

# The Sustainable Development Clauses in Free Trade Agreements of the EU with Asian Countries: Perspectives for ASEAN?

LUDO CUYVERS\*

*University of Antwerp, Belgium, North-West University (Potchefstroom Campus), South Africa, United Nations University—Centre for Regional Integration Studies, Bruges, Belgium*

**ABSTRACT** *The paper shows that the present EU GSP Plus arrangement is to be considered as showing the level of aspiration of the EU for future FTA partners regarding international rules of sustainability and good governance. Following its 2007 East Asia Policy Guidelines, the EU started negotiations on an interregional EU–ASEAN FTA and on the FTA with South Korea.*

*The EU–Korea FTA and the European Commission's reactions to the consultant's advice on sustainability provide evidence of the negotiation strategy regarding the sustainability chapter in such FTAs with Asia. We evaluate this chapter of the EU–Singapore FTA, concluded in December 2012 against this background and find that they are highly similar. We conclude that the EU–Singapore FTA sustainable development provisions can be considered as a benchmark for the ongoing FTA negotiations with Malaysia, Vietnam and Thailand, and as a baseline for such provisions in a future EU–ASEAN FTA.*

**KEY WORDS:** EU–ASEAN relations, free trade agreement, sustainable development, ILO core labour standards, multilateral environment agreements

## Introduction

During the past decade, interconnectedness has increased between respect for sustainable development and for the multilateral rules of the game in international trade. For many years, the European Union has endeavoured to promote sustainable development with its trading partners, using the Generalised System of Preferences and its bilateral or interregional free trade agreements (FTAs), combining respect for internationally agreed labour market protection rules and respect for multilateral environmental agreements (MEAs).

Since the conclusion of the EU–Korea FTA<sup>1</sup> in October 2010, this EU approach has created a precedent, which has entered its free trade strategy with the Association of South East Asian Nations (ASEAN). Article 13.6, Trade Favouring Sustainable Development, of this agreement states:

---

\*Correspondence Address: Centre for ASEAN Studies, University of Antwerp, Prinsstraat 13, 2000 Antwerp, Belgium. Email: [ludo.cuyvers@ua.ac.be](mailto:ludo.cuyvers@ua.ac.be)

1. The Parties reconfirm that trade should promote sustainable development in all its dimensions. The Parties recognize the beneficial role that core labour standards and decent work can have on economic efficiency, innovation and productivity, and they highlight the value of greater policy coherence between trade policies, on the one hand, and employment and labour policies on the other.
2. The Parties shall strive to facilitate and promote trade and foreign direct investment in environmental goods and services, including environmental technologies, sustainable renewable energy, energy efficient products and services and eco-labelled goods, including through addressing related non-tariff barriers. The Parties shall strive to facilitate and promote trade in goods that contribute to sustainable development, including goods that are the subject of schemes such as fair and ethical trade and those involving corporate social responsibility and accountability.

However, with due regard of the varying levels of economic development within ASEAN, the EU–Korea FTA as such, can hardly be considered as usable as a template for on-going negotiations with ASEAN countries. Yet, a number of provisions in this agreement, including the linking of trade and sustainable development, are readily usable in new EU FTAs with ASEAN countries and will, no doubt, be on the negotiation table, having also found their way into the EU–Singapore FTA.

In the present paper, the research question we investigate is if, and to what extent, the sustainable development provisions in the EU FTAs with Korea and Singapore, are also of impact on the on-going FTA negotiations with other ASEAN countries (Malaysia, Vietnam, Thailand) and are to be considered as a template for what the EU is aiming at negotiating with the other individual ASEAN countries.

Our methodology is essentially comparative legal analysis of the sustainability provisions in the EU's FTAs with Korea and Singapore, which is supplemented by an analysis of how, when and to what extent the EU's relevant international trade policy stance previously changed in its unilateral preferential trade regime for developing countries. This will allow us, first, to identify the EU's level of aspiration regarding sustainability provisions, and, second, compare with the relevant provisions in the EU's FTAs with Korea and Singapore.

After a brief introduction, in the next section, to the scholarly literature on the linkages between international trade and international labour and environmental standards, which is aimed at shedding light on the EU's motivations to refer to respect for such standards in its FTAs, we analyse in section 3 ('The EU's Level of Aspiration Regarding Trade-Related Sustainable Development') the sustainable development provisions in the EU's Generalised System of Preferences, a unilateral trade regulation of the European Union with developing countries. We will argue that these provisions define the level of aspiration of the EU regarding which international and multilateral conventions relevant for sustainable development, partner countries should ratify and implement. With a number of ASEAN countries losing the Generalised System of Preferences (GSP) benefits in the near future and the prospects of their benefits being replaced by free trade under bilateral FTAs with the EU, the mentioned level of aspiration of the EU also defines a bottom-line in its sustainable development negotiations.

In section 4 ('The EU–Korea FTA and the Long Road towards an EU–ASEAN FTA'), we then review the FTA negotiation process of the EU with Korea and ASEAN, and the

underlying principles and guidelines. Although Korea is not an ASEAN country and is a developed industrialised economy, it is shown, after a comparison with the more recent EU–Singapore FTA, that the sustainability provisions of the EU–Korea FTA have indeed provided a template for what the EU is aiming at negotiating with other individual ASEAN countries. In section 5 (‘Whither the Sustainable Development Chapter in EU–ASEAN Trade Agreements?’), the negotiated or under negotiation bilateral trade agreements with ASEAN countries, are considered as a baseline for a future interregional EU–ASEAN FTA in which similar trade-related sustainability provisions are expected. Section 6 finally concludes.

### **Motivations for Linking Trade and Sustainable Development Standards**

Sustainable development in the context of the EU’s FTAs refers to both the implementation of so-called core labour standards of the International Labour Organisation (ILO) and of a number of multilateral environmental conventions.

The linking at the multilateral level of respect of international core labour standards to international trade liberalisation has a history that goes back to the Havana Declaration of 1948, the text on international trade of which a year previously laid the foundation of the General Agreement of Tariffs and Trade (GATT). Remarkably, the Havana Charter is also the first international agreement in which labour conditions were linked to international trade (Wilcox 1949).

Despite regular calls from the early 1950s until 1995 when the World Trade Organisation (WTO) was created, for a ‘social clause’ in the GATT, no agreement was reached on this matter. The problem of this ‘social approach’ to international trade is that it would allow countries to discriminate and take trade restrictions against one country while abstaining from discrimination in other cases. That a social clause, in one form or another, did not find its way to the GATT, explains why it is found only in regional, bilateral or unilateral initiatives of international co-operation of, for example, the European Union and the United States (see in this respect, for example, Cuyvers and de Meyer 2012).

A similar although much more complicated situation has developed in the field of respect for international environmental agreements and standards, which has also led to an increased interconnectedness between environmental agreements incorporating trade provisions/instruments, and trade agreements incorporating environmental clauses. Mainly under pressure of the European Union, the environmental agenda in the multilateral trading regime of the WTO has pushed for a broad ‘good governance principle’ on environment. The relationship between the rules under multilateral environmental agreements (MEAs) and the WTO is under negotiation in the Doha Round of the WTO. A major concern is about the WTO consistency of discriminatory trade restrictions within MEAs in the form of import and export bans (which are allowed only under GATT Article XX), and of discrimination between MEA parties and non-parties in case all are WTO members (which would violate the GATT Article I principle of Most Favoured Nation Treatment).

The discussions at a multilateral level of linking trade liberalisation and respect for international standards, such as the ILO’s core labour standards, during the Uruguay Round, also inspired scholarly work.

