’ interests themselves are socially constructed, they are also able to employ rhetorical tactics as part of deliberate ends-oriented strategies to further their (perceived) interests. Central to this argument is a distinction between ‘globalization as discourse’ - structured sets of ideas upon which actors draw in formulating strategy - and ‘globalization as
rhetoric’ - the ‘strategic and persuasive deployment of such discourses’ (p. 151-2). Hay and Rosamond (2002) make a range of suggestions about what factors might influence the type of strategic rhetorical appeal to globalization and Europeanization used by different actors, but they do not tackle an ancillary question relating to when these rhetorical appeals might be more or less successful in influencing the behaviour of the target audience.

To answer this question, we incorporate elements of Schimmelfennig’s (2001) theory of ‘rhetorical action’. He addresses a particular puzzle that arises from the history of European integration, namely, the move from the association of Central and Eastern European countries to the European Community - which seemed most consistent with liberal intergovernmentalist expectations - to full accession, which went against the egoistic preferences of a number of powerful member states. Schimmelfennig explains this puzzle by appeal to ‘rhetorical action’ as the mechanism that links self-interested state preferences for association to an eventual policy outcome - enlargement - based on the collective identity and social norms of the European Community. He argues that those member states whose self-interested preferences were in line with the institutionalised norms of the Community – specifically, that the EC should constitute a ‘pan-European community of liberal-democratic states’ (Schimmelfennig 2001: 48, emphasis added) - were able to strategically deploy arguments based on these to ‘shame’ their opponents into norm-conforming behaviour. While Schimmelfennig has been taken to task for ontological inconsistency (Siles Brügge 2012: 55) - Member States seem at once to be motivated by materially-determined interests and the effects of socialisation and norm entrepreneurship - the key point that we take from this is that institutionalised norms may be invoked strategically as imperatives for particular types of action in much the same way as economic imperatives are invoked in Hay and Rosamond’s schema. Furthermore, Schimmelfennig contends that such appeals to institutional imperatives make for particularly effective rhetorical strategies, since they appeal to supposedly legitimate and broadly agreed standards. Yet we depart from Schimmelfennig’s argument in that, following Hay and Rosamond, we see such rhetorical strategies as being at the service of perceived (as opposed to materially-given) interests. We also assume that institutional norms may be ambiguous and that strategic appeals to these norms may depend on particular interpretations that are not necessarily intersubjectively shared; again, in much the same way that Hay and Rosamond point out that the strategic appeal to exigencies of globalisation does not necessarily reflect the material reality of this process. Whether or not actors using these discursive tactics internalise the underlying belief system is not particularly important for the
purpose of our argument. What does matter is that institutional constraints may be invoked strategically and that this strategy may be more or less successful - a point to which we will now turn.

So far, our theoretical argument has followed Parsons’ ideational logic. We have argued that actors may construct persuasive rhetorical strategies in pursuit of perceived interest-based goals, by invoking particular interpretations of institutional norms as constraints on the behaviour of other actors. In considering the reasons behind the success or failure of a particular rhetorical invocation of an institutional norm, we turn to Parsons’ institutional logic of path dependence. Indeed, this institutional logic is already implicitly present in Schimmelfennig’s model. He argues that the formation of the European Community institutionalised a normative commitment to the creation of a community of liberal-democratic states across Europe. This cemented in place a path-dependent institutional constraint, whereby this norm remained at the heart of the European Community even when it diverged from the preferences of powerful Member States, as in the case of enlargement. Schimmelfennig’s argument concentrates on the ability of those Member States with a preference for enlargement to successfully invoke this norm in pursuit of their policy aim. The argument might easily have focused on the flip side of this equation, namely, that the arguments of those Member States that opposed enlargement failed because they diverged from an important institutionalised norm. The suggestion here is that where actors’ preferences, and the rhetorical strategies they use to pursue them, converge with a widely agreed upon institutional norm, these rhetorical strategies are more likely to prove persuasive. Where the opposite is true and there is divergence between preferences and an institutional norm, constructing an effective rhetorical strategy becomes more difficult.

As we have already suggested, institutional norms may be ambiguous and actors may seize upon this ambiguity in order to construct convergence between those institutional norms and their own policy preferences through their rhetorical strategies. However, we argue that the path-dependent logic of institutions may affect how well this rhetorical appeal to an institutional norm works over time. An actor may successfully construct convergence between an institutional norm and their own policy preferences at a particular point in time. However, path-dependent processes (as well as the evolution of actors’ policy preferences) may lead to divergence between policy preferences and institutional norms over time, blunting the effectiveness of appeals to institutional norms as a rhetorical strategy.
actors are able to successfully construct an institutional norm as an imperative for other actors to behave in a particular way, we argue that this rhetorical strategy is more likely to succeed. Again, the opposite side of this equation is also true. When the path dependent logic of institutional norms leads to divergence with the preferences of those making appeals to this norm, this rhetorical strategy is undermined and is less likely to prove persuasive.

