



Centre for ASEAN Studies



Centre for International Management
and Development Antwerp

ISSN-2031-065X

EU-ASEAN FTAs

Does one size fit all?¹

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CAS Discussion paper No 91

April 2013

¹ Report prepared for the European Parliament's Committee on International Trade and presented at the Workshop "Trade and Economic Relations with ASEAN", Brussels, 28 February 2013.

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Executive Summary

I. ASEAN's economic situation

Singapore, Malaysia and Vietnam are three representative ASEAN member states, they are in different stages of development, Singapore is a high-income country, Malaysia is a high middle-income country and Vietnam is a low-middle income country. They by and large are developing according the so-called “flying geese” pattern, which was initiated by Japan in the 1950s. When fitting the Southeast Asian countries in this “flying-geese” formation, Singapore is in the small second tier of “geese” together with Taiwan, Hong Kong and South Korea,, coming after the first “goose” Japan, while Malaysia and Vietnam are in the third and the forth tier respectively.

The three countries experience high economic growth, which is mainly export-driven. The openness of their economies as measured by the ratio of international trade to GDP is ranging from 1.7 (for Malaysia and Vietnam) to 3.9 (Singapore). During the time period between 2000 and 2010, they cumulatively absorbed over 350 billion US dollar foreign investment.

Singapore – High skilled people, innovative economy, and distinctive global city

The Singaporean vision is to build a “distinctive global city” characterized by high skilled people and an innovative economy. It aims to be a global and regional hub for multiple activities, particularly in trade and finance.

Free market policies and practices together with government intervention in macroeconomic management and economic factor allocation are playing an equally important role in Singapore (the so-called “Singapore Model”). Together with its strong business and regulatory policies, factors such as the country's strategic geographic position, a vast natural seaport (Singapore is the busiest port in the world, above Rotterdam and Hong Kong), a highly skilled workforce and a favourable tax regime, have helped Singapore create a conducive business environment for foreign companies.

Agriculture's contribution to the Singaporean economy is virtually irrelevant. It absorbs 0.1 percent of its labour force and accounts for almost zero percent of Singapore's GDP. In comparison, services and industrial activities accounted for 70 percent and 30 percent respectively of Singapore's GDP in 2011. The petroleum and petrochemicals and manufacturing are the two major industries in Singapore. The country has the third largest oil refinery in the world, behind Rotterdam and Houston. Yet Singapore has been specialised in digital and electronics manufacturing for the past decades and it considers biomedical and pharmaceutical manufacturing as its future industries. Singapore is also a global leader in financial services. It has the world's fourth largest foreign exchange market after London, New

York and Tokyo. It is also recognised as one of the premier asset management centres in Asia. Tourism is the other major service industry. It contributed almost one-tenth of Singapore's GDP in 2011.

Singapore is a strong advocate of free trade. It applies MFN duty free to all imports of non-agricultural goods and an average tariff rate of 98.8 percent on imports of agricultural goods. There are, however, restrictions based on environmental, health, or public security concerns. For instance, the imports of rice requires import licensing in order to ensure food security and price stability.

Europe gradually gained in importance as Singapore's leading foreign investor in the 1995 to 2005 period. Europe's share of investment in this period rose from 31% to 43%, which is at the cost of the declining share of Asia and North America.

Malaysia – to achieve the promise of a developed nation status by 2020

Malaysia's vision is to achieve the promise of a developed nation status by 2020. Malaysia is moving towards a multi-sector economy from being much a raw materials producer in the past.

The country is wealthy in natural resources. Its agriculture industry is responsible for about one tenth of its GDP. Rubber and palm oil are Malaysia's key agricultural products. It is rich in oil and natural gas reserves, which is part of the foundation of high economic interdependence between Malaysia and Singapore. Industry was responsible for 41 percent of Malaysia's GDP in 2011. In particular, electronic components contribute a significant share in Malaysia's manufactures and exports. The country is one of the largest exporters of semiconductor devices and electrical goods and appliances in the world. The concerted development of the service industry is part of the national development strategy to venture into new growth areas and broaden the economic base for exports. According to the 10th Malaysia Plan (RMK 10), the goal for the service industry is to achieve 61 percent of GDP share by 2015 – with an annual growth of 7.2 percent.

Around 77 percent of Malaysia's imports are MFN duty free. According to WTO statistics, the simple average of Malaysian import duties is 6.5 percent, with 10.8 percent for the agricultural goods and 5.8 percent for the non-agricultural goods.

Vietnam – from a low medium income to a (high) middle-income country by 2020

Vietnamese vision in the next ten years is to evolve from a low-medium income country to a (high) middle-income country. Since 1989, the government launched reforms under the “Doi Moi” or “renovation”. Vietnam was implementing structural reforms for modernizing the economy and generating competitive export-driven industries and reaffirmed its commitment

to financial liberalisation and international integration. As the world's second fastest growing economy, Vietnam has managed to reduce its poverty level and create job opportunities for the vast labour force.

The employment in agriculture remains relatively high although the contribution of agricultural output to GDP is declining. The country is working towards expanding its industrial base with assistance from Japan, which has donated approximately US\$180 million as aid to finance small-medium sized enterprises. The main industries include food processing, construction and manufacturing. The country has already become a food processing base with an annual growth rate of 20-30 percent. It is also steadily becoming the global manufacturing centre of garments, textiles, leather products, mobile phones, electronics, IT and engineering.

Vietnam's trade with other Asian economies constitutes approximately 80 percent of its total trade. Its development lags behind that of Singapore or Malaysia, and so does its progress in multilateral trade liberalisation. Its tariff binding coverage is 100 percent and the simple average of applied import duties on agricultural goods was 17 percent in 2010. Less than half of its imports are subject to MFN duty free.

II. EU-SG FTA: a building block towards an EU-ASEAN FTA

On 16 December 2012, the European Commission announced the conclusion of the EU-Singapore Free Trade Agreement (FTA) negotiations. This important event initiated a key stage towards the ratification of the agreement that is likely to "level the playing field in Singapore and is a stepping stone to a greater engagement across Southeast Asia". As was the case with the FTA concluded between the EU and the Republic of Korea (ROK), this new agreement has been described as a model and a template for future negotiations with other countries in Southeast Asia.

The establishment of an interregional EU-ASEAN FTA has been an important goal for the EU since April 2007, when it opened negotiations with the Association of Southeast Asian Nations (ASEAN), with the intention of concluding a common agreement with seven of its ten members states⁶. However, negotiating with ASEAN as a single block proved a complicated task, causing the suspension of the process in favour of bilateral negotiations with the separate member states.

With the financial crisis affecting the EU since 2008, the "Global Europe" trade strategy that Brussels published in 2006 appears even more relevant, as Asia has now become the centre of economic growth in the world. At the time, when the EU decided to enter into bilateral

negotiations with individual ASEAN member states, the aim was to start the process with the gain of early successes. Being the EU's largest trading partner in Southeast Asia and already having negotiated a comprehensive FTA with the United States, Singapore was best placed to take up the pioneering role. Subsequent trends have only re-enforced this perception, confirming Singapore to act as a hub for European companies in Southeast Asia, becoming an even more significant partner for the EU, with bilateral trade growing by 41% between 2009 and 2011.