According to standard economic theory, the first-best method to deal with labour market imperfections (child labour, discrimination of workers for membership of trade-unions,

etc.) and/or environmental distortions (trade in endangered species or products thereof, production of substances which deplete the ozone layer, etc.) is to adopt appropriate corrective labour market or environmental policies, rather than trade policy. Trade policy to correct labour market and environmental distortions will likely entail efficiency losses elsewhere in the economy, which even might lead to an overall welfare loss. Even in the case where these efficiency losses are compensated by welfare gains due to enhanced sustainability, the net result will be smaller than that of the first-best method. However, for various reasons, labour market and environmental policy corrections, that is, the first-best policy instrument, might not be possible, in which case trade policy, as second-best method, is appropriate to bring about labour market or environmental corrections (Pearson 2000).

Although most empirical research was unable to show that linking international trade and international or other sustainability standards is efficient, some conclusions can be drawn regarding the ILO's core labour standards. Brown, Deardorff, and Stern (1996) concluded for example, that developing a political consensus for an efficiency-enhancing standard in the presence of an open trading system will be easier if all governments in the trading system agree to harmonise on the same standard, thus supporting the case for adopting the ILO core labour standards (see also Palley 1999). Almost a decade later, it was concluded that 'broad agreement' existed 'that adopting the four core labour standards (elimination of child labour, abolition of forced labour, encouragement of non-discrimination in employment, and freedom of association and collective bargaining) is highly effective in making globalization more equitable' (Gunter and van der Hoeven 2004, 32).

There can be no doubt that concerns in the EU and other industrialised countries, about substandard labour conditions in the developing countries are fuelled by both moral arguments, as well as fears for a 'race to the bottom' in the highly competitive global economy. For example, the moral argument in favour of trade sanctions against countries that permit child labour has been developed by Rodrik (1997). From a political economy perspective, Brown (2000, 36) has argued that trade sanctions against countries that have poor labour practices can also be justified using the same type of argument that justifies the general application of trade sanctions, such as these to countervail foreign subsidies or to impose anti-dumping duties.

On the other hand, the race to the bottom argument has remained scientifically controversial as many researchers, well before the turn of the century, have found evidence which contradicts it (e.g. Bhagwati 1995; Krueger 1996).<sup>2</sup> More recently, Freeman (2004) for example, has concluded that global labour standards do not threaten the comparative advantage of developing countries nor do poor labour standards create a race to the bottom. Chau and Kanbur (2001a) suggested that a southern race to the bottom is possible but not inevitable. The popular sentiment against competition with countries producing under substandard labour conditions, which is held in the constituency of the European politicians and bureaucrats is an important driving force for the EU's urge towards developing countries to ratify and implement the ILO's core labour standards. It is likely that the EU is also hoping to be increasingly successful in its endeavours once some important 'peer countries' have adopted these standards.<sup>3</sup>

Moreover, there is evidence that granting the economic benefits of trade liberalisation and market access, based on an FTA, on condition of the adoption of internationally agreed sustainability standards by the partner country, is offering the best results. As

Hafner-Burton (2005, 607) writes with respect to human rights and preferential trade agreements (PTAs):

Where persuasion alone is likely to fail, hard standards can influence the problem of compliance without changing actors' preferences. They provide an economic motivation to promote human rights policy reforms that would not otherwise be implemented, and they do so in a relatively short time horizon. When institutionalized PTAs create new and valuable gains, hard agreements can also commit future elites with preferences for liberalization to human rights reforms they would not otherwise select.

This argument, evidently, not only applies to human rights in general, but also to the ILO's core labour standards and even the standards laid down in the MEAs.

Another argument for the adoption of the EU's insistence on the inclusion of a sustainability clause in its FTAs can be found in Krugman's 'civil society support' thesis. This thesis states that to the extent that developed countries believe that they are exposed to unfair or unethical competition from producers that employ exploitative labour practices, punishing such practices will serve to support the free trade coalition in the countries (Krugman 1997). Representatives of the EU business society and civil society organisations respectively have been reported to disagree on the desirability of sustainability provisions in the EU's FTAs, prior to the start of the negotiation process (Bourgeois, Dawar, and Evenett 2007, 52–54, 88–93), such that the inclusion of a sustainability chapter in these FTAs to some extent has generated increased civil society support for trade liberalisation with developing countries.

### **The EU's Level of Aspiration Regarding Trade-Related Sustainable Development: Evidence from the EU's Generalised System of Preferences**

For many years, the EU's approach to sustainable development through international trade regulation combined concerns for sound social development in the partner countries, with those of the environment. The present section looks into the changes as relevant for the ASEAN countries. Furthermore, the situation at present of this EU sustainable development approach in ASEAN will be assessed, which will allow us to devote attention to the on-going FTA negotiations between the EU and individual ASEAN countries.

Also for many years, most ASEAN countries were, in an important way, trading with the European Union using the unilateral trade preferences of the EU's Generalised System of Preferences. As agreed by UNCTAD in 1969, the aim of the GSP is to support the industrialisation of developing countries by preferential treatment of their exports. Under the GSP, developing countries are granted unilateral and autonomous tariff reductions, which can even imply tariff-free importation of manufactured goods and particular agricultural products. The EU has applied its GSP since 1971 and has it regularly extended and renewed.

In 1995, the EU made important revisions to its GSP<sup>4</sup> by introducing tariff modulation according to the 'sensitivity' for EU producers of the product benefiting from the preferential tariff duty, as well as new graduation rules. Furthermore, a special incentive arrangement (to become operational on 1 January 1998) was introduced, with special incentives to be applied on the basis of an additional margin of preference as specified in

the ‘social clause’ and the ‘environmental clause’ of the Council Regulation.<sup>5</sup> The two clauses were further defined in the 2002–2004 GSP.<sup>6</sup> The aim of these clauses is to assist qualified beneficiary countries in sustaining and improving their environmental and social standards.

The introduction of a social clause in the GSP of the EU enables the granting of additional preferences to countries that respect specified social minimum standards. As the GSP is an autonomous and unilateral instrument, it allows room for manoeuvring and pushing in favour of fundamental labour standards. The additional preferences were considered as a compensation for the additional expenses of countries that apply and respect the relevant standards. Article 7 of the 2002–2004 GSP referred to the Conventions Nos 87 and 98 of the International Labour Organisation (ILO) regarding the freedom of association and of collective bargaining, and to ILO Convention No. 138 on the minimum age for the employment of children.

According to the environmental clause, products are favoured, the characteristics or the methods of production of which are recognised internationally as leading to the achievement of international environmental standards laid down in international agreements (e.g. regarding the ozone layer and climatic condition). In the 2002–2004 GSP, the environmental clause was only applied to the sector of manufactured tropical wood, and reference was made to the criteria of a sustainable management of the tropical forests. An arrangement similar to the social clause was introduced in that GSP for countries that respect the standards laid down by the International Tropical Timber Organisation.

However, as a result of a dispute case brought before the World Trade Organisation by India concerning the community’s special arrangements to combat drug production and trafficking, the 2005 EU GSP scheme introduced the ‘GSP Plus’ arrangements for sustainable development and good governance, which were brought under one social and environmental clause heading.<sup>7</sup> The condition for eligibility for countries was to be considered as vulnerable<sup>8</sup> and to have ratified and have implemented 16 UN/ILO core human and labour rights conventions, and *at least seven* of 11 international conventions related to the environment and governance principles.<sup>9</sup> The system remained basically unchanged for the period 2009–2011, until the end of 2013.

From 1 January 2014, a new EU GSP applies and *all* 27 listed conventions have to be ratified for a ‘vulnerable’ developing country to qualify for GSP Plus.<sup>10</sup> We refer to Annex 1 for the list of these conventions.

