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The sustainable development clauses in free trade agreements: an EU perspective for ASEAN ?[1]

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1. 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 bilateral or interregional free trade agreements, combining respect for internationally agreed labour market protection rules and respect for multilateral environmental agreements (MEAs). The persistent combination of respect for human rights and international core labour standards, and for specified MEAs through international trade agreements is unique in the world.

Since the conclusion of the EU-Korea Free Trade Agreement[3] in October 2010, this EU approach has also entered its free trade strategy in Asia. Article 13.6, Trade favouring sustainable development, of this agreement states:

> "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 ongoing negotiations with ASEAN countries; provisions in this agreement, including the linking of trade and sustainable development, will, no doubt, be on the negotiation table and have also found its way to the EU-Singapore FTA.

In the present paper, we first show how, according to economic analysis, the linking of international trade policy with labour market and environmental policy leads to second-best solutions, after which, in section 3, the institutional relationship between international trade and

[3] 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.

respect for core international labour standards at the multilateral level, is reviewed. Section 4 proceeds similarly, but in respect of environmental, safety and health standards and for multilateral environmental agreements. In section 5, we then review the sustainable development provisions in the EU's Generalised System of Preferences, a unilateral trade regulation, as well as in the EU-Korea FTA, to arrive in section 6 at the recently negotiated or under negotiation bilateral trade agreements with ASEAN countries, as a baseline for a future interregional EU-ASEAN FTA.

2. Trade policy and promotion of sustainable development according to the theory of the 'second-best'

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 environmental distortions will likely entail efficiency losses elsewhere in the economy, which even might lead to an overall welfare loss. Even in case, these efficiency losses are compensated by welfare gains due to enhanced sustainability, and the net result will be smaller than that of the first-best method. However, for various reasons, labour market and environmental policy corrections, i.e. 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).

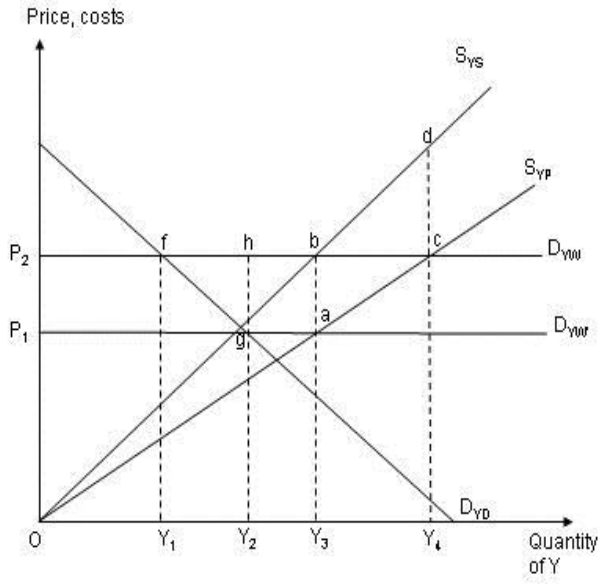
Consider environmental problems in a small open-economy, where a polluting good Y is produced, which uses up natural resources as inputs. Good Y is consumed domestically and is also exported. Figure 1 shows the domestic demand function D_{YD} and the world demand function D_{YW} at the prevailing price P_2 (at that price any output of Y produced will be sold). The social and the private marginal costs of the production of Y diverge due to an environmental externality in its production. Therefore, the social marginal cost curve, S_{YS} lies above or to the left of the private marginal cost curve, S_{YP}. Without any environmental regulation, OY_4 is produced, which is the output level at which marginal revenue equals private marginal costs. An optimal tax on production equalling ab/aY_3 will yield a net welfare gain of bdc=abdc-abc.

A similar argument can be put forward in case of violations of core labour standards, e.g. respect for the freedom of association will positively affect labour productivity, or the abolition of child labour will likely contribute to higher wages and a more educated workforce, which in turn will lead to higher productivity.[4] It has also been argued that the elimination of forced labour and child labour can lead to improved allocative efficiency (see OECD, 1996 :77-88).