Hence the theoretical framing of this paper can be summarised as follows. We seek to combine elements of Parsons’ (2007) ideational and institutional logics of political analysis to understand why a rhetorical appeal to institutionally embedded norms might prove unsuccessful in persuading other actors to behave in particular way. From Hay and Rosamond (2002), we take the idea that actors operating in an uncertain strategic environment may use certain discursive practices strategically - that is, they use these practices as part of an ends-oriented strategy in pursuit of particular goals based on their perceived interests. From Schimmelfennig (2001), we take the idea that one such discursive strategy - and one that might lend particular credibility and boost the chances of success of a rhetorical strategy - is to make strategic appeals to institutionalised norms. Where there is ambiguity surrounding the intersubjective consensus over these norms, actors may seize upon this ambiguity to construct convergence between the institutional norm and their particular policy preference. In seeking to explain why such a strategy may or may not succeed, we invoke elements of Parsons’ ‘institutional logic’. Here, we argue that institutions follow a particular path-dependent logic that is at least partially independent of strategic appeals to institutional norms. Under this logic, institutional developments up to a certain point in time affect the path subsequently taken. As such, while particular actors may construct convergence between their preferences and particular institutional norms at a certain point in time, path-dependent processes and institutional pathologies may, over time, lead to divergence between their preferences and the institutional norm to which they appeal, thus blunting the effectiveness of appeals to institutionalised norms as a rhetorical strategy.

**From Lomé to Cotonou to the EPAs**

The Lomé convention was established in 1975 following the United Kingdom’s accession to the Common Market in 1973, which required extending the geographical focus of the Yaoundé convention to include the Caribbean and Pacific Commonwealth states. Unlike Yaoundé, preferences under Lomé were granted on a non-reciprocal basis while commodity protocols for bananas, beef, rum and sugar offered eligible ACP states guaranteed prices in
excess of those available on the world market. All told, the Lomé convention was renewed on three separate occasions - 1981, 1985, 1989 - but was ultimately deemed to have failed in its principal objectives of promoting economic growth and diversification (European Commission, 1996; Gibb, 2000).

Important as these policy failings were, however, the key catalyst for the demise of Lomé was said to be adverse legal rulings against the banana protocol attached to it, under both the GATT and the WTO. In 1994 the GATT ruled that Lomé was inconsistent with the MFN clause because it did not constitute a ‘free trade area’ or ‘customs union’ (due to the lack of reciprocity) but nor was it consistent with the 1979 Enabling Clause (because it discriminated between developing countries). In response, the EU immediately sought and received a five-year waiver for Lomé in advance of the introduction of the much-strengthened dispute-settlement mechanism in 1995 (Ravenhill, 2004; Heron, 2011). Although the EU possessed the option to seek a further waiver - for which there are numerous other precedents under both the GATT and WTO - it soon intimated that its intention would be to recast the entire ACP trade relationship in such a way as to make it ‘WTO compatible’. Accordingly, the Cotonou Partnership Act of 2000 settled on the formula of replacing Lomé with separate EPAs based on ACP ‘regions’, later identified by the Commission as the Caribbean; the Pacific; West; Central; Eastern and Southern; and Southern Africa (SADC-minus). In order to make this possible, the EU would seek an extension to the WTO waiver (which was subsequently granted during the 2001 Doha Ministerial in Qatar) in order to allow the ACP sufficient breathing space to prepare for the EPA negotiations, scheduled to begin in September 2002 and end no later than 31 December 2007.

The signing of the CARIFORUM EPA in October 2008 - that is, a year of the expiry of the WTO waiver - appeared to provide symbolic affirmation of the merits of the EU’s post-Lomé

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2 Under the WTO the rules governing the granting of legal waivers were tightened up considerably, requiring a 77 per cent majority for approval as opposed to the 66 per cent that was the norm under the GATT 1947.

3 In November 2007, the five countries of the East African Community (EAC) – Burundi, Kenya, Rwanda, Tanzania and Uganda – broke away from the East and Southern Africa ‘region’ and signed a separate interim agreement with the EU, thus creating a seventh ACP group.