The 2005 GSP regulation stipulated, however, that by way of derogation:

2. ... for countries faced with specific constitutional constraints, the special incentive arrangement for sustainable development and good governance may be granted to a country which has not ratified and effectively implemented a maximum of two of the sixteen conventions listed in Part A of Annex III<sup>11</sup> provided (a) that a formal commitment has been made by the country concerned to sign, ratify and implement any missing Convention should it be ascertained that there exists no incompatibility with its Constitution no later than 31 October 2005, and (b) in case of an incompatibility with its Constitution, the country concerned has formally committed itself to sign and ratify any missing Convention no later than 31 December 2006.<sup>12</sup>



It will come as not too much of a surprise that only 14 developing countries applied for GSP Plus treatment. For the ratification record of the ASEAN countries of these conventions, we refer to Annexes 2 and 3. Given this ratification record and the level and speed of economic development of most of the ASEAN countries, none has ever applied for GSP Plus qualification.<sup>13</sup>

As mentioned, a revised GSP scheme has come into force on 1 January 2014.<sup>14</sup> It is concentrating the GSP preferences on fewer countries, while keeping the product coverage and the preference margins unchanged. Among the countries that are graduating in the new system, mention can be made of those that have achieved a high or upper middle income per capita, or countries that have preferential access to the EU, which is at least as good as under GSP, for example, under an FTA or a special autonomous trade regime. Furthermore, the GSP Plus incentives are reinforced.

Singapore already graduated from the EU GSP in 1995. Under the revised GSP of 2014, countries such as Thailand and Malaysia will graduate as well, which constitutes an important ‘carrot’ for both countries to start negotiating an FTA with the EU (see, for example, for Thailand: Pratuangkrai 2012a, 2012b). In 2011, Malaysia’s EU GSP eligible exports accounted for 25.7% of its exports to the EU. In Thailand, the share of GSP eligible exports in total exports to the EU in 2011 was 14.7%.<sup>15</sup>

The bilateral EU FTAs with individual ASEAN countries should eventually lead to an interregional EU–ASEAN FTA. However, the European Commission stated that a transition period will apply for Thailand (which might be classified as an upper middle income country by the World Bank for three subsequent years in 2013) and that the country will at least be able to benefit from GSP until 31 December 2014. Moreover, Malaysia can still benefit from GSP until 21 November 2014, as it started negotiations for an FTA with the EU before 20 November 2012.<sup>16</sup>

### **The EU–Korea FTA and the Long Road towards an EU–ASEAN FTA**

In 2003, the European Commission issued a communication on EU relations with ASEAN (EC 2003) in which it was stated that the EU should consider entering into a ‘WTO Plus’ FTA with ASEAN and that new bilateral agreements with ASEAN countries should all contain the ‘essential element’ clause regarding human rights (EC 2003, 3). This EC communication was triggered by a growing awareness that the centre of gravity of the world economy was slowly but steadily shifting to the Asia-Pacific region, with ASEAN emerging as the world’s largest exporter (EC 2003, 6), such that ‘the EU has both offensive and defensive interests in forging stronger economic ties with the region’ (EC 2003, 9). The EU aimed to establish a new partnership which should include:

- support of regional stability and the fight against terrorism;
- promotion of human rights, democratic principles and good governance;
- mainstream justice and home affairs issues;
- injection of a new dynamism into regional trade and investment relations;
- continuing support of the development of less prosperous countries;
- intensification of dialogue and co-operation in specific policy areas.

For our purpose the second and fourth items are the most important.

On 17 May 2006, in a talk in Kuala Lumpur on the future of EU–ASEAN trade relations for the EU–Malaysian Chamber of Commerce and Industry, EU Commissioner Peter

Mandelson said: 'I believe that the case for an [EU–ASEAN] FTA is a strong one and I will put it to the European Member States' (Mandelson 2006a). Later in the same year, on 18 September 2006, he made a speech in Berlin mentioning the same point and also stressing that FTAs with India, South Korea and ASEAN would be very promising for European businesses (Mandelson 2006b). By then, the EU had announced its objective to launch free trade negotiations with India, Korea and ASEAN at the earliest possible convenience.

A formal request by the European Commission to the EU member states for a mandate to initiate the negotiating process was issued and draft mandates were put to the EU member states on 6 December 2006. The Commission's hope was that concrete talks could kick off immediately and that negotiations be completed by 2009.

The EU and ASEAN started exploratory talks, with the EU contemplating three negotiating scenarios: EU FTA negotiations with ASEAN as a whole; with ASEAN minus Myanmar, Laos and Cambodia—the three least-developed economies in the region; or the negotiation of seven bilateral FTAs with Brunei, Indonesia, Malaysia, the Philippines, Singapore, Vietnam and Thailand—countries with which the EU is already in the process of negotiating individual partnership and cooperation agreements with.

At its meeting on 23–24 April 2007, the Council of the European Union adopted the Commission's recommendation to open negotiations with the Andean Community, the countries of ASEAN, Central America, India and the Republic of Korea. Based on the Commission's recommendation and the Council's decision, EU–ASEAN FTA negotiations are no doubt closely related to increasing EU concerns about its economic interests in South East Asia being jeopardised by the bilateral FTA negotiations with ASEAN countries of the USA, China and Japan. This concern was reiterated in the EU's 2007 East Asia Policy Guidelines.

These Policy Guidelines set out six key challenges and objectives:

1. The preservation of peace and strengthening of international security, in accordance with the principles of the UN Charter.
2. The promotion of a rule based international system.
3. The promotion of regional integration.
4. The development and consolidation of democracy, the rule of law, and respect for human rights and fundamental freedoms.
5. The promotion of cooperative and sustainable policies to meet global challenges such as climate change, energy security, environmental protection, poverty, economic imbalances, and health issues.
6. The promotion of non-proliferation of weapons of mass destruction. (Council of the European Union 2007, 2)

The negotiation directives for the European Commission were given in May 2007. Negotiations of an EU–Korea FTA and an EU–ASEAN FTA started on 4 May 2008. The negotiations with Korea were expected to be completed in March 2009, but seven rounds of negotiations over various aspects of the agreements were needed for successful completion. As to the EU–ASEAN FTA negotiations, little progress was made in the first year and negotiations were paused in February 2009 to allow for a period of reflection (Cuyvers, Chen, and de Lombaerde 2010, 261). It had soon become clear, that due to the institutional differences between the EU and ASEAN (being a mere 'FTA Plus'), the huge differences in the levels of development of the ASEAN countries—and therefore of their expectations and objective interests in the outcomes of an EU–ASEAN FTA—as well as



to the diplomatic position of Myanmar, the then still boycotted pariah of ASEAN, the interregional strategy was temporarily abandoned. In December 2009, EU member states gave the green light for the EC to pursue negotiations towards FTAs with individual ASEAN countries. Such bilateral FTAs could then act as building blocks that may be upgraded into a region-to-region agreement.

In contrast to the original EU–ASEAN FTA negotiations, the EU–Korea FTA negotiations were successfully concluded and the agreement signed on 6 October 2010. Being the first ‘new generation FTA’ launched by the EU in 2007, the EU–Korea FTA, no doubt, is reflecting the EU’s strategic options in East and South East Asia, including these on sustainability.

Regarding the position of the EU in its negotiations with ASEAN on trade and sustainability issues, it is interesting to refer to the reaction of the European Commission to the policy recommendations of the SIA consultant about the trade sustainability impact assessment (TSIA) of the EU–ASEAN FTA. The European Commission services stated about the trade and sustainability chapter in such FTA:

Such a chapter should, for instance, contain provisions on core multilateral labour standards and the decent work agenda including in areas where core ILO conventions are not yet ratified. It should also incorporate common commitments to multilateral environmental conventions and sustainable fisheries. Furthermore, it should contain provisions with respect to upholding levels of domestic legislation and may include more specific language on the sustainable management of natural resources. A trade & sustainable development chapter should further establish a strong monitoring mechanism, building on public scrutiny through formal Civil Society involvement.