[4] For an early but thorough analysis of the economics of international labour standards, we refer to HANSSON (1983).

Consider next the case, when such an output tax, the first-best measure, is not feasible, such that the government is resorting to an export tax of ab/aY_3 x 100 %. As a result, the equilibrium output level will drop to the targeted level, OY_3. From the domestic producers' perspective, the export tax will push down the world demand curve from D_{YW} to $D_{YW'}$, inducing a reduction in output from OY_4 to OY_3. However, the export tax will also reduce the domestic price from P_2 to P_1 and, consequently, will divert Y_1Y_2 of exports towards additional domestic consumption. This increase in consumption will also enhance total welfare acquired by the consumers, equivalent to the area Y_1fgY_2, which is, however, less than the export earnings foregone, Y_1fhY_2.

Figure 1: Inefficiency of use of trade policy for environmental externality



In Figure 1, the area *fhg* is the efficiency cost of the distortion caused by the export tax. The welfare loss of area *fhg* has to be deducted from the area *bdc* of the welfare gain due to improved environmental quality. Consequently, the use of trade policy aiming at correcting for a production externality that creates environmental problems is inferior to domestic environmental policy. If *fhg* exceeds *bdc*, aggregate welfare is even diminishing, a situation that we, by assumption, rule out in the rest of this paper.

Countries across the globe are open in a dual sense: both for commercial trade in goods and services, as well as for unaccounted trade of ‘social dumping’ of pollutants across borders. While the commercial trade is guided by market prices, the latter is not priced. The institutional response to contain such unintended transnational social and environmental problems is twofold : (i) negotiated labour market and environmental provisions in the multilateral trading system to minimise adverse social and environmental impacts of commercial trade in goods and services; and (ii) cooperative social and environmental forums addressing specific problems such as respect for core labour standards, as well as global environmental problems such as

global warming, desertification or coastal pollution, etc. that take the form of multilateral or regional social and environmental agreements.

3. The multilateral institutional framework and social provisions in the GATT and WTO

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.

Art. 7 of the Havana Charter reads as follows:

> "1. The Members recognize that measures relating to employment must take fully into account the rights of workers under inter-governmental declarations, conventions and agreements. They recognize that all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory."

The Havana Charter appealed to the member states of the future International Trade Organization to apply fair labour conditions in their respective territories, but being a compromise, it contained no trace of a statement giving countries the right to apply trade restrictions against countries with sub-standard labour conditions (WILCOX, 1949 : 139). However, Art. 45 in Chapter IV of the Charter on trade policy stated that member countries are allowed to take measures against imports produced by prison labour:

> "... nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Member of measures (...)
> (vi) relating to the products of prison labour ; (...)"

In the General Agreement on Tariffs and Trade of 1947, being the consolidation of the provisions of the Havana Charter regarding international trade, a similar provision as that of the mentioned Art. 45 is found in Art. XX(e) of GATT. It only applies the right of imposing restrictions on imports produced by prison labour, not to imports originating in countries which violate other international core labour standards and conventions such as the freedom of association and collective bargaining, the abolition of child labour, or others.

GATT Art. XX(e), which has been part of the WTO Convention since 1995, goes as follows:

> "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (…)
> (e) relating to the products of prison labour".

Despite regular calls from the early 1950s until 1995 when the World Trade Organization 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 e.g. the European Union and the United States (see in this respect e.g. CUYVERS and DE MEYER, 2012).

Political and social forces have not given up multilateral attempts to make further liberalisation of international trade and investment conditional upon the observance of certain international labour standards. The 1998 ILO Declaration of Fundamental Principles and Rights stressed (ILO Declaration on Fundamental Principles and Rights at Work, para. 5)

> "that labour standards should not be used for protectionist trade purposes, and that (…) the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up".

This provision responded to fears from developing countries that the developed world was not so much keen to promote fundamental labour standards throughout the world for these standards' sake, but rather to reduce the developing economies' low-wage comparative advantage, and so protect their own industries (WTO, 2001a).