4 The Cotonou Agreement made special provisions for LDCs, which would be granted Lomé-equivalent duty- and quota-free preferences under what became the ‘Everything but Arms’ (EBA) agreement of 2001. By including the handful of UN-designated LDCs that had been excluded from Lomé, the EBA effectively got around the issue of WTO incompatibility since the regime was now legally consistent with the 1979 Enabling Clause. At the same time, however, this neat solution made the task of establishing region-wide EPAs even more problematic: with duty- and quota-free treatment now available to the LDCs through EBA there was very little incentive for them to abandon non-reciprocity in order to participate in the EPA process!
trade vision and grounds for thinking that other ACP regions would soon follow suit. First, the timing of the CARIFORUM agreement was significant in that it appeared to underscore the importance that EU policymakers placed on a swift conclusion to the EPA negotiations in order to safeguard preferences from further WTO litigation. Second, CARIFORUM negotiators were evidently persuaded by the European Commission’s insistence that the EPAs needed to be ‘comprehensive’ in nature by including free trade provisions in areas like services, investment and competition policy, which were not covered by Lomé or required to satisfy strengthened multilateral trade rules. Yet, despite the precedents set, the CARIFORUM EPA now stands as a high point in the EPA negotiations and to date remains the only agreement of its kind. Indeed, by 2011 the European Commission was reporting that only 36 out of 79 ACP states had signed even the more limited ‘goods only’ interim EPAs, while only 18 (only four outside of CARIFORUM) were deemed to have taken sufficient steps to ratify and implement these agreements (Bilal and Ramdoo 2011).

The failure of the EPAs to make much headway in recent years presents students of European political economy with a striking analytical puzzle. That is to say, why is it that in spite of the obvious power asymmetries involved and the ostensible commitment of the ACP to the goal of freer trade and closer economic integration the EPAs have met with much less success than might have been expected? As we have indicated, there is now an embryonic literature emphasising non-material factors and the role of transnational advocacy coalitions that provides a partial solution to this puzzle. While we are sympathetic to the general approach behind this scholarship, we argue that it does not go a far enough in uncovering the role of non-material factors in North-South trade diplomacy. In other words, what is neglected by approaches that rest on non-material sources of explanation - the causal role of ideas more specifically - is proper consideration of why the EU’s own recourse to these discursive methods was apparently less successful than the counter-strategies of its adversaries belonging to transnational advocacy coalitions. To answer this question, we argue, it is necessary to consider both institutional and ideational logics of explanation without reducing one to the other. In this specific case, the promotion of the EPAs by EU policy actors rested on a strong convergence between intersubjective institutional norms and the EU’s normative preferences - the first referring to the legal imperatives of reciprocal free trade for satisfying WTO trade rules and the second the EU’s desire to recast its relationship with the ACP countries on the basis of comprehensive and reciprocal free trade agreements - which was initially present but then began to dissipate. This convergence initially enabled the EU to
pursue a discursive strategy that constructed the reform of the Lomé regime as not only desirable, but also necessary in order to comply with WTO law. However, once the EU’s preferences were revealed to be at odds with path-dependent WTO rules, its norm-based advocacy of the EPAs had limited reach - thus creating the discursive space for transnational activists to, first, question and, ultimately, in small measure undermine the EU’s development prospectus for the ACP.

*The creation of WTO and the demise of Lomé*

The customary starting point for almost all critical accounts of the EPAs is the issue of WTO compliance (Gibb, 2000; Hurt, 2003; Ravenhill, 2004; Goodison, 2007; Faber and Orbie, 2009). The key summative point is that while the Lomé regime could fairly easily have been rendered ‘WTO compatible’ without the need for reciprocity - through, for example, obtaining a waiver for which numerous other precedents exist under the WTO - EU policy makers chose to present this discursively as an immovable and external constraint, in order to justify neoliberal policy reforms. Even so, the extant literature that is most explicit in identifying the ideological thrust of the EPAs (Gibb 2000; Hurt 2003) has difficulty explaining why the EU’s discursive strategy achieved such modest results. To put it another way, these accounts appear to assume that the neoliberal beliefs held by powerful actors could be unproblematically translated into substantive policy outcomes. In contrast, we argue that the *process* by which this policy diffusion occurs is a highly contingent one and requires a strong convergence between the EU’s normative preferences and the legal and institutional norms to which its discursive strategy appeals. In what follows, we argue that such a convergence was present in the initial stages of the negotiations but then began to dissipate - thus creating the discursive space for other actors transnational activists to advance alternative norm-based arguments.