The EU-Singapore FTA: what has been negotiated?

The EU-Singapore FTA (EUSG FTA) is said to be a mutually beneficial and genuinely comprehensive agreement. With the exception of some areas that have not been included for obvious reasons (such as air and rail transport and agriculture), the agreement touches on tariff elimination, non-tariff barriers (NTBs), public procurement and provisions on the rules of origin. Negotiations reached a very high level of ambition. The EU-Singapore FTA is the first one to be branded as a "Green FTA", addressing issues such as green growth and NTBs in the renewable energy sector, while including a specific chapter on sustainable development which contains terms on the liberalisation of environmental services and specific rules on illegal fishing and logging.

Key issues that were on the table during the negotiations included liberalisation of services, public procurement and investment, while geographical indications and rules of origins demonstrated sharp differences between the EU and Singapore. The service sector proved to be one of the EU's key offensive interests, for which the European Commission stated to have obtained a result on par with the US-Singapore FTA. Both the EU and Singapore agreed to implement a far-reaching liberalisation of the service sector, as well as to remove domestic regulations impeding this process. In the area of public procurement, the provisions of the draft agreement are going beyond the commitments earlier agreed by both the EU and Singapore under the WTO Agreement on Government Procurement. While market access for investment has been negotiated smoothly, the chapter on investment protection – a competence only recently acquired by the EU – is still to be finalised, as the European negotiators only obtained the mandate to start negotiations mid-2012.

Geographical indications are of paramount importance to the European Union. However, Singapore is lacking a dedicated register to protect them, instead implementing a US-style trademark regime. With the resources required to establish such a register from scratch, this particular chapter was a difficult one to conclude with the EU, leading both parties to finally

⁶ Laos, Cambodia and Myanmar were not included as Laos and Cambodia are under the 'Everything But Arms' (EBA) regime and Myanmar had been withdrawn from the EU 'General System of Preferences'(GSP) scheme in 1997 before getting back the EBA status in September 2012.

agree to establish an EU-style register. Singapore, in its turn, was very determined to achieve a favourable outcome on rules of origin. While the EU fears of witnessing third countries abusing the system to export their goods duty-free to the EU via Singapore, provisions in the agreement required to be balanced with the need to encourage “ASEAN origin cumulation” as an incentive for increased factual economic integration for ASEAN members to pave the way for an eventual EU-ASEAN FTA.

How can the EU-Singapore FTA compare to both the EU-ROK and the US-Singapore FTA?

When concluded in 2009, the EU-ROK FTA was described as a model for negotiations with other Asian partners, in particular Singapore. Therefore, the two agreements share certain general aspects, for instance on services, NTBs and sustainable development, with the details diverging to reflect market specificities. Moreover, the EU-ROK FTA does not include an investment protection chapter, as the Lisbon Treaty was not yet in force when the mandate was initially approved by Council.

The US-SG FTA, in force since 2004, provided a baseline for the EU in its negotiations with Singapore. The agreement covers the entire spectrum of trade-related issues, from tariffs on goods to rules of origin, market access, liberalisation of services and investment. Commitments in fields such as services or public procurement are comparable in both FTAs. On specific topics, the EU has even gone further. Finally, the US-Singapore FTA facilitated EU-Singapore negotiations on competition, as Singapore had already committed itself to enacting a competition law and had established a Competition Commission in 2005.

The EU-Singapore FTA: a model for the rest of ASEAN member states?

The EU-Singapore FTA is the first step towards the wider EU objective of an eventual EU-ASEAN FTA. Negotiations with Malaysia have started in October 2010, although due to the recent elections in Malaysia the negotiations have been on hold for some time until the new government is ready to take some political decisions and advance the negotiations. Negotiations with Vietnam were launched in June 2012, while negotiations with Thailand started on 6 March 2013. Scoping exercises are well underway with Indonesia, under discussion with the Philippines.

However, negotiations between the EU and Malaysia are currently on hold due to sharp differences over some issues, among which public procurement, Geographical Indications, palm oil and automotive sectors have raised difficulties. As for Vietnam, even in the early stages of negotiations it has become clear that issues such as tariff elimination, competition policy, equity participation caps in the services sector and the enforcement of intellectual property rights will become difficult issues for finding a mutually beneficial and ambitious

agreement. Moreover, both Malaysia and Vietnam are developing countries which for country-specific reasons are more tempted to protect emerging local industries. An FTA with either of them will neither be quick nor easy. With Vietnam, political issues concerning human rights may enter the picture, complicating the Parliamentary ratification now required since the entry into force of the Lisbon Treaty.

The EU-SG FTA is a starting and turning point for future negotiations with other ASEAN countries, especially for the norms it sets for services, investment, public procurement and sustainable development. Yet, the near absence of tariffs and the high quality of Singapore's regulations clearly facilitated the process of negotiations, which will be impossible to reproduce with other ASEAN members. The EU has to keep in mind that its other Southeast Asian trade partners may not be either as willing or able to liberalise their markets according to the Singapore model.

Market access for investment and services, intellectual property rights (IPR), GIs and public procurement will be key - and for them novel - topics for future negotiations with other ASEAN member states. The discussions risk to replicate the EU-India FTA negotiations, where the EU was already forced to lower its expectations, taking into consideration India's determination – as is the case with many developing countries – to protect its domestic 'infant' industries.

In conclusion, the EU-SG FTA will rather take up the role of a baseline for starting future FTAs with the other ASEAN countries than it becoming the real model. The considerable economic differences between Singapore and the other ASEAN member states, illustrated by ongoing negotiations with Malaysia and Vietnam, show that many chapters successfully addressed in the Singapore Agreement – such as GI or public procurement – will not be easily resolved on same or similar terms. Moreover, as mentioned earlier, the European Parliament must now assent to every trade agreement concluded by the European Union. It would thus be foolish to neglect political issues such as human rights, labour rights or environmental issues that may well play a crucial role in debates within both the INTA Committee and the Parliament as a whole.

The EU will have to realise that an EU-ASEAN FTA will not go beyond the lowest common denominator of ASEAN member states policy preferences, which is mirrored in the ASEAN acquis, unless what goes beyond that leads to the codification of cooperation provisions in the EU's bilateral FTAs which are also linked to the establishment of strong institutional mechanisms, thus allowing the development of economic integration disciplines in the future.

A model "EU-Singapore" FTA to be sold off the shelf to the rest of ASEAN and Asia is wishful and wistful thinking. The ultimate target of an EU-ASEAN FTA that is in both regions' interests will follow from using Singapore as a key building block within a wider framework to establish

bilateral FTAs that are congruent and which can be knitted together as a single interregional agreement over time. The pace will be largely set by that of ASEAN's own economic and political integration. The road that leads there is still long and uncertain, raising questions such as "How ASEAN will evolve and how strong the economic community will be it establishes?", "How will the EU approach negotiations with other ASEAN countries? Will it lower - have more realistic - expectations after creating a precedent with the EU-Singapore FTA that reflects the exceptional nature of Singapore within ASEAN and the Region?", and last but not least, "How will trade dynamics in Southeast Asia evolve, and in which direction will it push ASEAN member states?".