The WTO Doha Ministerial Declaration reaffirmed the status quo reached in the Singapore Ministerial Declaration of 1996 and the ILO Declaration of 1998, and took note of work under way in the International Labour Organization (ILO) on the social dimension of globalisation (WTO, 2001b, para 8). The ILO-backed World Commission on the Social Dimension of Globalization published its conclusions in 2004, formally noting that the Declaration's commitment not to call into question the comparative advantage of low-wage countries implied

> "of course, (…) that no country should achieve or maintain comparative advantage based on ignorance of, or deliberate violations of, core labour standards."(WORLD COMMISSION ON THE SOCIAL DIMENSION OF GLOBALIZATION, 2004, para. 421)

Until the ILO Declaration of 1998, there was no consensus in the literature, nor in international forums, as to which international labour standards should be considered as core labour standards. Many authors agreed, however, that these relate to the following conventions of the International Labour Organization:

C.29: Forced Labour Convention, 1930 (No. 29)
C.87: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
C.98: Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
C.100:- Equal Remuneration Convention, 1951 (No. 100)
C.105: Abolition of Forced Labour Convention, 1957 (No. 105)
C.111: Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
C.138: Minimum Age Convention, 1973 (No. 138)Minimum age specified: 15 years
C.182: Worst Forms of Child Labour Convention, 1999 (No. 182)

It will be clear that the GATT or WTO provisions on sub-standard labour conditions in exporting countries as a reason for trade barriers in the importing countries are restricted to the use of prison labour. No reference to other international core labour standards allows import restrictions. It is also noteworthy that, in contrast to the provisions of some multilateral environmental agreements, the international core labour conventions of the ILO are not referring to the use of trade restrictions as instrument to enforce compliance with the standards, which, however, are binding for member states of ILO.[5]

The ratification status of the ILO core labour standards of the ASEAN countries is summarised in Table 1.

Table 1: Ratification status of ILO core labour standards of ASEAN countries (year of ratification)

	C.29	C.87	C.98	C.100	C.105	C.111	C.138	C.182
Brunei							2011	2008
Cambodia	1969	1999	1999	1999	1999	1999	1999	2006
Indonesia	1950	1998	1957	1958	1999	1999	1999	2000
Lao PDR	1964			2008		2008	2005	2005
Malaysia	1957		1961	1997	1958 (1)		1997	2000
Myanmar	1955	1955						
Philippines	2005	1953	1953	1953	1960	1960	1998	2000
Singapore	1965		1965	2002	1965 (1)		2005	2001
Thailand	1969			1999	1969		2004	2001
Vietnam	2007			1997		1997	2003	182

(1) Denunciated
Source: Annex 1

[5] Membership of ILO automatically implies the application of the ILO Conventions 87 and 98.

It appears that important hiatuses still exist as far as ASEAN countries' ratification of the ILO core labour standards is concerned; particularly, C.087 (Freedom of Association and Protection of the Right to Organise Convention, 1948), C.098 (Right to Organise and Collective Bargaining Convention, 1949) and C.111 (Discrimination in Employment and Occupation Convention, 1958). C.138 and C.182 relating to child labour are ratified by all ASEAN countries, except Myanmar.[6]

4. The multilateral institutional framework and environmental provisions in the WTO and MEAs

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 World Trade Organization (WTO) has pushed at the WTO 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.

Some MEAs incorporate trade measures as a means of enforcing the treaty and prevent free-riding by banning trade with non-parties (as in the Montreal Protocol), or to prevent environmental harm from trade (like extinction of threatened species in the Convention on International Trade in Endangered Species). On the other hand, multilateral trade agreements under the WTO also contain environmental provisions to ensure that freer flow of goods and services among trading partners does not lead to inadvertent environmental harm largely through the means of standards on products and processes.

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). It is true that at present no such formal conflicts seem to have arisen, but there is no reason to think that such conflicts can be avoided for ever, taking into account the complexities of the issues involved and the objective interests of the parties.