The starting point, then, is to consider the initial convergence between changing legal and institutional norms in the WTO and the EU’s independently-determined neoliberal policy preferences, which enabled the later to discursively construct trade reforms as not only desirable but necessary. As noted earlier, the key catalyst for the demise of Lomé and the shift towards reciprocity was said to be adverse legal rulings against the EU’s banana protocol under both the GATT and the WTO. The seminal event here, of course, was the conclusion of the Uruguay round (1986-1993) - leading to the creation of the WTO and, even more pertinent, the adoption of the ‘Understanding on Rules and Procedures Governing the
Settlement of Disputes (otherwise known as the Dispute Settlement Understanding or DSU). Although the DSU essentially rested upon the GATT system of dispute settlement it introduced a greater degree of automaticity to the process, rendering it more autonomous and legally robust (Narlikar 2005). What this effectively meant was that informal trade practices that had evolved under the aegis of the GATT on the basis of ad hoc concessions rather than legally codified obligations were now more likely to be - and indeed in the case of Lomé were - found contrary to the MFN principle.

Although much was made subsequently about the role of the DSU in precipitating the demise of Lomé - not least by the EU itself - it is important to note that the original dispute was provoked, not principally by the legality or otherwise of the regime itself, but by the creation of the single banana market in 1992 as part of the implementation of the Single European Act (Alter and Meunier 2006). Nevertheless, the upshot was that the banana regime was found by three separate panels - 1993, 1994, 1997 - to contravene various aspects of GATT trade law, including Article I (non-discrimination), Article III.4 (national treatment), Article XIII (non-discrimination in the application of quantitative restrictions), Article XXIV (free trade areas) as well as Article V of the General Agreement on Services (GATS) and aspects of EU competition law. Most significantly, by ruling the banana protocol in contravention of Article I, the GATT ruling, in effect, signalled that the entire Lomé regime was open to legal challenge - a challenge, moreover, made far more likely to succeed in the light of the impending introduction of the DSU. The 1994 panel not only found that the protocol contravened the MFN principle, it was also unconvinced by the EU’s defence that Lomé fell under the rubric of Article XXIV. The reason for this was that the absence of reciprocity meant that these trade arrangements could not possibly satisfy the GATT legal requirements for the prompt and complete liberalization of ‘substantially all trade’. The panel also concluded that since neither Part IV nor the Enabling Clause mention Article XXIV, there was no recourse to Special and Differential Treatment (SDT) as the basis for exemption from the MFN requirement. Finally, because SDT under the GATT and WTO operated on the idiosyncratic principle of ‘self-declaration’ the only other basis on which to offer non-reciprocal preferences - that is, short of a legal waiver - was to extend these to all developing countries or limit them to those formally classified by the UN as Least Developed Countries (LDCs).
In the event, the EU’s immediate response was to seek and subsequently obtain a five-year waiver for Lomé in what was one of the very last acts of the Uruguay round. Although at this point the EU possessed the option to seek a further waiver, it intimated that its intention would be to recast the entire Lomé system in a way which would render it compatible with Article XXIV. The reason given for this dramatic volte-face was that the tightening of rules covering the granting of legal waivers under the WTO (requiring a 75 per cent as opposed to a 66 per cent majority for approval) meant that such a request was unlikely to succeed. Yet this argument was not entirely persuasive. First, it is worth noting that throughout the tortuous dispute settlement process (which was not fully resolved until December 2009), at no point did any of the complainants oppose the granting of a waiver from Article I for Lomé (Barfield 2003). It is important to recall in this respect that the main grievance did not even relate to the granting of special trade preferences for ACP banana producers - which, in any case, only accounted for around 16 per cent of the EU market - but the way in which tariff quotas and import licences discriminated against Latin American ‘dollar bananas’ and in favour of European commercial interests respectively (Ravenhill 2004: 129). And, of course, Lomé was no different in principle to other non-reciprocal preferences grant by the likes of the United States, Canada and Australia, established before and after the DSU came into operation.