In this context, the Commission services recognise the importance of developing common commitments and encouraging high standards and levels of protection, while leaving to the parties the freedom to regulate according to their own collective preferences. Co-operation activities also have a role to play e.g. through policy-dialogue, on trade related global environmental issues, employment and social policies, human resources development, labour relations and social dialogue. The Commission services do not aim at harmonisation of social and environmental provisions with parties to trade agreements, but rather at progressing through dialogue and cooperation to make economic and trade-related endeavours sustainable in the long term. (EC 2010a, 6)

In contrast to the strict unilateral rules of the GSP Plus provisions (see earlier), to which the GSP eligible ASEAN countries in the past were reluctant to abide, the second paragraph of this quotation seems to give a lot of flexibility and room of manoeuvre to the EU negotiators of a sustainability clause in an EU–ASEAN FTA. This is evidently a sound and safe approach, taking into account the social and environmental ‘development gaps’ between the individual ASEAN countries. However, it also fully explains the phrasing in the EU–Korea FTA of October 2010: ‘The Parties recognise that it is not their intention in this Chapter to harmonise the labour or environment standards of the Parties, but to strengthen their trade relations and cooperation in ways that promote sustainable development’ (Art. 13.1, 3).

The sustainability chapter then continues: ‘each Party shall seek to ensure that [...] laws and policies provide for and encourage high levels of environmental and labour protection, consistent with the internationally recognised standards or agreements referred to in Articles 13.4 and 13.5’ (Art. 13.3), which state, *inter alia* regarding international labour rights and conventions:

The Parties [...] commit to respecting, promoting and realising, in their laws and practices, the principles concerning the fundamental rights, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation. The Parties reaffirm the commitment to effectively implementing the ILO Conventions that Korea and the Member States of the European Union have ratified respectively. (Art. 13.4, 3)

The chapter then proceeds with respect to multilateral environmental agreements as follows:

2. [...] The Parties reaffirm their commitments to the effective implementation in their laws and practices of the multilateral environmental agreements to which they are party.

3. The Parties reaffirm their commitment to reaching the ultimate objective of the United Nations Framework Convention on Climate Change and its Kyoto Protocol. They commit to cooperating on the development of the future international climate change framework in accordance with the Bali Action Plan. (Art. 13.5)

The EU–Korea FTA also states the parties’ intention to facilitate and promote trade in environmental goods and services:

The Parties shall strive to facilitate and promote trade and foreign direct investment in environmental goods and services, including environmental technologies, sustainable renewable energy, energy efficient products and services and eco-labelled goods, including through addressing related non-tariff barriers. The Parties shall strive to facilitate and promote trade in goods that contribute to sustainable development, including goods that are the subject of schemes such as fair and ethical trade and those involving corporate social responsibility and accountability. (Art. 13.6, 2)

With due regard of the continuity in the European Commission’s approach to sustainable development as stated in its reactions to the SIA consultant’s recommendations (see earlier), the trade and sustainable development chapter of the EU–Korea FTA can rightly be considered as the ‘template’ for the EU FTAs with the individual ASEAN countries, as well as the future interregional EU–ASEAN FTA. It is, therefore, interesting to review briefly in the next section, where possible, the status of the relevant EU negotiations with the ASEAN countries.

### **Whither the Sustainable Development Chapter in EU–ASEAN Trade Agreements?**

The list of core human and labour rights conventions and those related to the environment and to governance principles in the EU GSP, so we argued, can be considered as reflecting what the European Union hopes and aspires to achieve in terms of binding multilateral sustainability commitments from the ASEAN countries in the long run. Of course, these aspirations are not on the negotiation table, but rather in the heads of the EU negotiators, as they should lead to EU–Korea FTA type of provisions on sustainability.

Based on the ratification record of the ASEAN countries of the relevant conventions (see Annexes 2 and 3), the EU probably will also be confronted with occasional reluctance from its counterparts to agree with the general ‘philosophy’ and content of specific conventions. This seems to be particularly the case for the core human and labour rights to which the EU’s position on sustainable development is referring. For instance, ILO C.105 on the abolition of forced labour and ILO C.87 Convention concerning Freedom of Association and Protection of the Right to Organise, is ratified only by four ASEAN countries, and the Convention on the Elimination of All Forms of Discrimination against Women, ILO C.98 Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, and ILO C.111 Convention Concerning Discrimination in Respect of Employment and Occupation are ratified by five of the 10 ASEAN members. On the other hand, it is clear from the time of ratification by the ASEAN countries of the ILO conventions relating to child labour that their opposition against ‘western’ values of universal labour rights (in contrast to the so-called ‘Asian’ values) might have changed since the late 1990s to early 2000s.

Apart from Myanmar and Brunei, both Singapore and Malaysia have ratified the least number of core human and labour rights conventions that the EU considers as laying a solid legal foundation for sustainable development. This is striking, as both countries are the ones among the ASEAN countries with which FTA negotiations were started first: negotiations with Singapore were launched on 22 December 2009 and the EU member states agreed on 10 September 2010 with the start of the negotiations with Malaysia. Singapore is the largest trading partner of the EU in ASEAN and Malaysia the second largest. No doubt, European economic interests are prevailing. The question is: are (were) the economic interests of Singapore and Malaysia also bargained by the EU against ratification commitments in an EC negotiation strategy on a sustainability chapter in the FTA, with the famous lyrics of Frank Sinatra’s *New York, New York* in mind: ‘If I can make it there, I’ll make it anywhere ...’? Evidently, an EU–Korea FTA type of sustainability chapter would probably do this trick.

On 16 December 2012, the negotiations between the EU and Singapore on a bilateral FTA (EUSG FTA) which had started in March 2010, were concluded, leading to the second EU FTA with a key trading partner in Asia. Singapore being a leading ASEAN and AFTA country,<sup>17</sup> and although the trade agreement with the EU is a bilateral FTA, the EUSG FTA is, no doubt, also a major point of reference for on-going and future free trade negotiations with other ASEAN countries.

That the sustainable development chapter in the EU–Korea FTA served as a model for the EUSG FTA will be clear from an analysis of the respective provisions, which are very similar (with some important nuances, see below), even if the phrasing may be somewhat different. The EU’s insistence on respect for core labour standards was not experienced as of a polemical nature by Singapore, which had already made ambitious commitments at

the global level. Up to now, Singapore has ratified 27 ILO conventions (of which 23 are currently in force),<sup>18</sup> among which six are fundamental or so-called ‘core’ conventions. The sustainable development chapter was therefore one of the first to be concluded in the negotiations.

In spite of the similarity between the sustainable development chapter in the EU–Korea FTA and the EUSG FTA, some noteworthy nuances should, however, be made.<sup>19</sup>

Firstly, the EUSG FTA is more explicit than the EU–Korea FTA that commitments of core labour conventions and MEAs will *not* be used to discriminate or restrict trade. Article 13.1, §3 of the EUSG FTA states:

The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour and environment laws. At the same time, the Parties stress that environmental and labour standards should not be used for protectionist trade purposes.<sup>20</sup>

Moreover, the linkage in Art 13.6, §1 of the EU–Korea FTA between core labour standards, and economic efficiency, productivity and innovation, is completely absent in the EUSG FTA, which can only be explained by Singapore’s reluctance to acknowledge such a linkage.