[6] It is one thing to ratify an ILO convention. It is another thing to implement and respect the provisions of it. In the past, we have constructed a social development index, which takes into account various aspects of respect or disrespect for the mentioned core labour standards. See CUYVERS and VAN DEN BULCKE (2007).

4.1 WTO rules on trade restrictions for environmental and health concerns

The environmental provisions of the multilateral trading system are embedded in different agreements of the WTO, following the principle that when international trade has significant environmental effects, trade policies should be a part of the policy package to achieve sustainable development. Some exceptions to the WTO principles of the Most Favoured Nation and National Treatment are based on environmental justification. The GATT already allowed departures from free trade in case of imports posing a threat to health and natural resources; and over time with increasing concerns about environmental aspects of various production processes, the WTO has included provisions that cover issues of the products methods abroad.

A WTO Secretariat Report on Trade and Environment (WTO 1999) recognised the theoretical and empirical literature that trade is rarely the root cause of environmental degradation (except because of greater resource use and waste generation due to increased economic activities following free trade) and that most environmental problems result from polluting production processes, certain kinds of consumption, and the disposal of waste products. The WTO report observed that "trade would unambiguously raise welfare if proper environmental policies were in place". Increased international trade can only result in large negative environmental effects outweighing the benefits from trade liberalisation if a country is lacking domestic environmental policy (GATT 1992: 2).

The goal of achieving sustainable development was formally recognised in the multilateral trading system in 1994. The Preamble in the Final Act of the Uruguay Round, that established the WTO, states that

> "(…) trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development."

The environmental agenda of the WTO was initiated in 1994 with the work programme of the Committee on Trade and Environment (CTE). Official sources often reiterate that the foundation of the WTO is based on the principle of promotion of free and fair trade along with sustainable development and environmental protection, from which it follows that, by extension, WTO rules would not go against efforts to protect the environment, such as a multilateral environmental agreement.

The following WTO provisions allow the use of environmental trade restrictions:

(i) GATT Article XX (b), (d), (g)

The environmental provisions in the GATT are contained in Article XX, which we came across before when looking into the GATT's social provisions. Art. XX provides general exceptions to the practice of free trade by countries under certain circumstances, and states that protectionist measures may be imposed by one country against another member country only in a non-discriminatory manner. Article XX allows for the enforcement of measures *necessary* to protect human health, flora and fauna, and exhaustible natural resources (paragraphs *b*, *d* and *g*):

> "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (…)
> (b) Necessary to protect human, animal or plant health. (…)
> (d) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement.(…)
> (g) Relating to the conservation of exhaustible natural resources if such measures are effective in conjunction with restrictions on domestic production or consumption."

Although the GATT does not mention 'environmental protection' or 'preservation', member countries use Article XX exceptions to justify the trade restrictions against environmentally harmful products. The US-Mexico 'tuna dispute' or the dispute on US shrimp imports from some Asian countries of the early- and mid-1990s is a famous case in point.

(ii) GATS Article XIV (b)

The General Agreement on Trade in Services (GATS) Article XIV (b) relating to international trade in services is the analogon of GATT Article XX. In particular, it allows members to erect trade barriers on environmental grounds if "necessary to protect human, animal or plant life or health".

(iii) WTO Agreement on Application of Sanitary and Phytosanitary Measures (SPS)

SPS relates to the use of health and safety standards in the trade of food, plants and animals. The Agreement refers to the basic international standards, guidelines and recommendations of international organisations and institutions, including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organisations operating within the framework of the International Plant Protection Convention. SPS allows countries, however, to use more stringent standards than a trading partner under certain conditions in order to protect human, animal and plant health.

(iv) WTO Agreement on Technical Barriers to Trade (TBT)

TBT relates to the member countries' use of standards and quality regulations for non-food items and commits the WTO members not to create unnecessary obstacles to international trade when setting technical regulations and standards for products. TBT therefore also allows the use of standards to protect health and the environment.