What all this suggested was that the fate of Lomé did not rest simply on a dispassionate reassessment of its technical and legal merits following the creation of the EU internal market and the strengthening of multilateral trade rules. Rather, as William Brown (2000) has pointed out, the deeper point was that these matters were themselves being shaped by a fundamental shift in the ideological underpinnings of global economic governance in general and the EU’s external relations with the developing countries in particular. According to Brown (2000: 368-74), Lomé was originally premised on the notion of ‘ideological neutrality’, wherein the effectiveness of alternative programmes and policies was deemed to be measurable against objective development criteria - ruling out ‘the possibility of the Community living by doctrines’ (European Commission, cited in Brown 2000: 368). In 1996, the European Commission published its landmark Green Paper on Relations between the European Union and the ACP Countries, which marked the point at which the commitment to ‘ideological neutrality’ gave way to a creeping faith in the universalism of neoliberalism.
and the policy conditionality with which it became associated. In line with these ideological trends, the policy diagnosis of Lomé offered by the Green Paper placed heavy emphasis on the role of ‘supply-side’ blockages, declaring that the 'state of institutions and economic policy in the recipient country have often been major constraints’ on the effectiveness of trade preferences (European Commission, 1996: iv). In other words, the absence of reciprocity was problematic not only because it was now incompatible with strengthened multilateral trade rules, but also because it served to inhibit the types of policy reform that were by this point deemed essential for economic development.

In other words, even though the implications of the GATT ruling and advent of the DSU for the future of Lomé were ambiguous - further waivers appeared a viable alternative to reciprocity - there was enough congruence between these developments and the EU’s desire to reform its relations with developing countries to allow the construction of a rhetorical strategy that rendered these reforms not only desirable but necessary. The introduction of the DSU, the challenges to the banana regime and the ruling that Lomé was incompatible with both Article XXIV and the Enabling Clause lent considerable weight to the EU’s case for reform. Meanwhile, reconstructing the EU-ACP relationship in compliance with Article XXIV provided a rationale for the introduction of reciprocity, which would turn the traditional logic behind Lomé on its head by rendering continued preferential market access conditional upon market liberalization. In this way, by invoking Article XXIV as an external constraint, the beneficiaries of Lomé would be left with little alternative but to sign reciprocal EPAs or incur the loss of access to a primary export market. At this stage in the EPA process, then, the path dependent development of the international trade regime lent itself well - although not unambiguously - to strategic appeals from EU policymakers in their pursuit of an independent set of policy aims, namely, the recasting of the Lomé regime on a reciprocal basis.

From the Cotonou Agreement to the EPAs

Although the Green Paper set out a number of alternative options (including the standard application of GSP, a single agreement based on the principle of uniform reciprocity and the establishment of several ‘differentiated’ FTAs involving individual regions and countries),
the trade component of the Cotonou Agreement would eventually lead to the formulae of replacing Lomé with separate EPAs based on six regional configurations. The EU’s decision to opt for this region-based solution to the problem of WTO compliance appears justified on legal, normative and practical grounds. That is to say, once EU policy-makers dismissed out of hand the prospect of seeking a further WTO waiver, Article XXIV was deemed to be the only possible means of satisfying multilateral trade rules. While, in theory, this did not require a region-based solution - agreements based on uniform or differentiated reciprocity had just as much chance of satisfying this requirement - this was apparently ruled out on the grounds of practicality, given the heterogeneity and complexity of the ACP group that, by this point, numbered more than 70 countries. However, it is difficult to ignore the fact that this blueprint coincided with a growing enthusiasm among EU policy makers for the external promotion of regionalism - an enthusiasm that rested on the belief that the EU’s own unique experience meant that it had a comparative advantage in offering this type of development assistance. In this respect, it is notable that by this point the EU was promising to ‘add value’ to the efforts of other donors (European Commission 1996: xii), in cementing the idea that South-South regionalism would foster integration into the global economy, produce economies of scale, stimulate investment and lock in market-oriented policy reforms (European Commission 1995; 2002).

Despite the fact that the expiry of the WTO waiver on 31 December 2007 came and went without a single reciprocal agreement having been signed, the conclusion of the CARIFORUM EPA the following year at least provided grounds for optimism that other ACP regions would eventually fall into line. In this specific case, CARIFORUM negotiators were evidently persuaded by the EU’s case that - in the absence of the protection afforded by the waiver - the conclusion of a reciprocal agreement was essential to safeguarding preferences from further WTO litigation (CRNM 2008). In addition, regional elites broadly shared the view of EU officials that a comprehensive agreement, while not strictly necessary for satisfying multilateral trade rules, would improve access to the EU market for non-traditional exports, thus fostering economic diversification and lessening the Caribbean’s long-standing dependence on agricultural commodities blighted by preference erosion and declining terms of trade (Heron 2011). Finally, the relatively advanced stage of regional integration within the Caribbean - coupled with relative homogeneity in terms of the
sensitivity of individual member states to the effects of preference erosion - meant that the insistence on a region-based agreement caused few problems for CARIFORUM, at least compared with the situation elsewhere. In sum, the CARIFORUM agreement was a product of a relatively strong convergence between legal and institutional norms as enshrined in the WTO and the neoliberal policy preferences of EU policy makers and their CARIFORUM counterparts.