Secondly, whereas the EU–Korea FTA recognises in Art. 13.11 ‘the importance of cooperating on trade-related aspects of social and environmental policies in order to achieve the objectives of this Agreement’, and that ‘the Parties commit to initiating cooperative activities’ as set out in an appendix, the EUSG FTA *only* mentions cooperation on trade-related *environmental* policies and that the Parties ‘*may* initiate cooperative activities of mutual benefit in areas including but not limited to ...’ (Art. 13.10 of the EUSG FTA, emphasis added). This, again, is evidence of Singapore’s reluctance vis-à-vis linking international trade and core labour standards.<sup>21</sup>

Lastly, the EUSG FTA contains elaborated provisions on trade in timber and timber products, as well as trade in fish products (Art. 13.7 and 13.8 of the EUSG FTA), which are relevant taking into account Singapore’s position of ‘entrepôt’ trading country in South East Asia, and the ASEAN content rules of origin that can be applied to products from other ASEAN countries, exported to the EU via Singapore.<sup>22</sup> Such provisions were evidently irrelevant for the EU–Korea FTA. The EUSG FTA is silent, however, about products of ASEAN origin which are produced in countries which are not committing themselves to respect, apply and implement the international core labour standards or multilateral environmental agreements. This absence seems to lead to a void in the sustainable development provisions of the EUSG FTA.

It is remarkable that the EUSG FTA is also branded as the EU’s first ‘Green’ FTA, containing specific terms on the liberalisation of environmental services such as waste removal and rules on illegal fishing and logging. As was the case for other chapters as well, the items included in the sustainable development chapter were not much of a problem for Singapore, but the issues will have to be thoroughly addressed during the FTA negotiations with other ASEAN countries, for which the EU FTA with Singapore is setting a clear precedent.<sup>23</sup>

Negotiations on a Malaysia–EU FTA (MEUFTA) were officially launched in October 2010. At the time of writing this paper, seven rounds of talks have been held, of which the last one was in April 2012. Regarding ILO conventions, Malaysia has ratified 16

conventions, of which 15 are in force and one (C.105—Abolition of Forced Labour Convention) has been denounced.<sup>24</sup> In contrast to the EU negotiations on the sustainable development clause in the EUSG FTA, these with Malaysia are proceeding in a tenser atmosphere, although some key-witnesses which we consulted are voicing a more rosy and optimistic opinion.<sup>25</sup> A major reason seems to be related to the position of Malaysia's palm oil sector and how palm oil as a biofuel source is considered by the European Union.<sup>26</sup>

As the MEUFTA will include a chapter on sustainable development, it will probably serve to address the challenges Malaysia currently faces, such as biodiversity loss caused by deforestation and the intensification of agriculture and aquaculture. Malaysia is a member of the Roundtable on Sustainable Palm Oil and therefore should comply with its social and environmental standards, which is still a questionable matter for the European Commission (EC 2010b).

Nevertheless, beyond pragmatic issues, the key-witnesses we consulted assert that Malaysia does share many EU principles, even if not contained in a law, but rather reflected in non-legislative tools such as best practices. Therefore, this chapter of the MEUFTA should probably not be difficult to conclude. Some administrative matters may require more time, including the composition of the group involved in the monitoring mechanism. The EU wants NGOs and advocacy groups to take part in the process, but Malaysia may request specific guarantees, such as a pre-agreed list. Even if this seems rather unimportant, it is Malaysia's first experience with this kind of mechanism and the authorities do not want to set a precedent that they could regret later (Cuyvers et al. 2013, 19). The last news (on 3 October 2013) about the EU–Malaysia FTA negotiations is that Malaysia has put these on hold and is reconsidering its options.

As to Vietnam, the EU started negotiations on the Vietnam–EU FTA (VEFTA) only in June 2012, shortly after a renewed Partnership and Cooperation Agreement (PCA) was concluded by the two partners. Vietnam has ratified 19 ILO conventions, of which 18 are in force and one convention has been denounced (C.005—Minimum Age (Industry) Convention).<sup>27</sup> The country also ratified a number of MEAs. The discussions on the sustainable development FTA chapter might substantially focus on environmental issues as Vietnam is facing significant damage to its natural resources. It is much too early to allow an assessment of the status of the negotiations on the sustainability clause.

The EU–Thailand FTA negotiations were launched on 6 March 2013, and these, with the Philippines and Indonesia, are still in preparation. It remains to be seen how they will proceed with respect to the sustainability chapter. For most ASEAN countries, the introduction of a chapter on sustainability in an FTA similar to that in the EU–Korea FTA and the EUSG FTA is a completely new experience,<sup>28</sup> which is also going beyond the ASEAN *acquis*, that is, what the individual member countries have committed to under AFTA and the ASEAN Economic Community. It has been argued that trade agreements between ASEAN and a trading partner will not go beyond the lowest common denominator of ASEAN member states policy preferences (Kleimann 2013). However, taking into account the ratification record of the individual middle-income ASEAN countries and the relative ease with which the sustainability chapter seems to have been concluded in the EUSG FTA, it can be hoped, if not expected, that similarly phrased chapters will end up in the bilateral EU FTAs with other ASEAN countries.<sup>29</sup>

This evidently is not to say that it will be easy. Taking into account the middle-income ASEAN countries' inexperience with trade-related sustainability provisions, it is most likely that the EU will have to offer strong co-operation commitments and set up co-operation

schemes in the field of sustainable development, through the codification of co-operation provisions that are linked to the establishment of strong institutional mechanisms, either in the FTA or in a Voluntary Partnership Agreement, like the one envisaged to deal with illegal logging and timber trade (Ecorys et al. 2009).

## **To Conclude**

Economic analysis teaches that there are good reasons to think that international trade policy is a second-best instrument to achieve sustainable development and increase welfare. This is particularly so when, in specific cases, the required labour policy and/or environmental policy measures are not feasible, which explains the industrialised importing economies' attempts to link social and environmental conditionality with market access for goods originating in developing countries. The WTO provisions that allow this are very limited for fear of introducing WTO inconsistent trade discrimination.

Since the mid-1990s, the systematic EU approach of linking international labour conventions and multilateral environmental agreements, in the EU GSP and international trade agreements, has aimed at promoting sustainable development through preferential trade. Whereas in the EU GSP, which is by definition an autonomous and non-negotiable trade regime, the sustainable development conditions for additional GSP benefits have become harder, it seems that the European Commission, at least in its negotiations with ASEAN countries, is allowing more flexibility in order to get what it wants. The list of 27 international labour and environmental conventions of the new 2014 GSP of the EU can evidently be considered as its level of aspiration with respect to the end-result to which its future FTAs with ASEAN countries hopefully will lead.

The provisions of the sustainable development chapter of the EU–Korea FTA, concluded in October 2010, are clearly reflecting this approach. The European Commission's negotiations approach with ASEAN countries towards sustainable development in its social and environmental aspects will use this chapter as a model. The text of the EUSG FTA which is the end result of a negotiation process of 33 months, shows a chapter on sustainable development which is very similar to that of the EU–Korea FTA, in spite of some nuances. The EUSG FTA is also hailed as the first 'Green FTA' and according to key-witnesses the development chapter was reached without much difficulty. The EUSG FTA provisions on trade and sustainable development can, therefore, be considered as a benchmark, if not a template, for such chapters in FTAs under negotiation with other ASEAN countries.

Most ASEAN countries still have some way to go in ratifying the ILO core labour conventions, in spite of being partner in many trade-related MEAs. Moreover, they have hardly any experience with sustainable development provisions in FTAs. However, it can be expected that countries such as Thailand and Malaysia will not show much reluctance in agreeing to an EU–Korea FTA or EUSG FTA type of chapter on sustainable development, although there are still hurdles to overcome, such as how to deal with the ecological footprint of palm oil biofuel and with illegal logging and timber trade, to mention two instances. Most likely, the European Commission will have to offer and commit itself to developing strong and institutional co-operation links and mechanisms in the social and environmental aspects of sustainable development in order to go beyond the so-called ASEAN *acquis* in these fields, which, at present, can hardly provide a basis for sustainable development provisions in a future EU–ASEAN FTA.