4.2 International trade restrictions and multilateral environmental agreements

In 2001, the environment was explicitly put on the future WTO negotiating agenda. In the Doha Ministerial Declaration, the member countries agreed on a work programme on trade and environment. Article 13 of the Doha Ministerial Declaration, states:

> "31. With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:
>
> (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;
>
> (ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;
>
> (iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services."

The Doha Round of multilateral negotiations broke down after failing to reach a compromise on agricultural import rules in July 2008. Because of the deadlock the Round has been faced with since then, it is far from clear how the interrelationship between multilateral trade rules and multilateral environmental agreements will evolve in the future and how the concerns of WTO member countries can be dealt with as to how to address trade measures applied pursuant to some MEAs, especially those that are discriminatory trade restrictions, in consistency with the WTO rules.

Although the first multilateral environmental agreements (MEAs) date from the early 20th century, it is only recently that environmental pollution problems from economic activities are addressed, such as greenhouse gas emissions, use of genetically modified organisms, persistent pollutants, etc. In a number of these MEAs, trade measures are incorporated to cope with cases where uncontrolled trade might lead to environmental damage, or as a means of enforcing the agreement and preventing free-riding by banning trade with non-parties (e.g. the Montreal Protocol). While the trade measures in MEAs are often very diverse, wide-ranging and mandatory, in other cases they are neither specified, nor made mandatory. This situation might

evidently and easily lead to WTO non-consistent discrimination, as was already pointed out by the GATT Secretariat, as early as 1992.[7]

It is interesting to look into some of the MEAs, which include trade measures to reduce environmental pollution.

(i) Convention on International Trade in Endangered Species of Wild Flora and Fauna, CITES (1973)

The aim of CITES is the protection of certain species of wild fauna and flora against over-exploitation through international trade. The trade measures incorporated in the Convention include prohibition in commercial trade of the prioritised endangered species, or restricted traffic in these species.

CITES lists the endangered species in three appendices according to the threat of extinction.

CITES's Appendix I includes species threatened with extinction. Trade in specimens of species listed in this appendix is allowed only on condition that a scientific assessment ascertains that such export and import is not detrimental to the survival of that species and that the specimen has not been obtained in violation of the country's law to protect such species.

Appendix II includes species that could be threatened with extinction unless trade is regulated. Trade in specimens of species from this list is allowed through permits that are granted, provided trade is not detrimental to the survival of the species in the wild.

Appendix III includes all species that any party identifies as being subject to regulation within its jurisdiction, and requests cooperation of other Parties in the control of trade to prevent unsustainable or illegal exploitation. Trade in species from Appendix III is only allowed with permits or certificates.

(ii) Montreal Protocol on Substances that Deplete the Ozone Layer (1987)

The aim of this Protocol is the reduction and elimination of emissions of ozone depleting substances from anthropogenic sources, including chlorofluorocarbons and other chemicals. Based on the Montreal Protocol, countries are required to control production as well as consumption of ozone depleting substances (ODS), and to control trade. Another obligation of the countries is to comply with the phase-out of ODS, after which date the production of ODS for domestic consumption stops, unless its use is agreed to by the members as essential.

[7] "…as long as participation in an MEA is not universal, trade provisions will be, like negative trade incentives, discriminatory" (GATT 1992: 31).

(iii) Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal (1989)

The Basel Convention controls the transboundary movement of hazardous wastes. The treatment and disposal of hazardous wastes near the region of waste generation are encouraged and the parties of the Convention are obliged to ensure that the transboundary movement of hazardous wastes is reduced to the "minimum consistent with the environmentally sound and efficient management of such wastes".

The hazardous wastes covered are those listed in the Convention, as well as those defined as hazardous by domestic legislation of member countries. The transboundary movement of hazardous wastes to members, *especially developing countries*, is not allowed if there is reason to believe that the wastes will not be managed in an environmentally sound manner. This provision is rather outdated, being intended to eliminate the dumping of hazardous wastes from industrialised countries to developing countries, whereas today a number of developing countries have become in the course of their industrialisation process, also generators of hazardous waste.