List of abbreviations

ASEAN	Association of Southeast Asian Nations
CETA	Comprehensive Economic and Trade Agreement
Cu m	Cubic Meter
EU	European Union
EUSG FTA	EU-Singapore Free Trade Agreement
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GDP	Global Domestic Product
GI	Geographical Indications
GPA	Plurilateral Agreement on Government Procurement
IMP3	Third Industrial Market Plan (Malaysia)
IPR	Intellectual Property Rights
LNG	Liquefied Natural Gas
MFN	Most Favoured Nation
MICE	The Meetings, Incentives, Conferencing and Exhibitions Industry
MNC	Multinational Company
NTB	Non-Tariff Barrier
RMK10	Rancangan Malaysia ke-10 (10 Malaysia Plan)
ROK	Republic of Korea
SGX	Singapore Exchange
SPC	Singapore Petroleum Company
TPP	Transpacific Partnership
US	United States
WTO	World Trade Organisation

1. Introduction

On 16 December 2012, the negotiations between the EU and Singapore on a bilateral free trade agreement (FTA) were concluded, leading to the second EU FTA with a key trading partner in Asia (the first being with Korea). Although a bilateral FTA, the EU-Singapore FTA is, no doubt, also a major point of reference for on-going and future free trade negotiations with other ASEAN countries.

As early as 2006, the European Union 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, during 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 clear⁷ 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 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 inter regional strategy was 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. The EU-Singapore FTA should, therefore, be looked at also from this perspective.

The present paper is the report which was prepared by a research team co-ordinated by the European Institute for Asian Studies (EIAS) for the Workshop “Trade and Economic Relations with ASEAN”, which was organised in Brussels on 28 February 2013 by the European Parliament's Committee on International Trade. The research team consisted of researchers from EIAS (Brussels), the Centre for ASEAN Studies of the University of Antwerp (Belgium), the United Nations University/Centre for Regional Integration Studies (Bruges, Belgium) and consultancy firm Polint (Brussels).

⁷ For an early assessment and “announcement of a future failure” at that time, see Cuyvers, “An EU-ASEAN Free Trade Agreement: Reflections on issues, priorities, strategies”, CAS Discussion paper No 53, University of Antwerp: Centre for ASEAN Studies, October 2007, which was also used as the keynote address at the Workshop “The EU-ASEAN FTA: Perspectives of European Business”, European Institute for Asian Studies, Brussels, 28 September 2007.

The research was hampered from the outset by the text of the agreement still remaining undisclosed, as being under review by legal teams from the European Union and Singapore. In spite of this drawback, reasonable insight in the main provisions could be gathered by available press communiqués and related documents – both from official and unofficial sources, as well as by interviews of key witnesses.

The focus of the paper is on the major provisions of the EU-Singapore Free Trade Agreement (EUSG FTA) and on the extent that this agreement can serve as a “template” in the FTA negotiations between the European Union and other ASEAN countries, in particular Malaysia and Vietnam⁸.

In the next section, a brief economic profile is sketched of Singapore, Malaysia and Vietnam, as well as the key characteristics of the trade policy of these countries. This is followed by section 6.3 which investigates what, according to various sources, has been negotiated between the EU and Singapore, together with elements which can be traced back to previous FTAs of the EU and the US with other Asian countries. The previous “landmark” FTAs which are taken for comparative purposes into account here, are the EU-Korea FTA and the US-Singapore FTA. The comparison will allow a tentative assessment of the continuity and discontinuity in the provisions of the EUSG FTA, in other words, where these provisions are also found in the two “landmark” FTAs considered, and where the EUSG FTA provisions differ.

Section IV then explores the question: to what extent can the EUSG FTA become a model for the EU FTAs under negotiation with other ASEAN countries. Therefore major issues on the negotiation table with Malaysia and Vietnam, as well as the status of the EU’s FTA negotiations with both countries, is reviewed. This, in turn, allows one to draw some lessons as to how and to what extent, the EUSG FTA can be considered as an essential building block in the construction of an EU-ASEAN FTA. The final section concludes and attempts to give further food for thought.

2. The economic situation in Singapore, Malaysia and Vietnam

In the present section, we review the main characteristics of the economic structure and performance, as well as relevant trade policy characteristics of Singapore, with which the FTA negotiations were concluded. With reference to Malaysia and Vietnam, the negotiations had already proceeded sufficiently.

⁸ The EU negotiations with Thailand were officially launched on 6 March 2013.

2.1 Singapore — A distinctive global city with an innovative economy and high-skilled population

2.1.1 The Singapore Model

Singapore strongly advocates free market policies and practices. Meanwhile, government intervention is evident in macroeconomic management and major factors of production such as land, labour and capital resources. Both the market and the state have equally strong roles in the Singaporean economy.

The Singapore Model was born out of necessity, as the country was required to open up its economy towards external markets due to its relatively small domestic market. However, the inherent vulnerability of depending on external markets compelled the government to enact economic policies that would safeguard the country from perturbations in the global market. It also triggered the Singapore government to actively encourage new industries to develop in order to respond to the needs of the global market.

Singapore is the only Asian country to bear an AAA credit rating from all three major credit rating agencies – Standard & Poor's, Moody's and Fitch. According to the 2011 Index of Economic Freedom, Singapore is the second freest economy in the world. Moreover, its business freedom score is exceptionally high, as it only takes three days to start a business, compared to the world's average of thirty-four days. Apart from strong business and regulatory policies, other factors such as the country's strategic geographic position, its vast natural seaport, a highly skilled workforce and a favourable tax regime, have created a conducive business environment for companies and industries.

2.1.2 Economic structure

Singapore has major geostrategic importance in Asia. After the British colonised Singapore in 1819, the island quickly became the centre of the trade route between India and China. Today, Singapore is the busiest port in the world, above Rotterdam and Hong Kong. Many multinational companies (MNCs) have also set up regional headquarters in Singapore, due to its high degree of globalisation and accessibility to other markets. Singapore aspires to be a global and regional hub for multiple activities, particularly in the fields of trade and finance.

In 2010, 0.1 percent of Singapore's labour force was active in agriculture, with a further 30.2 percent in industry and 69.7 percent in services. Services and Industry respectively accounted for 73 percent and 27 percent of Singapore's GDP in 2010. The contribution of agriculture was virtually irrelevant, accounting for zero percent of the GDP.

The petroleum and petrochemicals industry in Singapore is one of the biggest in the world, importing oil from other countries before refining them for export and further use in other

countries. Singapore is home to the third largest oil refinery in the world, after Rotterdam and Houston. The Singapore Petroleum Company (SPC) is a leading player in the petroleum industry and is engaged in the exploration, production, refining and distribution of petroleum and petrochemicals.

Manufacturing is another major industry in Singapore. Although the city-state has been specialised in digital and electronic manufacturing for the past forty years, it diversified into other forms of manufacturing. Thanks to government initiatives and subsidies, biomedical and pharmaceutical manufacturing are seen to be the future for Singapore industries.