Yet, despite the precedents set by the CARIFORUM EPA, we have seen that to date it remains the only agreement of its kind. Although it is certainly true that the more advanced nature of regional integration within the CARIFORUM region, combined with relative homogeneity in terms of sensitivity to the effects of preference erosion, provides part of the answer to why CARIFORUM was willing to sign a comprehensive agreement when the rest of the ACP was not, we argue that endogenous factors alone cannot explain this variation. Rather, it is the case that, over time, the political dynamics and institutional trajectory of the WTO system increasingly served to undercut the EU strategic appeals to this as an institutional constraint. The first point to note here relates to Article XXIV. Although critics were quick to recognise that Article XXIV was a good deal more flexible than EU policy makers acknowledged (see South Centre 2008; Trommer 2013) few considered the full implications of this legal ambiguity. This relates not just to the ability of EU policy makers to invoke WTO compliance as an external constraint, but also to its appropriateness as a legal mechanism for crafting free trade agreements that are simultaneously WTO compatible while also based on principles of SDT, which the EU claims are at the heart of the EPAs. The problem here is that, while SDT provisions are enshrined elsewhere in the legal texts of the GATT and WTO, Article XXIV makes no mention of this - and, as such, provides no guidance as to how ‘development friendly’ free trade agreements might be rendered WTO compatible beyond the simple matter of reciprocity.

The absence of SDT provisions from Article XXIV thus meant that the EPAs lacked a clear organising principle around which region-wide agreements could be constructed. But because the EU’s regional agenda for the ACP was prosecuted more or less exclusively in accordance with WTO compliance and the legal requirements for satisfying Article XXIV, the only basis on which SDT provisions could be enshrined in a regional EPA was if they applied solely to LDCs. The principle of ‘differentiation’ enshrined in the Cotonou Agreement and later implemented through the separate EBA agreement - which granted LDCs duty free and
quota free access to the EU market on a unilateral basis - served to expose the limited and uneven nature of the EU’s policy leverage in the EPA negotiations. As we have already suggested, the Cotonou Agreement and, even more so, the EPAs rested on the ability of the EU to exercise policy leverage afforded by the ACP’s dependence on preferences to impose domestic and regional reforms. Even without taking into account the disruptive effect of the EBA initiative, the flaws in this strategy became more and more apparent after the EPA negotiations intensified in the run up to the expiry of the WTO waiver. On the one hand, the policy leverage afforded by the ACP’s dependence on preferential access to the EU market only extended as far as each beneficiary was equally dependent on preferences and hence similarly exposed by liberalization. On the other hand, even if this was the case - which it was not - there would still be incongruence between the desire to secure reciprocity at a regional level and the fact that the policy levers used to achieve this could only be deployed at a national level. This incongruence was accentuated by the principle of differentiation implemented through EBA, which ensured there would be zero costs for LDCs because preferential access was guaranteed whether they signed an EPA or not.

This problem was further compounded by the legal ambiguity surrounding SDT itself. The more the EU’s case for reform rested on the pretext of WTO compatibility, the more it needed to rely on the GATT’s idiosyncratic approach to SDT - an approach informed by a curious mix of informality and extreme legalism (Narlikar 2005; Wilkinson 2006; Heron 2013). Eligibility for trade preferences is something that was never adequately addressed, either under the GATT or WTO. The development provisions that evolved under the aegis of the GATT rested for the most part on ad hoc concessions rather than legally codified obligation (see Heron 2013). Despite the widespread recognition of the special and differential needs of developing countries, eligibility for such treatment (apart from for LDCs afforded special treatment under the 1979 Enabling Clause) rested on the principle of self-declaration – a principle with close to no legal standing under international trade law. The significance of all this is to show that the legal norms that the EU placed at the heart of its post-Lomé trade vision were a good deal more opaque than it was willing to acknowledge. Not only this but the idiosyncrasies of these rules - particularly the fact that they lacked any organising principle around which to enshrine SDT in an interregional free trade agreement - actually made the pursuit of reciprocity in relation to highly heterogeneous ACP regions more difficult.
‘Global Europe’ and the entwinement of the EU’s commercial and development agendas

We now turn to what has been one of the most contentious and politically divisive aspects of the entire EPA process: the inclusion of the so-called ‘Singapore issues’. These issues did not become central to the negotiations until the mid 2000s, following the collapse of the Cancun Ministerial in September 2003 and in the context of the growing entwinement of the EU’s commercial and development agendas associated with the advancement of the Lisbon Agenda. It was at this point that the path-dependent institutional trajectory of the WTO diverged most starkly from the EPAs, providing the discursive space for transnational activists to counter the EU’s strategic discourse regarding the necessity and desirability of the EPAs.