(iv) Stockholm Convention on Persistent Organic Pollutants (2001)

The Stockholm Convention aims to protect human health and the environment from persistent organic pollutants (POPs) by reducing or eliminating their release, based on production and consumption restrictions on the pollutants listed in its annexes.

Parties are required to *prohibit* or take measures to *eliminate* the production and use of chemicals listed in Annex A (e.g. aldrin, chlordane, dieldrin, mirex), and *restrict* the production or use of chemicals in Annex B (e.g. DDT). Annex C contains the list of chemicals that are *unintentionally* produced from anthropogenic sources (e.g. during paper and pulp manufacturing, or by the incineration of wastes, particularly medical waste). International trade in the chemicals listed in Annexes A or B is allowed only for environmentally sound disposal or for use permitted according to these annexes, with a ban on exports for a country of the Annex A POPs (except for environmentally sound disposal) when production and use exemptions are no longer in effect.

Table 2 summarises the ratification and accession status of the four MEAs of the individual ASEAN countries, indicating the year of ratification or accession.

Table 2: ASEAN countries' ratification and accession status of some major MEAs (year of ratification or accession)

	CITES (1973)	Montreal Protocol (1987)	Basel Convention (1989)	Stockholm Convention (2001)
Brunei	1990	1993	2002	
Cambodia	1997	2001	2001	2006
Indonesia	1979	1992	1993	2009
Lao PDR	2004	1998	2010	2006
Malaysia	1978	1989	1993	
Myanmar	1997	1993		2004
Philippines	1981	1991	1993	2004
Singapore	1987	1989	1996	2005
Thailand	1983	1989	1997	2005
Vietnam	1994	1994	1995	2002

Source: Annex 2.

Except Myanmar, all ASEAN countries have ratified or acceded to the MEAs listed. Brunei and Malaysia have not ratified the Stockholm Convention, but are members of it.

5. Changes over time in the EU's approach to sustainable development in its unilateral regulations and preferential trade agreements as relevant for ASEAN

As mentioned in the introduction, 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 to devote attention to the on-going FTA negotiations between the EU and individual ASEAN countries.

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 regularly extended and renewed its GSP.[8]

[8] For a recent assessment of the effectiveness of the EU GSP with ASEAN countries, see ZHOU and CUYVERS (2012).

In 1995, the EU made important revisions of its GSP[9] 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.[10] The two clauses were further defined in the 2002-2004 GSP. [11] 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, there is more room for manoeuvring 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 No 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 Organization by India concerning the community's special arrangements to combat drug production and trafficking, the 2006 EU GSP scheme introduced the "GSP Plus" arrangements for sustainable development and good governance, which were brought under one social and environmental clause heading.[12] The condition for eligibility for countries was being considered vulnerable[13]

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[9] Council Regulation No. 3281/94 of 19 December 1994 applying a four-year scheme of generalized tariff preferences (1995-1998) in respect of certain industrial products originating in developing countries, Official Journal of the European Communities L 348, 31.12.1994.

[10] Council Regulation (EC) No 2820/98 of 21 December 1998, Official Journal of the European Communities L. 357, 30.12.1998.

[11] Council Regulation (EC) No 2501/2001of 10 December 2001applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31December 2004, Official Journal of the European Communities L 346, 31.12.2001.

[12] It also included the Arrangement combating drug production and trafficking**.**

[13] 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.

and to have ratified and have implemented 16 UN/ILO core human and labour rights conventions, and *at least seven* of eleven international conventions related to the environment and governance principles.[14] The system remained basically unchanged for the period 2009-2011, until today. From 1 January 2014, a new EU GSP will apply and *all* 27 listed conventions have to be ratified for a 'vulnerable' developing country to qualify for GSP Plus.[15]

The conventions mentioned are the following:

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)

[14] Art. 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, 30.06.2005.

[15] 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, 31.10.2012. 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.