Singapore is also a global leader in services, particularly in finance. Singapore's banking system is considered to be among the strongest in the world, nurturing the fourth largest foreign exchange market in the world after London, New York and Tokyo. The Singapore Government Securities is the only Asian-based market, besides Japan, to be part of the Citigroup World Bond Index. The Singapore Exchange (SGX) was also the first demutualised, integrated securities and derivatives exchange in the Asia-Pacific. Altogether, Singapore is recognised as one of the premier asset management centres in Asia, with more than 200 international asset management firms.

Tourism is the second major service industry in Singapore, next to finance. In 2010, tourist arrivals to Singapore hit a record of 11,638 million visitors with tourist receipts of more than S\$18.8 billion. Thanks to government initiatives, tourism has diversified into niche markets such as medical tourism, the gaming industry and the MICE (Meetings, Incentives, Conferencing and Exhibitions) industry. With the advent of the two new integrated resorts in 2010, tourism expenditure in sightseeing and entertainment grew by an astonishing 1834 percent in 2010.

2.1.3 International trade and investment

International trade is of paramount importance for Singapore. A large percentage of trade is conducted to meet domestic demand for energy, food, and other necessities. Singapore also a regional centre of entrepôt trade, as well as of value-adding activities, whereby raw materials are imported, before refining them for re-export. Altogether, 47 percent of Singapore's exports consist of re-exports.

As a strong advocate of free trade, Singapore has relatively few trade barriers. Trade partners with the Most Favoured Nation (MFN) status have zero tariff rates applied to their products, except for the product lines for alcoholic beverages. There are, however, some import restrictions, based mainly on environmental, health, and public security concerns. The importation of rice also requires import licensing in order to ensure food security and price stability.

Singapore is the eighteenth largest exporter of oil in the world. In 2010, Singapore exported 1,374 million barrels of oil per day. On the other hand, Europe, North America and Asia were the major FDI contributors to Singapore. Between 1995 and 2005, Europe gradually gained in importance as Singapore's leading foreign investor, with Europe's share in investment rising from 31 to 43 percent in this period. Although the absolute amount of foreign investments in Singapore from Asia and North America increased during the same period, their shares recorded a decline. Asia recorded a share decline from 33 to 24 percent, whereas North America's share shrunk from 21 to 15 percent.

The United Kingdom, Switzerland, the Netherlands, Norway and Germany were some of the major foreign investors from Europe to invest in Singapore. Japan was its largest Asian foreign investor. Most of the FDI flows between 1995 and 2005 went into major sectors of Singapore's economy, such as (1) financial services and the insurance services sector, (2) hotels and restaurants, (3) the manufacturing sector, (4) wholesale trade and the retail trade sector.

2.2 Malaysia – Towards the developed nation status by 2020

Malaysia's economy witnessed an economic boom in the 1970s, after which it expanded from a raw materials producer to a more diversified economy. The country's rich natural resources ensure sustained development in agriculture, forestry and mining. Economic growth is also attributed to its bordering the Malacca Straits, an important international shipping crossroad, thus also promoting Malaysia's international trade in an important way. Malaysia's well developed manufacturing sector produces a diverse range of goods.

2.2.1 *Economic structure*

Malaysia's economic development can largely be attributed to its wealth of natural, agricultural and forestry resources. Major products include cocoa, rice, rubber, coconuts, pepper, subsistence crops, timber, palm oil and natural oil. In 2010, Malaysia's agricultural industry was responsible for approximately one tenth of its GDP with rubber and palm oil being the country's key agricultural products by far. Malaysia is the second largest producer of palm oil in the world, producing more than 17.7 million tonnes of palm oil in 2008. The majority of Malaysia's palm oil is exported to China, the EU, Pakistan, the US and India. Malaysia also accounts for one third of the world's rubber exports, serving for export to countries such as the US and Japan mainly in the production of automotive components. Currently, Malaysia is holding 2.9 billion barrels of proven oil reserves and 2.35 trillion m³ of proven natural gas reserves. This makes them ranked respectively 32nd and 17th in the world.

Malaysia's industrial sector accounts for 41 percent of the country's GDP in 2010. Key industries of Peninsular Malaysia include rubber, palm oil processing and manufacturing, light manufacturing, pharmaceuticals, medical technology, electronics, tin mining and smelting,

logging, and timber processing. The Eastern Malaysian states of Sabah and Sarawak are keenly focused on logging, petroleum producing and refining, as well as agro-processing.

Malaysia's diversified manufacturing sector is the backbone of its economy, which growth is visible in its contribution of 30 percent to the GDP in 1999 as compared to 13.9 percent in 1970. Malaysia possesses abundant natural resources such as minerals, liquefied natural gas (LNG), petroleum and tin. In addition, electronic components contribute a significant share in Malaysia's manufactures and exports. The country is the largest exporter of semiconductor devices and electrical goods and appliances in the world.

Services have been growing in economic importance in the past few years. In 2010, the service sector was responsible for 49 percent of the GDP. Malaysia's service sector predominantly comprises of Islamic banking, finance, telecommunications and tourism. The concerted development of the service industry is part of the national development strategy to venture into new growth areas and broaden the economic base for exports. It is expected to provide the basis for sustained economic growth, as according to the 10th Malaysia Plan (RMK10), the goal for the service industry is to reach a share in GDP of 61 percent by 2015 – with an annual growth of 7.2 percent. Under the IMP3, non-government services are targeted to grow at an average annual rate of 7.5 percent. Construction services are also expected to increase annually by 5.7 percent.

In April 2009, the Malaysian government introduced new licences for investment banking, Islamic banking, takaful (Islamic insurance) and insurance business. The threshold for foreign equity ownership was also raised from 49 percent to 70 percent, thus allowing foreign banks to open new branches and micro-credit facilities in the country.

2.2.2 International trade and investment

Malaysia's main export goods include electronic equipment, petroleum and liquefied natural gas, wood products, palm oil, rubber, textiles, and chemicals. Its main import items include: electronics, machinery, petroleum products, plastics, vehicles, iron and steel products, as well as chemicals.

2.3 Vietnam – From a low-income country to a high/middle-income country by 2020

In 2001, Vietnam reaffirmed its commitment to pursue financial liberalisation and international integration. Since then, structural reforms have been implemented to modernise the economy and to create competitive export-driven industries. Its 2007 WTO membership has secured Vietnam a place in the integrated global market and reinforced its internal economic reform process.

Vietnam has become the world's second fastest progressing economy. Agricultural dependency in total output shrank from 25 percent in 2000 to 20 percent in 2007. Poverty levels declined and Vietnam succeeded in creating job opportunities for its vast labour force. Nevertheless, the economic slump in 2008-2009 made it difficult to continue its job creation programme.

2.3.1 Economic structure

Although Vietnam's agricultural output declined, employment in the sector remained comparatively high. In 2005, 60 percent of the labour force was concentrated in agriculture, forestry and fishing, although production in the agricultural sector was responsible for merely 30 percent of Vietnamese exports. The reduced government monopoly on rice exports converted Vietnam into one of the world's largest rice exporters.

By 2010, Vietnam's insurance sector was expected to account for 4.2 percent of GDP through increasing life and non-life insurance premiums, accounting for respectively \$2 billion and \$562 million.