We can recall from our earlier discussion that, although the abandonment of Lomé hinged on the necessity of WTO compliance, the decision was informed by a more or less independent set of normative convictions, concerning the desirability of reciprocity and market-oriented policy reform. Although conformity with Article XXIV required reciprocal liberalisation for trade in goods, this did not extend to the Singapore issues (investment, services, competition policy and government procurement), since these issue areas were still to be agreed upon at the multilateral level. The Cotonou Agreement nonetheless made reference to these issues - albeit vaguely - as potential negotiation issues, reflecting the EU’s desire to use the EPAs to promote a wider set of economic reforms. Furthermore, while unrelated to Article XXIV, the inclusion of the ‘Singapore issues’ was - at least at this stage - premised on the belief that it was very much in keeping with the general negotiating direction in which the WTO appeared to be heading. Indeed, the publication of the aforementioned Green Paper coincided with the launching of a separate strategy paper (European Commission 1996a; see also Faber and Orbie 2009; Heron and Siles-Brügge 2012), which formed the basis for the EU’s Millennium - and later Doha - Trade Round objectives first enunciated at the Singapore Ministerial in 1996.

Following the debacle at Cancún in 2003, however, the three most controversial Singapore issues (competition policy, transparency in government procurement and investment) were dropped from the Doha agenda, thus signalling a clear divergence between the EU’s EPA agenda and the underlying legal and institutional parameters on which the agreements were supposedly based. But this divergence was not simply a matter of chance. Rather, the
collapse of the Cancun reflected the path-dependent institutional dynamics of the entire negotiating process, regarding the content and indeed the overall desirability of a further round of multilateral liberalization (Narlikar and Wilkinson 2004). The key point is that the majority of developing county delegations approached Cancun - and the Seattle ministerial before it - feeling that their developed country counterparts had still to deliver promises made during the previous Uruguay round - what had become known as the ‘implementation issues’ - but were now seeking to open up negotiations in the ‘Singapore issues’ without first addressing these grievances. Although these tensions certainly did not make the collapse of Cancun and the abandonment of the Singapore agenda inevitable, the outcome was still a great deal more politically contingent than allowed for in the EU’s discursive strategy.

The EU’s eventual response to Cancun rested upon the ongoing internalisation and strategic deployment of a discourse of ‘global competitiveness’ as a pretext for neoliberal policy reform (Tsoukalis 1997; Rosamond 2002). In 2006, the EU launched its Global Europe trade strategy, the essential thrust of which was that the internal dimension of the Lisbon Agenda needed to run in tandem with a more offensive external trade strategy in which negotiation on the Singapore issues would be a priority (Hay 2007). Under this agenda, remaining ‘pockets of protectionism’ in the EU that had hitherto managed to escape liberalization would be traded away in exchange for securing preferential access to emerging markets for the EU’s export-oriented firms (Siles-Brügge 2012). Global Europe suggested that the ACP countries were peripheral to Europe’s main commercial interests in Asia and Latin America and the Commission sought to draw a line between the EU’s ‘main trade interests’ (European Commission 2006: 10-11) and its trade agreements with peripheral countries in which the primary motive was promoting sustainable development through the gradual regional and global integration of these countries into the world economy in a manner consistent with WTO rules (European Commission 2006: 3). However, it is striking that the arrival of Peter Mandelson at DG Trade in the aftermath of the Cancun Ministerial coincided with the increased prominence of the Singapore issues in the EPA negotiations (Heron and Siles-Brügge 2012).