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)

The 2005 GSP regulation stipulated 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[16] 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."[17]

It will come not too much as a surprise that only 14 countries applied for GSP+, and that given the ratification record of the ASEAN countries and the level and speed of economic development of most of them, none has ever applied for GSP+ qualification.[18]

A revised GSP scheme will come into force on 1 January 2014.[19] It will concentrate the GSP preferences on fewer countries, while keeping the product coverage and the preference margins unchanged. Among the countries that will graduate 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, e.g. under a Free Trade Agreement or a special autonomous trade regime. Furthermore, the GSP+ incentives will be reinforced.

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[16] These are the core human and labour rights UN/ILO Conventions, just mentioned.
[17] Art.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, 30.06.2005. This derogation clause has disappeared in the 2014 EU GSP.
[18] 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.
[19] 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, 31.10.2012.

Singapore graduated from the EU GSP in 1995. Under the revised GSP of 2014, countries such as Thailand and Malaysia would graduate as well, which constitutes an important "carrot" for both countries to start negotiating a free trade agreement with the EU (see e.g. for Thailand: Pratruangkrai, 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%.[20]

The bilateral EU FTAs with 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, the final text includes an amendment that will ensure that Malaysia can still benefit from GSP until 31 December 2015, in case it has concluded negotiations for an FTA with the EU before 1 January 2014.[21]

As early as 2006, the European Union clearly and publicly stated the goal of reaching an interregional EU-ASEAN FTA. It all officially started with a statement by EU Commissioner Peter Mandelson in Kuala Lumpur on 17 May 2006, on the occasion of a talk on the future of EU-ASEAN trade relations for the EU-Malaysian Chamber of Commerce and Industry: "… I believe that the case for an (EU-ASEAN) FTA is a strong one and I will put it to the European Member States". For the outside world, this remarkable statement was followed on 6 December 2006 by the formal request by the European Commission to the EU member states for a mandate to initiate the negotiating process. The negotiation directives for the European Commission were given in May 2007. It soon became clear[22], however, 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 Free Trade Agreements with individual ASEAN countries. Such bilateral FTAs could act as building blocks that may be upgraded into a region-to-region agreement.

[20] 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.

[21] SGIA (2013). 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.

[22] For an early assessment and "announcement of a future failure" at that time, see L. CUYVERS (2007), which was also the keynote address at the Workshop "The EU-ASEAN FTA: Perspectives of European Business", European Institute for Asian Studies, Brussels, 28 September 2007. The problems of the interregional EU-ASEAN FTA negotiations were further analysed in L.CUYVERS, L. CHEN and P. DE LOMBAERDE (2010).

In its reaction 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, 2010 : 6)

In contrast to the strict unilateral rules of the GSP+ provisions (see above), to which the GSP eligible ASEAN countries in the past were reluctant to abide to, 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 above), the Trade and Sustainable Development Chapter of the EU-Korea FTA can rightly be considered as the "template" for the individual EU FTA's with the ASEAN countries and the future interregional EU-ASEAN FTA. It is, therefore, interesting to briefly review in the next section, where possible, the status of the relevant EU negotiations with the ASEAN countries.

6. 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 can be assumed 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 relevant conventions (see

Annex 1 and 2), 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 to. 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 ten 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, 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 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, 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 free trade agreement (EUSG FTA) which had started in March 2010, were concluded, leading to the second EU FTA with a key trading partner in Asia (the first being with Korea). Singapore being a leading ASEAN and AFTA country[23], 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.

In recent trade negotiations, the EU has been adamant on the necessity to include a sustainable development chapter in the final text, the content of which is not perceived by the EU as demanding, as it mostly refers to international conventions already signed by the partners. Unlike the US, the EU does not link such clauses to sanctions. Nevertheless, even if the EU only wants to initiate consultative mechanisms, partner countries in Asia (and in particular in ASEAN) are very often reluctant to be lectured on these matters, linking them with national or

even regional pride and sovereignty (cfr. the "Asian values" discussions in the past). The underlying idea is to enshrine its sustainability principles so that "trade supports environmental protection and social development" and to involve civil society in this project (EC, 2012 : 3)[24].