Although it is still mainly a primary sector producer and exporter, the Vietnamese government has strongly expanded the country's industrial base. Supporting industrial zones have been built in several locations, including the Que Vo district and the Bac Ninh province. For years, Japan has been the major donor of Vietnam, thus helping the development of the country's auxiliary industries with approximately US\$180 million of aid financing SMEs since 2008. Moreover, there is a high prospect of developing supporting industries, such as the garment, textile, leather, electronics, IT, automotive and engineering sectors, with additional priority being given to livestock and aquaculture industries. The latest technology and business solutions are being employed to serve the increasing domestic and export demands.

Vietnam's main industries include food processing, construction and manufacturing, while steadily becoming a global manufacturing centre with a diversified industrial base.

2.3.2 International trade and investment

Vietnam's major trading partners are Japan, Singapore, Hong Kong, Taiwan, Korea and the European Union, its trade with other Asian economies accounting for approximately 80 percent of the total trade. The main Vietnamese exports are petrochemicals, construction, cement, power generation/electricity, food and beverages, paper and pulp, plastic and rubber.

Although agricultural products are ranking highly on the list of export items, this may change along with the rise of Vietnam's industrial base. The most significant export products include crude oil, textiles and garments, rice, coffee, rubber, coal, aquaculture and processed forest

products. Vietnam's main imports are petroleum products, steel, fertilizer, electronics, machinery and equipment.

2.4 Comparison of the trade policy situation

Table 1 compares trade policy indicators of Singapore, Malaysia and Vietnam, showing a picture of three countries which widely differ in the level and scope of protection of their domestic market of agricultural and manufactured goods, services, as well as capital investment. All three countries are witnessing impressive growth rates of both exports and imports. Their different level of economic development is also clearly reflected in the data (e.g., the amounts and structure of services imports and the importance of the agricultural sector).

Table 1 - Trade policy indicators⁹

	Singapore	Malaysia	Vietnam
TRADE POLICY			
WTO accession	1 January 1995	1 January 1995	11 January 2007
Trade Policy Review	24, 26 July 2012	25, 27 January 2010	...
GPA accession	20 October 1997	Observer	-
Tariffs and duty free imports			
Tariff binding coverage (%)	69.7	84.3	100
MFN tariffs	Applied 2011	Applied 2010	Applied 2010
Simple average of import duties			
All goods	0.0	6.5	9.8
Agricultural goods (AOA)	0.2	10.8	17.0
Non-agricultural goods	0.0	5.8	8.7
Non ad-valorem duties (% total tariff lines)	0.0	0.7	0.1
MFN duty free imports (% , 2010)			
in agricultural goods (AOA)	98.8	76.9	44.5
in non-agricultural goods	100.0	77.4	44.0
Services sectors with GATS commitments	67	73	105
Contribution to WTO budget (% , 2012)	2.254	1.137	0.379
Import duties collected (% , 2008-2010)			
in total tax revenue	0.0	6.1	...
to total imports	0.0	1.0	...
Number of notifications to WTO and measures in force			
Outstanding notifications in WTO Central Registry	6	24	29
Goods RTAs - services EIAs notified to WTO	19 - 15	11 - 7	8 - 4
Anti-dumping (30 June 2011)	...	6	...
Countervailing duties (30 June 2011)
Safeguards (26 October 2011)	0	0	0
Number of disputes (complainant - defendant)			
Requests for consultation	1 - 0	1 - 1	2 - 0
Original panel / Appellate Body (AB) reports	0 - 0	1 - 0	1 - 0
Compliance panel / AB reports (Article 21.5 DSU)	0 - 0	1 - 0	0 - 0
Arbitration awards (Article 22.6 DSU)	0 - 0	0 - 0	0 - 0
Commercial services exports (million US\$)	128 891	34 913	8 769
export annual growth rate (%), 2005-2011	10	10	13
Commercial services imports (million US\$)	113 827	37 490	11 707

⁹ Based on the most recent WTO Trade Policy Review.

import annual growth rate (%), 2005-2011	11	9	18
share in world total exports	3.09	0.84	0.21
Breakdown in economy's total exports			
By principal services item			
Transportation	28.8	13.9	28.6
Travel	14.8	52.3	64.1
Other commercial services	56.4	33.8	7.3
share in world total imports	2.88	0.95	0.30
Breakdown in economy's total imports			
By principal services item			
Transportation	29.3	34.9	70.3
Travel	17.8	27.5	14.6
Other commercial services	52.9	37.6	15.1

3. The EUSG FTA: Continuity and discontinuity compared

On December 16 2012, the European Commission announced the conclusion of the EU-Singapore Free Trade Agreement (EUSG FTA) negotiations. This important event initiated the stage towards the ratification of the agreement that is likely to “level the playing field in Singapore and is a stepping stone to a greater engagement across Southeast Asia”. As was the case with the FTA concluded between the EU and the Republic of Korea (ROK), this new agreement has been described as a model and a template for future negotiations with other countries in South-East Asia.

The establishment of an integral EU-ASEAN FTA has been an important goal for the EU since April 2007, when it opened negotiations with the Association of Southeast Asian Nations (ASEAN), with the intention of concluding a common agreement with seven of its ten member states.¹⁰ However, negotiating with ASEAN as a single block proved a complicated task. The stalemate mostly arose from three reasons, (1) that ASEAN is still lacking supranational authority, (2) the economic heterogeneity of the ASEAN countries and (3) the political quandary that Myanmar was at the time.¹¹

Yet, with Asia increasingly becoming the centre of economic growth, the region was remaining very attractive and a solution had to be found in order for Europe to tap into Southeast Asia's vast economic potential. In 2008, following the logic dictated by the “Global Europe” trade strategy which the EU had published earlier in 2006, the decision was altered to enter into bilateral negotiations with the ASEAN countries, maintaining the establishment of an integrated ASEAN-EU FTA as the final goal. With the recent financial crisis badly affecting Europe, the

¹⁰ Laos, Cambodia and Myanmar were not included, as Laos and Cambodia are under the ‘Everything but Arms’ (EBA) regime, and Myanmar had been withdrawn from the EU ‘General System of Preferences’ (GSP) scheme in 1997 before getting back EBA status in September 2012.

¹¹ For an early assessment of this issue, see Cuyvers, Chen and De Lombaerde, “ASEAN-EU FTA Negotiations: Waiting for Godot?”.

Global Europe Strategy started to appear increasingly relevant and early successes had to be gained to set the entire process on track.

Therefore, the EU had to identify relevant candidates to enter into the negotiation process. In particular, the process envisaged countries that would fit the criteria Brussels had established with its “Global Europe” strategy, including being a major EU trading partner and having provided strong evidence with regard to delivering capacities during FTA negotiations. Being the EU’s largest trading partner in Southeast Asia and already having negotiated a comprehensive FTA with the United States, Singapore was top ranked to take up the pioneering role.¹² Subsequent trends have only re-enforced this perception, confirming Singapore to act as a hub for European companies in Southeast Asia, becoming an even more significant partner for the EU, with bilateral trade growing by 41 percent between 2009 and 2011.