Measured against the continuation and extension of its EPA strategy based on comprehensive national and regional trade policy reform, the collapse of Cancun represented the most striking divergence between the EU’s strategic discourse and the legal and institutional parameters on which it was supposedly based. This had the effect of blunting the EU’s
rhetorical appeals to WTO rules as an external constraint that rendered the EPAs necessary as well as desirable. The more that the EU emphasised the Singapore Issues, the less traction was to be gained from continuing to invoke the necessity of WTO compliance, since this obviously went beyond what was strictly required to satisfy multilateral trade rules, particularly once these issues had been dropped from the WTO agenda altogether. On top of this, the entwinement of the EU’s ‘commercial’ and ‘development’ agendas raised the costs of signing up to an EPA for ACP countries. These costs came not only in the form of reciprocity and compliance with the EU’s insistence on reforms associated with the Singapore issues, but also a raft of other requirements including an MFN clause and a ban on export duties. The EU’s justification for the inclusion of these measures in the negotiations - namely, that it did not want to be put at a competitive disadvantage as a result of having signed the EPAs - is difficult to square with the oft-cited claim by its officials that there were no ‘offensive interests’ at stake in the negotiations. The MFN clause in particular caused consternation for those ACP countries and regions for which the EU was not the dominant trade partner or which hoped to form future trade partnerships with emerging powers. Overall, the increasing prominence of the Singapore issues in the negotiations after Cancun meant that Commission officials now had to rely more and more on moral suasion to convince the ACP of the merits of comprehensive EPAs, particularly in the case of LDCs and non-preference-dependent countries.

All told, the effect of the divergence between EU preferences and the trajectory of developments in the WTO was to expose the former to a rhetorical onslaught from the various critics of the EPAs - ACP governments, sceptical EU member states, NGOs and activists - which mobilised to effectively rebut the European Commission’s depiction of the EPAs as ‘non-coercive’ and ‘development-friendly’ and to, instead, portray them as coercive, driven by commercial self-interest and potentially deeply damaging to the ACP. Although opposition to the EPAs from elements of global civil society began almost as soon as the talks got under way in September 2002 (Traidcraft 2003; ActionAid 2004), there is no doubt that the increasing prominence of the Singapore issues in the negotiations after Cancun meant that the Commission could no longer hide behind the pretext of ‘WTO compatibility’ and was forced to make the case for the desirability of the EPAs even in the absence of their necessity. In this context, transnational advocacy coalitions were able to use their own recourse to ‘rhetorical action’ (Schimmelfennig 2001) to, first, question and, ultimately, undermine the
EU’s case. The EU’s initial reliance on the convergence between its policy preferences and WTO imperatives for its discursive construction of the EPAs as both necessary and desirable meant that, once the trajectory of WTO developments diverged from the EU’s own agenda, policymakers were, in effect, hoisted with their own petard.

**Conclusion**

To conclude, then, in the context of the EU’s blunted rhetorical appeals to the necessity of WTO compatibility, the outcome of the EPAs demonstrates both the EU’s uneven leverage across the ACP regions and the limited reach of its norm-based arguments about the desirability of the agreements. The broad trend has been that those preference-dependent ACP countries that are ineligible for alternative preferences have tended to sign full or interim EPAs in order to preserve market access, while LDCs and those not dependent on preferences have proved less likely to do so (Bilal and Stevens 2009). However, the outcomes of the negotiations have demonstrated some departures from this overall trend - LDCs that have signed EPAs and preference-dependent non-LDCs that have refused to do so (see Murray-Evans 2013) - suggesting the influence of ideational factors that cut across material incentives and, indeed, uneven responses to the EU’s claims about the desirability of the EPAs and the counter-claims of transnational activists.

Theoretically, this paper has aimed to contribute to wider debates in the constructivist institutionalist literature about ‘when ideas matter’, paying particular attention to how ideational and institutional factors are interwoven in the persuasive strategies that form a crucial element of processes of policy diffusion. Here, we have suggested that Parsons’s institutional and ideational logics of explanation can be fruitfully combined. In this way, institutions are seen as relating to action in two different ways simultaneously - as intersubjectively present and path dependent constraints and as ambiguous structures that are open to interpretation and strategic discursive deployment. It is the interaction between these two types of relationships between actors and institutions that we argue can help us to explain the success - or otherwise - of discursive appeals to institutional constraints. We argue that where intersubjective norms or rules converge with actors’ preferences to the extent that they are able to construct these rules as external constraints as part of an ends-oriented discursive strategy, such rhetorical action is likely to lend legitimacy to, and boost the effectiveness of, their persuasive strategies. However, as our EPA case study demonstrates, such convergence is not static but highly dynamic. While actors may be able to construct their particular policy
preferences as convergent with intersubjective institutional norms at a particular point in time, path dependent institutional developments (and indeed changing policy preferences) may lead to divergences over time and the blunting of discursive appeals to institutions as external constraints. Indeed, the extent of this divergence may be great enough that previous appeals to external institutional constraints may serve to actively undermine the discursive strategies that they had previously underpinned - as we have seen in the unravelling of the EU’s justification of the EPAs as necessary to satisfy GATT Article XXIV.

References