## Acknowledgements

The present paper is a thoroughly revised and updated version of the background paper for the author's keynote address at the 2nd International Conference on Advancement of Development Administration, 'Green Society, Governance and Competitiveness', Bangkok, 30 May to 1 June 2013. Comments by Glenn Rayp, Wilma Viviers and two anonymous referees are gratefully acknowledged.

## Notes

- <sup>1</sup> Free Trade Agreement between the European Union and its member states, of the one part, and the Republic of Korea, of the other part, Official Journal of the European Union L 127, 14 May 2011.
- <sup>2</sup> But less dismissive conclusions are reached by, for example, Mah (1997) and Maskus (1997). For a review up to 2000, see Brown (2000).
- <sup>3</sup> Such peer effect on the probability of ratification is evidenced by, for example, Chau and Kanbur (2001b).
- <sup>4</sup> Council Regulation No. 3281/94 of 19 December 1994 applying a four-year scheme of generalised tariff preferences (1995–1998) in respect of certain industrial products originating in developing countries, Official Journal of the European Communities L 348, 31 December 1994.
- <sup>5</sup> Council Regulation (EC) No. 2820/98 of 21 December 1998, Official Journal of the European Communities L 357, 30 December 1998.
- <sup>6</sup> Council Regulation (EC) No. 2501/2001 of 10 December 2001 applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004, Official Journal of the European Communities L 346, 31 December 2001.
- <sup>7</sup> It also included the arrangement combating drug production and trafficking.
- <sup>8</sup> Countries are considered vulnerable due to their lack of diversification and insufficient integration into the international trading system. This applies to countries not classified by the World Bank as high income countries for three consecutive years, and where the five largest sections of GSP-covered imports to the European Community represent more than 75% in value of their total GSP-covered imports, and where GSP-covered imports to the Community represent less than 1% in value of total GSP-covered imports to the Community.
- <sup>9</sup> Article 9, Council Regulation (EC) No. 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences, Official Journal of the European Union L 169, 30 June 2005.
- <sup>10</sup> Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No. 732/2008, Official Journal of the European Union L 303, 31 October 2012. The new list differs from the old list in that the International Convention on the Suppression and Punishment of the Crime of Apartheid dropped off, and that the United Nations Framework Convention on Climate Change (1992) was added.
- <sup>11</sup> These are the core human and labour rights UN/ILO Conventions, just mentioned.
- <sup>12</sup> Article 9, Council Regulation (EC) No. 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences, Official Journal of the European Union L 169, 30 June 2005. This derogation clause has disappeared in the 2014 EU GSP.
- <sup>13</sup> One should also take into account that Laos and Cambodia are eligible for the 'Everything but Arms' arrangement, which gives more generous preferences, applying to all product lines, not just the GSP eligible ones.
- <sup>14</sup> Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No. 732/2008, Official Journal of the European Union L 303, 31 October 2012.
- <sup>15</sup> Based on European Commission statistical data. The share of the exports which actually received GSP preferential treatment in total exports to the EU was in 2011 17.1% for Malaysia and 10.1% for Thailand. We are grateful to Marc Mortier (European Commission) for having supplied the statistical data.
- <sup>16</sup> SGIA (2013). Article 4, §3 of the new GSP Regulation (EU) No. 978/2012 states that the mentioned country graduation 'shall not apply until 21 November 2014, for countries which by 20 November 2012 have initialled a bilateral preferential market access agreement with the Union, which provides the same tariff preferences as the scheme, or better, for substantially all trade, but which is not yet

- applied'. Hence, in Annex I to the Regulation (EU) No. 978/2012, both Thailand and Malaysia are listed as eligible. However in Annex 2 (Beneficiary countries of the general arrangement referred to in point (a) of Article 1(2)) only Thailand is mentioned.
- <sup>17</sup> AFTA stands for ASEAN Free Trade Agreement, which came into force in 2002. Under AFTA, Cambodia, Laos, Myanmar and Vietnam have time until 2015 to eliminate fully import duties on intra-ASEAN trade.
- <sup>18</sup> [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103163](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103163).
- <sup>19</sup> At the time of writing this paper, the text of the EUSG FTA was still under review by the authorities of the EU and Singapore. The English version which is available at present, is the one provided since 20 September 2013 by the European Commission. The chapter on sustainable development can be consulted on: [http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc\\_151766.pdf](http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151766.pdf). See also EC (2012).
- <sup>20</sup> Article 13.2, §2 of the EU–Korea FTA goes as follows: 'The Parties stress that environmental and labour standards should not be used for protectionist trade purposes. The Parties note that their comparative advantage should in no way be called into question.'
- <sup>21</sup> This reluctance is probably also at the origin of a somewhat more time-biding provision relating to the first meeting of the contact and monitoring body. This body is the Committee on Trade and Sustainable Development in the EU–Korea FTA, and the Board on Trade and Sustainable Development in the EUSG FTA. It will meet within the first year according to Art. 13.12, §3 of the EU–Korea FTA, but within the first two years according to Art. 13.15, §3 of the EUSG FTA.
- <sup>22</sup> The inclusion of the EU's cumulation of ASEAN origin, was a request of Singapore during the FTA negotiations. For the origin cumulation provisions of the EUSG FTA, see its Protocol I: [http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc\\_151773.pdf](http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151773.pdf).
- <sup>23</sup> The liberalisation of environmental services was a key-point of the SIA consultant, which the European Commission agreed to. See EC (2010a, 8): 'The consultants also recommend *the incorporation of relevant environmental considerations and provisions in other chapters of the FTA*, for instance in relation to tourism, energy markets textiles and leather tanning, fisheries, etc. The Commission services agree with this suggestion and will further explore the scope of so doing. The exact formula will depend on individual circumstances in specific countries and sectors. The EU supports *rapid liberalisation of environmental goods and services*, including, and very importantly, through addressing non-tariff barriers facing such goods and services.' Emphasis of the original document.
- <sup>24</sup> [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102960](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102960).
- <sup>25</sup> As these key-witnesses are diplomats, we are bound to confidentiality and obliged not to disclose their names.
- <sup>26</sup> The EU is questioning the sustainability of palm oil biofuel on the basis of criteria such as biodiversity losses triggered by the deforestation that takes place when a tropical rainforest or peat-swamp forest is reassigned to oil-palm cultivation. Emitting only 19% less greenhouse gas, palm oil biofuel made in Malaysia cannot qualify for tax credit under the EU Renewable Energy Directive (RED), and Kuala Lumpur has therefore criticised the RED as arbitrary, even threatening to bring the case before the WTO.
- <sup>27</sup> [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103004](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103004).
- <sup>28</sup> Of the 89 FTAs in the Asian Development Bank database, only six have provisions which relate to labour policy and 10 relating to environmental policy. Only three are mentioning ILO core labour conventions: the Japan–Philippines Economic Partnership Agreement, the Singapore–Costa Rica FTA and the Singapore–Panama FTA. See <http://aric.adb.org/comparisonftacontent.php>.
- <sup>29</sup> At the time of writing this paper, the Philippines was contemplating the benefits of an FTA with the European Free Trade Area, which will be the Philippines' first such agreement with European countries. The country is also currently determining which sectors would be part of an FTA with the European Union (Business World 2013). On the other hand, Indonesia has been pushed repeatedly to start FTA negotiations with the EU, but this is unlikely to happen before the 2014 elections in Indonesia (Linggasari and Sesbania Gewap 2013).

## References

- Bhagwati, J. 1995. "Trade Liberalisation and "Fair Trade" Demands: Addressing the Environmental and Labor Standards Issues." *World Economy* 18 (6): 745–759.