4. The EU-Singapore FTA: what has been negotiated?

4.1 Broad description

The EU-Singapore FTA (EUSG FTA) is said to be a mutually beneficial, genuinely comprehensive agreement. With the exception of some areas that have not been inserted for obvious reasons- such as air and rail transport, as well as agriculture. The agreement touches on most trade-related issues such as tariff reduction, non-tariff barriers (NTBs), public procurement and provisions on rules of origin. Negotiations reached a very high level of ambition, which explains their surprising duration. Indeed, although negotiations had been foreseen to end by summer 2012, an extra six months proved necessary to attain the aspired level of commitments. Importantly, the EUSG FTA is the first FTA to be branded as “green”, addressing issues such as green growth and NTBs in the renewable energy sector, while also including a specific chapter on sustainable development.

Although the negotiations have been concluded, the text of the agreement has still a long way to go before entering its implementation phase. Translation and legal assessment could take up to six months. Only after this crucial translation and legal review, the formal ratification procedure can start, with debates among the Member States and within the European Parliament. However, hopes are high that the agreement can be adopted by the European Parliament before the end of this parliamentary session in 2014. As indicated in the introduction, this also implies that our assessment of the EUSG FTA is not based on the official text of the agreement, which is embargoed, but on a review of preparatory documents, memo’s, communiqués and interviews with key witnesses.

¹² For an early indications on the potentials of an EU-Singapore FTA, see Vandergeest, Brenton, Cuyvers. and Messerlin, “Sharing Benefits of Globalisation: A EU-Singapore Free Trade Agreement”.

4.2 Main Chapters

Singapore has no export sector in which the EU has a defensive interest. Hence, key issues during the EUSG FTA negotiations were relating to services, public procurements and investment. On the issue of geographical indications (GIs) and rules of origin sharp differences between the EU and Singapore emerged. Both issues were deemed essential to the European Union and GIs were never before included in trade agreements by EU trading partners prior to discussions with Brussels, making the negotiation process even more complex.

4.2.1 Services

The service sector proved to be one of the EU's key offensive interests in its negotiations with Singapore and a tough topic to discuss. The outcome attained by Brussels is of tremendous importance. As was the case with the US almost ten years ago, Singapore seems to have agreed to a fairly beneficial agreement. Both parties will carry out a far-reaching liberalisation of their services market and will remove domestic regulations impeding this process. At the same time, new commitments were made in areas such as environmental, engineering, architectural, postal and computer services, telecommunications and maritime transports¹³.

In terms of market access for services, the EUSG FTA can probably be considered as one of the best agreements ever negotiated, due to three main reasons. Firstly, the number of markets opened is very high. Secondly, many horizontal provisions have been agreed upon, with the aim of cutting back on arbitrary decisions of the authorities, resulting in better rules on licensing (a well-known trade-barrier) and mutual recognition of diplomas and certifications, for example in architecture. Finally, for several sectors, the EU succeeded in inserting elements originating from the EU *acquis* to ensure a level-playing field for European companies. Those principles will, among other measures, translate into an independent regulator in the field of telecommunications, one of the most important sectors for European players. Such insertion of the EU *acquis* is remarkable as it is a rather new phenomenon in FTA negotiations.

Additionally, the EU was very interested in opening up the market of financial and banking services. Indeed, the liberalisation of retail banking was considered a very difficult issue to negotiate. Although it is already a saturated sector in Singapore, the EU wanted to create a precedent for its negotiations with other ASEAN countries. Singapore thus made concessions but could not compromise on every issue put forward by Brussels.

Notwithstanding satisfaction regarding the final agreement, the EU also made strong commitments in various areas important to the City-State, such as architecture, engineering, e-commerce and the restaurant sector.

¹³ European Commission Memo/19/993, 16 December 2012.

4.2.2 Public Procurements

Although the European Union and Singapore are parties to the WTO Agreement on Government Procurement (GPA), some provisions of the draft EUSG FTA reach beyond the GPA text, especially for tendering procedures, rules of transparency and non-discrimination. Overall, the European Commission deems it reached a better agreement in public procurement than the United States previously did. Indeed, the EU has a more open sub-national procurement market, providing it could offer Singapore wider access to its market, obtaining significant commitments from the City-State.

4.2.3 Investment

Before the entry of the Lisbon Treaty on 1 December 2009, the EU only had the authority to negotiate market access for investment, representing the right for these investments to enter one's market and territory. Since the Lisbon Treaty is in vigour, the EU acquired an additional competence in the field of investment protection, which is the right, once the investments have been made, to be protected from being confiscated by national authorities. As a consequence, the EU can now include a specific investment chapter in its trade agreements.

In its negotiations with Singapore, discussions on market access for investments have been going rather smoothly. However, as the official mandate to start negotiations on investment protection only arrived mid-2012, the talks on this chapter have not been finalised yet. As it is not considered a difficult topic, hopes are high for an agreement to be reached soon. Therefore, as the investment chapter will be much shorter than the free trade agreement itself, the procedure could go much faster too, resulting in an addendum to catch up in time to be included in the actual FTA before being finalised.

4.3 Hurdles

As previously mentioned, some topics like geographic indications and rules of origin were considered as hurdles during the EUSG FTA negotiations.

4.3.1 Geographical Indications

Geographical indications (GIs) are, like trademarks, a domain of Intellectual Property Rights (IPRs). They aim at protecting products – mainly goods but sometimes also services – that possess “a specific quality, reputation, or other characteristics attributable to that geographical origin and the production and/or procession and/or preparation that take place in the defined geographical area”.¹⁴ The system established by the EU has been adopted by an increasing number of countries worldwide. The EU register offers protection not only to wine and spirits but also to foodstuff. Hence, it comes as no surprise that its imposition to third partners, who protect GI through other means, may encounter resistance. Singapore, like the United States, Australia,

¹⁴ Wattanapruttipaisan, “Trademarks and Geographical Indications: Policy Issues and Options in Trade Negotiations and Implementation”.

New Zealand and Japan, does not have a dedicated registration system for GIs but used its trademark regime to protect them. A main difference between the system applied by Singapore and by the EU is that according to the European system, the GI has priority, even if the trademark had been registered before.

Originally, Singapore had no geographical indication to protect. Yet, the negotiations proved tough, as the EU asked the City-State to set up an entire system from scratch, a very resource consuming procedure. However, Singapore was aware of the importance and sensitivity of the issue for the EU and finally agreed to establish an EU-style register. The aim is to demonstrate Singapore's willingness to set up such a system. Compared to the ongoing negotiations with Canada on the Comprehensive Economic and Trade Agreement (CETA), the result obtained by the EU in the EUSG FTA is quite positive.

The ongoing negotiations of the Transpacific Partnership (TPP) complicated the EU's negotiation position with Singapore, as the United States were pushing for the trademark approach in the TPP agreement. Seen in the long-term perspective, the provisions included in all bilateral FTAs are essential, as they may serve as a critical mass when time comes to set up a global system.¹⁵

Regarding other IPR domains, the EU considers it obtained positive commitments on copyrights, a field in which Singapore applied a US-inspired system. Indeed, both partners agreed on increasing the remuneration rights on certain creative activities and on a better enforcement of IPRs, although criminal sanctions are not foreseen to be included.¹⁶

4.3.2 Rules of origin

Singapore was very determined to achieve a favourable agreement on the rules of origin. This chapter was initially perceived to be a delicate one. However, the matter was settled much faster than expected. Although Singapore is not a competitor of the EU in very sensitive sectors such as cars or shoes, Singapore's produce is not the real bone of contention, as its expensive land and labour make the City-State less competitive than other Southeast Asian low-income countries. The core issue for the EU was to prevent third countries (like China for example) to abuse the system by exporting their goods duty free via Singapore.