The chapter on sustainable development in the EU-Korea FTA served as a model for the EUSG FTA and the provisions are therefore very similar, 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, since Singapore 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[25]), among which six fundamental or so-called 'core' conventions (see Table 1). The sustainable development chapter was therefore one of the first to be concluded in the negotiations.

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 will set a clear precedent.[26]

Negotiations for a Malaysia-EU FTA (MEUFTA) were officially launched in October 2010. So far, seven rounds of talks have been held, of which the last one 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.[27] In contrast to the EU negotiations on the sustainable development clause in the EUSG FTA, these with Malaysia seem to be proceeding in a much tenser atmosphere. A major reason is the position of Malaysia's palm oil sector and how palm oil as a biofuel source is considered by the European Union. 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.

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[23] AFTA stands for ASEAN Free Trade Agreement, which came into forcé in 2002. Cambodia, Laos, Myanmar and Vietnam have time until 2015 to fully eliminate import duties on intra-ASEAN trade.
[24] At the time of writing this paper, the text of the EUSG FTA was still undisclosed, being under review by legal teams from the European Union and Singapore.
[25] http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103163
[26] The liberalisation of environmental services was a key-point of the SIA consultant, which the European Commission agreed to. See EC (2010 : 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."
[27] http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102960

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, 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, CHEN, GOETHALS & GHISLAIN, 2013 : 19).

As to Vietnam, the EU started its 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).[28] The country also ratified a number of MEAs, among which the four briefly reviewed in section 4. A sustainable development chapter will, no doubt, be inserted in the agreement and the discussions 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 is a completely new experience[29], which is also going beyond the ASEAN *acquis*, i.e. what the individual member countries have committed 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

[28] http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103004

[29] Of the 89 FTAs in the Asian Development Bank database, only 6 have provisions which relate to labour policy and 10 relating to environmental policy. Only 3 are mentioning ILO core labour conventions : the Japan-Philippines Economic Partnership Agreement, the Singapore-Costa Rica Free Trade Agreement and the Singapore-Panama Free Trade Agreement. See http://aric.adb.org/comparisonftacontent.php

concluded in the EUSG FTA, it can be hoped, if not expected, that similar chapters will end up in the bilateral EU FTAs with other ASEAN countries.

This evidently is not to say that it will be easy and 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 (ECRYS, 2009 : 351-352).

7. To conclude

Based on economic analysis, 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. Therefore, 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. Although the ILO core labour conventions are not mentioning trade sanctions or trade restrictions as an instrument for gaining support and respect for these conventions by exporting countries, a number of important multilateral environmental agreements are making such trade restrictions mandatory.

Since the mid-1990s, the unique and 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 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, if not a template. The text of the EU-Singapore FTA is still undisclosed. It is the end result of a negotiation process of 33 months, but the agreement is hailed as the first "Green FTA" and according to key witnesses the development chapter that is very similar to that in the EU-Korea FTA, was reached without much difficulties.

Most ASEAN countries still have some way to go in ratifying the ILO corer labour conventions, in spite of being partner in the trade relating 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 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.

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ANNEX 1

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	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=UNTSONLINE&tabid=2&mtdsg_no=IV-1&chapter=4&lang=en#Participants
2. International Convention on the Elimination of All Forms of Racial Discrimination (1965) http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_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&mtdsg_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&mtdsg_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?mtdsg_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&mtdsg_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&mtdsg_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
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_INSTRUMENT_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
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
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
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
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
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

(1) Denunciated

ANNEX 2

Conventions related to the environment and to governance principles													
	16	17	18	19	20	21	22	23	24	25	26	27	Total
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	8	8	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
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
19. Convention on Biological Diversity (1992) 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/ViewDetailsIII.aspx?&src=UNTSONLINE&mtdsg_no=XXVII~7&chapter=27&Temp=mtdsg3&lang=en#Participants
21. Cartagena Protocol on Biosafety (2000) 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
23. Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998) http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-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
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
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
27. United Nations Convention against Corruption (2004) http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XVIII-14&chapter=18&lang=en