- Bourgeois, J., K. Dawar, and S. J. Evenett. 2007. *A Comparative Analysis of Selected Provisions in Free Trade Agreements*, Study commissioned by DG TRADE, St Gallen, Swiss Institute of International Economics and Applied Economic Research, University of St Gallen, October.
- Brown, D. K. 2000. *International Trade and Core Labour Standards: A Survey of the Recent Literature*, Labour Market and Social Policy—Occasional Papers No. 43. Paris: OECD.
- Brown, D. K., A. V. Deardorff, and R. M. Stern. 1996. "International Labor Standards and Trade: A Theoretical Analysis." In *Fair Trade and Harmonization: Prerequisites for Free Trade? Vol. 1: Economic Analysis*, edited by J. Bhagwati and R. Hudec, 227–280. Cambridge, MA: Cambridge University Press.
- Business World. 2013. "FTA with EFTA under Study." *Business World Online*, 29 September. <http://www.bworldonline.com/content.php?section=Economy&title=FTA-with-EFTA-under-study&id=77190>
- Chau, N. H., and R. Kanbur. 2001a. *The Race to the Bottom, from the Bottom*. CEPR Discussion Paper, No. 2687. February London: Centre for Economic Policy Research.
- Chau, N. H., and R. Kanbur. 2001b. *The Adoption of International Labor Standards Conventions: Who, When and Why?* Working Paper 2001–07, June. Ithaca, NY: Department of Applied Economics and Management, Cornell University.
- Council of the European Union. 2007. *Guidelines on the EU's Foreign and Security Policy in East Asia*, Doc. 16468/07. Brussels: Council of the European Union. <http://register.consilium.europa.eu/pdf/en/07/st16/st16468.en07.pdf>
- Cuyvers, L., L. Chen, and P. de Lombaerde. 2010. "ASEAN-EU FTA Negotiations: Waiting for Godot?" In *Competitiveness of ASEAN Countries: Strategic and Policy Issues Shaping MNE's Activities*, edited by P. Gugler, and J. Chaisse, 259–299. Cheltenham-Northampton: Edward Elgar.
- Cuyvers, L., and T. de Meyer. 2012. "Market-Driven Promotion of International Labour Standards in Southeast Asia: The Corporatization of Social Justice." In *Private Standards and Global Governance: Economic, Legal and Political Perspectives*, edited by A. Marx, M. Maertens, J. F. M. Swinnen, and J. Wouters, 114–149. Cheltenham-Northampton: Edward Elgar.
- Cuyvers, L., L. Chen, L. Goethals, and S. Ghislain. 2013. *EU–ASEAN FTAs: Does One Size Fit All?* Report prepared for the European Parliament's Committee on International Trade Workshop 'Trade and Economic Relations with ASEAN', Brussels, 28 February 2013. Brussels: European Institute for Asian Studies.
- EC. 2003. *A New Partnership with South East Asia*. Brussels: European Commission, COM (2003) 399/4. [http://trade.ec.europa.eu/doclib/docs/2004/july/tradoc\\_116277.pdf](http://trade.ec.europa.eu/doclib/docs/2004/july/tradoc_116277.pdf)
- EC. 2010a. *Commission Services' Position Paper on the Trade Sustainability Impact Assessment of the Free Trade Agreement between the EU and ASEAN*. Brussels: European Commission. [http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc\\_146294.pdf](http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146294.pdf)
- EC. 2010b. *Commission Services' Annex on Malaysia to the Position Paper on the Trade Sustainable Impact Assessment of the FTA between the EU and ASEAN*. Brussels: European Commission. [http://trade.ec.europa.eu/doclib/docs/2011/january/tradoc\\_147337.pdf](http://trade.ec.europa.eu/doclib/docs/2011/january/tradoc_147337.pdf)
- EC. 2012. *Facts and Figures: EU Trade Agreement with Singapore*. Brussels: European Commission, Memo, December 16.
- Ecorys., et al. 2009. *Trade Sustainability Impact Assessment for the FTA between the EU and ASEAN, Phase 2—Interim Report*. Rotterdam: ECORYS. Ref: TRADE07/C1/C01—Lot 2, pp. 351–352. [http://trade.ec.europa.eu/doclib/docs/2009/may/tradoc\\_143167.pdf](http://trade.ec.europa.eu/doclib/docs/2009/may/tradoc_143167.pdf)
- Freeman, R. B. 2004. "Trade Wars: The Exaggerated Impact of Trade in Economic Debate." *World Economy* 27 (1): 1–23.
- Gunter, B. G., and R. van der Hoeven. 2004. "The Social Dimension of Globalization: A Review of the Literature." *International Labour Review* 143 (1–2): 7–43.
- Hafner-Burton, E. M. 2005. "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression." *International Organization* 59 (3): 593–629.
- Kleimann, D. 2013. *Beyond Market Access? The Anatomy of ASEAN's Preferential Trade Agreements*. EUI Working Paper LAW 2013/01. San Domenico di Fiesole: European University Institute, Department of Law.
- Krueger, A. B. 1996. *Observations on International Labor Standards and Trade*. National Bureau of Economic Research Working Paper 5632. Cambridge, MA: National Bureau of Economic Research.
- Krugman, P. R. 1997. "What Should Trade Negotiators Negotiate About?" *Journal of Economic Literature* 35 (1): 113–120.
- Linggasari, Y., and Y. Sesbania Gewap. 2013. "Indonesia Encouraged to Form Free Trade Agreement with European Union." *Jakarta Globe*, April 3. <http://www.bilaterals.org/?indonesia-encouraged-to-form-free&lang=en>

- Mah, J. S. 1997. "Core Labor Standards and Export Performance in Developing Countries." *World Economy* 20 (6): 773–785.
- Mandelson, P. 2006a. "The Future of EU-ASEAN Trade Relations." *EU-Malaysia Chamber of Commerce and Industry*, Kuala Lumpur, May 17, European Commission - SPEECH/06/309. [http://europa.eu/rapid/press-release\\_SPEECH-06-309\\_en.htm?locale=en](http://europa.eu/rapid/press-release_SPEECH-06-309_en.htm?locale=en)
- Mandelson, P. 2006b. "Europe Competing in the World." *Churchill Lecture: Federal Foreign Office*, Berlin, September 18, European Commission - SPEECH/06/507. [http://europa.eu/rapid/press-release\\_SPEECH-06-507\\_en.htm?locale=en](http://europa.eu/rapid/press-release_SPEECH-06-507_en.htm?locale=en)
- Maskus, K. 1997. *Should Core Labor Standards Be Imposed through International Trade Policy?* World Bank Policy Research Working Paper No. 1817, August. Washington, DC: World Bank.
- Palley, T. I. 1999. *The Economic Case for International Labor Standards: Theory and Some Evidence*. Washington, DC: AFL-CIO.
- Pearson, C. S. 2000. *Economics and the Global Environment*. Cambridge: Cambridge University Press.
- Pratruangkrai, P. 2012a. "In View of GSP Reform, EU Pushed for Trade Talks." *The Nation*, January 20. <http://www.nationmultimedia.com/business/In-view-of-GSP-reform-EU-pushes-for-trade-talks-30174105.html>
- Pratruangkrai, P. 2012b. "The Pros and Cons of Far-Reaching Trade Agreements." *The Nation* (Year-End Special), December 25. <http://www.nationmultimedia.com/business/The-pros-and-cons-of-far-reaching-trade-agreements-30196735.html>
- Rodrik, D. 1997. *Has Globalization Gone Too Far?* Washington, DC: Institute for International Economics.
- SGIA. 2013. *New EU Generalised System of Preferences (GSP) Published in EU Official Journal*. Warwickshire: Sporting Goods Industry Association. <http://www.sgiauk.com/new-eu-generalised-system-of-preferences>
- Wilcox, C. 1949. *A Charter for World Trade*. New York: The Macmillan Company.