Sensitivities were to be considered on both sides, with agriculture as a key issue for the EU and the assurance for Singapore to be able to re-export or use imports from other ASEAN countries. This "ASEAN origin cumulation", points at the regional cumulation of origin which is allowed under the present EU GSP system, however this has never been clearly included in any FTA before, although the concept is familiar from the EU's General System of Preferences which

¹⁵ For more information see Wattanaputtipaisan, "Trademarks and Geographical Indications: Policy Issues and Options in Trade Negotiations and Implementation".

¹⁶ European Commission Memo/12/993, 16 December 2013.

currently applies to the region. However, from the EU point of view there were fears of important import competition of products from other ASEAN countries entering the EU duty free through Singapore.

The EU-Singapore agreement on rules of origin is considered to be balanced and satisfying to the European Member States. European companies follow the rules of modern trade and manufacturing, globally spreading their value chain. Therefore, regional cumulation of origin would allow EU companies to source from other ASEAN countries through such provisions in the EUSG FTA. The EU does not aim at countering the phenomenon of ASEAN cumulation, as it is its final goal to reach a region-to-region agreement, implying that economic integration between ASEAN countries is in its interest and must thus be encouraged. GIs, services and rules of origin were the last items at the negotiation table and Singapore used their agreement with GIs and the EU request about the liberalisation of services as a bargaining chip to reach agreement on its requested definition of rules of origin.

4.4 The Sustainable Development Chapter and the EU 2020 Strategy

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 as demanding, as it mostly refers to international conventions already signed by the partners. Unlike the US, the EU does not link those clauses to sanctions. Nevertheless, even if the EU only wants to initiate consultative mechanisms, partner countries are very often reluctant to be lectured on those 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 those principles so that “trade supports environmental protection and social development” and to involve civil society in this project.¹⁷

Labour standards, however, were not a polemical topic with Singapore as the country has already made ambitious commitments at the global level. Up to now, Singapore has ratified 27 ILO conventions (of which 23 currently in force¹⁸), among which six fundamental or so-called “core” conventions (on forced labour, on equal remuneration, on the right to organise and collective bargaining, on minimum age and on worst forms of child labour). The sustainable development chapter was thus one of the first to be concluded in the negotiations.

The EUSG FTA is 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

¹⁷ European Commission Memo/12/993, 16 December 2013.

¹⁸ http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103163

addressed during the FTA negotiations with other ASEAN countries, for which the EU FTA with Singapore will set a clear precedent.

5. The EUSG FTA: influences from previous FTAs?

Before assessing the impact of the EUSG FTA on future and ongoing negotiations with ASEAN countries, it is important to consider previous agreements that were considered landmarks for both the EU and Singapore and may have influenced the EUSG negotiations. These are the EU-Korea FTA and the US-Singapore FTA. When the EU-Korea FTA had just been signed, it was described as a model for Singapore and negotiations with other ASEAN countries. On the other hand, the landmark US-Singapore FTA provided Singapore with negotiations experience with a leading Western economy. Moreover, the provisions of the US-Singapore FTA gave both the European and Singaporean negotiators a benchmark and bottom-line.

5.1 The EU's landmark agreement: The EU-Korea FTA

5.1.1 General description

The EU-Korea FTA (EUROK FTA) entered into force on 1 July 2011, the first “new generation of FTA” the EU signed with an Asian country. At the time of its conclusion, the EUROK FTA was said to be the most comprehensive free trade agreement negotiated by the European Union. It covered all areas crucial to the EU's competitive position, ranging from services liberalisation and investment competition to non-tariff barriers (NTBs) in areas such as intellectual property rights, public procurement, and technical barriers. The EU considers the EUROK FTA as the most ambitious EU FTA and a “benchmark” for future FTAs the EU aims to conclude with countries with a similar level of development. The EUROK FTA mirrors the level of EU's ambitions in the negotiations of the EUSG FTA.

From the EU perspective, South Korea and Singapore share an important common characteristic, explaining the European interest to sign an FTA with them. Both are fast growing and dynamic Asian markets for EU exports, and, their booming markets enable the EU to expand exports of its competitive sectors such as the chemical industry (including cosmetics and pharmaceuticals), machinery sector, food and beverages.

Even more strategic interests are to be found in the services sector where the EU enjoys a strong comparative advantage, which will benefit from further liberalisation in banking, finance and insurance. An FTA will secure EU market access to both South Korea and Singapore in comparison to its main competitors such as the US and Japan.

One of South Korea's key motivations in concluding an FTA with the EU originates from its desire to provide Korean exporters better access to the large EU market, meanwhile enhancing

Korea's global competitiveness by improving factor productivity and by fuelling competition in the domestic market. A similar mechanism would be there for Singapore.

5.1.2 Comparison with the EUSG FTA

When concluded in 2009, the EUOK FTA was described as a model for negotiations with other Asian partners, in particular Singapore. The two agreements, therefore, share provisions, for instance regarding services, NTBs and sustainable development, with diverging details to reflect market specificities.

Tariff reduction and rules of origin

Singapore had only six tariff lines, so the chapter on tariff reduction was easily finalised. However, the situation was more complex with South Korea. Seoul and Brussels agreed to eliminate 98,7 percent of the duties in trade value for both industry and agriculture. In principle, all customs duties on industrial goods would be fully removed within 5 years, with the exception of a number of agricultural products. Regarding rules of origin, the EU accepts 55 percent local value added in most manufactures and 40 to 45 percent for cars and for the most sensitive consumer electronic items. For the first time, the EU allows the "Duty Drawback" scheme (DDB) in a bilateral agreement, under which duties paid on parts and components used for final products will be refunded when the final products are exported.

Investment

The EUOK FTA contains a substantial section on market access for investment. However, as the Lisbon Treaty was not yet in force when the mandate was initially given by the Council, the European negotiators had no competence for investment protection, which therefore was not included in the negotiations with Seoul.

Non-Tariff Barriers

The EUOK FTA incorporates fundamental rules on Non-Trade Barriers (NTBs). All export duties are prohibited. Particularly, the inclusion of strong and precise clauses on standards and technical barriers to trade (TBT) illustrates that standards and technical regulations are an essential element of the new generation EU FTAs. The EUOK FTA contains legal binding commitments to adopt international standards in electronics (safety standards) and automobiles, while further regulatory cooperation is foreseen in the pharmaceutical and medical device sector.

The EUOK FTA is a fair benchmark when it comes to assessing measures fighting NTBs, especially in sensitive sectors for the EU like car manufacturing, electronics or pharmaceuticals. The agreement established with Singapore is quite similar and contains annexes on NTBs, addressing the duplication of testing and the alignment with international standards.