## Annex 1

### *List of Conventions of Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 Applying a Scheme of Generalised Tariff Preferences Core Human and Labour Rights UN/ILO Conventions*

1. Convention on the Prevention and Punishment of the Crime of Genocide (1948).
2. International Convention on the Elimination of All Forms of Racial Discrimination (1965).
3. International Covenant on Civil and Political Rights (1966).
4. International Covenant on Economic Social and Cultural Rights (1966).
5. Convention on the Elimination of All Forms of Discrimination against Women (1979).
6. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
7. Convention on the Rights of the Child (1989).
8. Convention Concerning Forced or Compulsory Labour, No. 29 (1930).
9. Convention Concerning Freedom of Association and Protection of the Right to Organise, No. 87 (1948).
10. Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No. 98 (1949).
11. Convention Concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No. 100 (1951).
12. Convention Concerning the Abolition of Forced Labour, No. 105 (1957).
13. Convention Concerning Discrimination in Respect of Employment and Occupation, No. 111 (1958).
14. Convention Concerning Minimum Age for Admission to Employment, No. 138 (1973).

15. Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No. 182 (1999).

*Conventions Related to the Environment and to Governance Principles*

16. Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973).
17. Montreal Protocol on Substances that Deplete the Ozone Layer (1987).
18. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989).
19. Convention on Biological Diversity (1992).
20. The United Nations Framework Convention on Climate Change (1992).
21. Cartagena Protocol on Biosafety (2000).
22. Stockholm Convention on Persistent Organic Pollutants (2001).
23. Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998).
24. United Nations Single Convention on Narcotic Drugs (1961).
25. United Nations Convention on Psychotropic Substances (1971).
26. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).
27. United Nations Convention against Corruption (2004).

## Annex 2

Core human and labour rights UN/ILO Conventions																
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total
Brunei					2006		1995							2011	2008	4
Cambodia	1950	1983	1992	1992	1992	1992	1992	1969	1999	1999	1999	1999	1999	1999	2006	15
Indonesia		1999	2006	2006	1984	1998	1990	1950	1998	1957	1958	1999	1999	1999	2000	14
Lao PDR	1950	1974	2009	2007	1981	2012	1991	1964			2008		2008	2005	2005	12
Malaysia	1994				1995		1995	1957		1961	1997	1958 (1)		1997	2000	8
Myanmar	1956				1997		1991	1955								5
Philippines	1950	1967	1986	1974	1981	1986	1990	2005	1953	1953	1953	1960	1960	1998	2000	15
Singapore	1995				1995		1995	1965		1965	2002	1965 (1)		2005	2001	8
Thailand		2003	1996	1999	1985	2007	1992	1969		1999		1969		2004	2001	11
Vietnam	1981	1982	1982	1982	1982		1990	2007		1997			1997	2003	2000	11
Total	7	6	6	6	10	5	10	9	4	5	8	4	5	9	9	
No. of Parties	142	175	167	160	187	153	193	177	152	163	171	174	172	165	177	

## Sources:

1. Convention on the Prevention and Punishment of the Crime of Genocide (1948) [http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSO&tabid=2&mtmsg\\_no=IV-1&chapter=4&lang=enParticipants](http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSO&tabid=2&mtmsg_no=IV-1&chapter=4&lang=enParticipants)
2. International Convention on the Elimination of All Forms of Racial Discrimination (1965) [http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-2&chapter=4&lang=en)
3. International Covenant on Civil and Political Rights (1966) [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&lang=en)
4. International Covenant on Economic Social and Cultural Rights (1966) [http://treaties.un.org/untc/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/untc/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4&lang=en)
5. Convention on the Elimination of All Forms of Discrimination against Women (1979) [http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-8&chapter=4&lang=en)



6. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtidsg\\_no=IV-9&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-9&chapter=4&lang=en)
7. Convention on the Rights of the Child (1989) [http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtidsg\\_no=iv-11&chapter=4&lang=en](http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtidsg_no=iv-11&chapter=4&lang=en)
8. Convention Concerning Forced or Compulsory Labour, ILO No. 29 (1930) [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312174:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174:NO)
9. Convention Concerning Freedom of Association and Protection of the Right to Organise, No. 87 (1948) [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_J\\_NSTRUMENT\\_ID:312232](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_J_NSTRUMENT_ID:312232)
10. Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No. 98 (1949) [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312243](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312243)
11. Convention Concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No. 100 (1951) [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312245](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312245)
12. Convention Concerning the Abolition of Forced Labour, No. 105 (1957) [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312250](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250)
13. Convention Concerning Discrimination in Respect of Employment and Occupation, No. 111 (1958) [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312256](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256)
14. Convention Concerning Minimum Age for Admission to Employment, No. 138 (1973) [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312283](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283)
15. Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No. 182 (1999) [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312327](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327)

(1) Denunciated

## Annex 3

Conventions related to the environment and to governance principles														Total
	16	17	18	19	20	21	22	23	24	25	26	27		
Brunei	1990	1993	2002	2008	2007			2009	1987	1987	1993	2008	10	
Cambodia	1997	2001	2001	1995	1995	2003	2006	2002	2005	2005	2005	2007	12	
Indonesia	1979	1992	1993	1994	1994	2004	2009	2004	1976	1996	1999	2006	12	
Lao PDR	2004	1998	2010	1996	1995	2004	2006	2003	1973	1997	2004	2009	12	
Malaysia	1978	1989	1993	1994	1994	2003		2002	1967	1986	1993	2008	11	
Myanmar	1997	1993		1994	1994	2008	2004	2003	1963	1995	1991	2012	11	
Philippines	1981	1991	1993	1993	1994	2006	2004	2003	1967	1974	1996	2006	12	
Singapore	1987	1989	1996	1995	1997		2005	2006	1973	1990	1997	2009	11	
Thailand	1983	1989	1997	2003	1994	2005	2005	2002	1961	1975	2002	2011	12	
Vietnam	1994	1994	1995	1994	1994	2004	2002	2002		1997	1997	2009	11	
Total	10	10	9	10	10	88	10	9	10	10	10			
No. of Parties	178	197	180	193	195	166	179	192	153	183	188	165		

## Sources:

16. Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973) <http://www.cites.org/eng/disc/parties/alphabet.php>
17. Montreal Protocol on Substances that Deplete the Ozone Layer (1987) [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-2-a&chapter=27&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-2-a&chapter=27&lang=en)
18. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989) [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-3&chapter=27&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-3&chapter=27&lang=en)
19. Convention on Biological Diversity (1992) [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-8&chapter=27&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-8&chapter=27&lang=en)
20. The United Nations Framework Convention on Climate Change (1992) [http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSONLINE&mtdsg\\_no=XXVII~7&chapter=27&Temp=mtdsg3&lang=enParticipants](http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSONLINE&mtdsg_no=XXVII~7&chapter=27&Temp=mtdsg3&lang=enParticipants)
21. Cartagena Protocol on Biosafety (2000) [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-8-a&chapter=27&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-8-a&chapter=27&lang=en)
22. Stockholm Convention on Persistent Organic Pollutants (2001) [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-15&chapter=27&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-15&chapter=27&lang=en)

23. Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998) [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVIlI-7-a&chapter=27&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVIlI-7-a&chapter=27&lang=en)
24. United Nations Single Convention on Narcotic Drugs (1961) [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=VI-15&chapter=6&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=VI-15&chapter=6&lang=en)
25. United Nations Convention on Psychotropic Substances (1971) [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-16&chapter=6&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-16&chapter=6&lang=en)
26. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=VI-19&chapter=6&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=VI-19&chapter=6&lang=en)
27. United Nations Convention against Corruption (2004) [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=XVIII-14&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XVIII-14&chapter=18&lang=en)

Copyright of Journal of Contemporary European Studies is the property of Routledge and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.