Six areas have been discussed: electronics, motor vehicles and vehicle parts, pharmaceuticals, renewable energy generation, meat and meat products and authorised operative schemes. As both countries had legitimate concerns, the end result proved very balanced with half of the issues quickly addressed, while the rest was left for the end of the negotiations. The real novelty with the EUSG FTA is the fourth annex reflecting the special attention given by both countries to green aspects of trade, aiming at facilitating investments in renewable energy and stimulating green growth. With Singapore, being a developed country with similar environmental preoccupations, such a commitment was not difficult to obtain. Beyond being an important precedent in introducing environmental concerns into trade agreements, the focus on the green aspects of trade is also a strategic move for the EU, as East Asia will need to catch up on its “green” technology, leaving an opening for EU companies to fill the space and play an important role in the transmission of know how.

Government Procurement

The EUOK FTA includes a WTO plus chapter on government procurement. In addition to reaffirming commitments to the WTO Government Procurement Agreement (GPA), the EUOK FTA expands procurement opportunities to public work concessions and “Built-Operate-Transfer” (BOT) contracts, providing extra opportunities for European suppliers who are globally competitive in areas such as transport equipment, public works and utilities.

Services

At the time of its conclusion, the European Commission considered the EUOK FTA the most ambitious FTA for services ever concluded by the European Union. It goes well beyond existing commitments in the WTO's General Agreement on Trade in Services (GATS) in the area of financial services, telecommunications, maritime transport services, and e-commerce. In particular, it allows EU satellite broadcasters to operate directly cross-border into South Korea, which goes beyond the Korean commitments made in the KORUS FTA. The provisions on legal services are similar to those presented in the KORUS FTA.

When assessing the FTAs, it is enlightening to consider internal politics and to analyse the agreements from this perspective. In the case of the EUOK FTA, the Korean government wanted to modernise the service sector by pushing for further liberalisation. For such a difficult move, an FTA negotiation provides an excellent scapegoat, allowing the government to push for hard policies.

Geographical Indications

Regarding GIs, Singapore adopted a slightly different approach than Korea, wanting to ensure they could defend the system to be created at the international level, for instance while

negotiating the TPP. In the EUKOR FTA, there is a full section of a chapter devoted to GIs and around 160 were registered, apart from the usual spirits.¹⁹

Sustainable development

In the EUKOR FTA, provisions are included on establishing shared commitments and cooperation on trade and sustainable development. Both sides commit not to lower the enforcement of labour standards or environmental standards and Korea agreed to modify its draft legislation on CO2 emissions. The chapter on sustainable development in the EUKOR FTA served as a model for the EUSG FTA and the provisions are therefore very similar, even if the phrasing may be somewhat different.

It will be clear that the EUKOR FTA belonging to a new generation of WTO+ EU FTAs with an important regulatory content, also the EUSG FTA will prove to be a WTO+ agreement, creating a level playing field and ensuring regulatory issues to be properly addressed.

5.2 Singapore's landmark agreement: the US-SG FTA

5.2.1 General Description

The US-SG FTA, in force since 2004, provided a baseline for the EU in its negotiations with Singapore. Indeed, the text covers the entire spectrum of trade-related issues, from tariffs on goods to rules of origin, market access, services and investment. At the conclusion of the US-SG FTA, USTR (the US Trade Representative) declared that the agreement would be described as a real breakthrough in terms of competition policy, e-commerce and public procurement. The text contained major progress in IPRs, which once implemented, allowed Singapore to attract many foreign investments and to emerge as a regional centre for multinational pharmaceutical companies.

The US FTAs with Singapore and Korea were both negotiated under the “Fast Track” procedure (which expired in June 2007). The US-SG FTA was approved by the US Congress, whereas in contrast, the KORUS FTA (as well as the US FTAs with Peru, and Colombia) was negotiated with “Fast Track” authority, but in early 2007 it became clear that these agreements would not win Congressional approval without modifications involving more enforceable labour and environmental provisions. They featured only one labour provision subject to dispute resolution – the requirement to effectively enforce domestic labour laws, not including fundamental labour standards. The US FTA provisions on labour laws and international conventions have not been the same over time, giving rise to a “spaghetti bowl” of differences.²⁰

¹⁹ Pollet-Fort, “The EU-Korea FTA and its Implications for the Future EU-Singapore FTA”.

²⁰ Cuyvers and De Meyer, “Market-driven promotion of international labour standards in Southeast-Asia – the corporatization of social justice”.

Singapore made concessions mostly on access for American service providers, especially in financial services (the lifting of the ban on new licenses for American banks, allowing for unlimited number of branch locations, while giving the possibility to apply for access to ATMs) and on public procurement. On legal services, progress was made with the recognition of several law degrees (Harvard University, Columbia University, New York University, the University of Michigan) and the admission of some of the top US lawyers to take the Singapore bar.

The US-SG FTA and the EUSG FTA are broadly similar but the EU obtained at least a parity of what the US negotiated and, as was the case for services and other chapters, Brussels considers it bargained a better deal. Of course, for Singapore, the US-SG FTA was negotiated during a different period of time and with another trading partner. Therefore, in some areas, the EU negotiated a better agreement, but in other cases, the US pulled the better end of the string. On services, the situation of what has been achieved seems to be comparable. However, the question of environmental and labour issues was not formally raised by the US²¹ and the text includes commitments not to reduce or weaken the respective labour or environmental standards as a means to attract trade or investment - an obligation enforceable through a dispute settlement mechanism.

5.2.2 Comparison with the EU-SG FTA

Services

In the case of US-SG negotiations, market access for services was a key issue. The final agreement provides substantial access with exceptions clearly listed, following the negative listing approach. However, the EU favoured the use of positive listing with the City-State, which is the approach generally chosen by other ASEAN countries as well, except for Singapore. Although approaches are not as decisive as many may believe, it was a first disagreement that needed to be overcome. What matters in the end is the substance and a negative listing approach does not automatically imply that the FTA will have a wider scope.²² In the case of Singapore, the EU institutions claim they bargained for commitments at least equivalent to the US agreement²³, even though the approaches were different.

Competition

In its FTA with the US, Singapore committed itself to enact a competition law and to establish a competition commission by January 2005. This clearly facilitated the EU's task and "Competition" was considered to be one of the easiest chapters to conclude during the EUSG FTA negotiations. The final agreement contains comprehensive rules on competition and state aid and a dispute settlement mechanism.

²¹ Nanto, "The US-Singapore Free trade Agreement: Effects After Three Years".

²² Pollet-Fort, "The EU-Korea FTA and its Implications for the Future EU-Singapore FTA".

²³ European Commission Memo/12/993, 16 December 2013.

Rules of origin

Rules of origin in the US-SG FTA established either a percentage of the product's value or an operation that has to take place in Singapore, for the product to be deemed originating from the City-State. Some exceptions were made in the field of IT products and medical devices through an Integrated Sourcing Initiative (ISI), listing products that do not need to comply with the rules of origin to benefit from the duty free regime. ISI allows for streamlined customs procedures and a lighter burden on the shoulders of the companies. In 2003, the list contained 155 products, but this was expanded by express consent of the US Congress.²⁴ The initiative was deeply criticised by civil society as labour and environmental clauses in the FTA do not apply to factories located outside Singapore, who benefit nevertheless from the duty free regime.

6. The EUSG FTA – a model for FTAs with other ASEAN trade partners?

The EU-Singapore FTA is the first step in achieving the wider EU goal of a comprehensive EU-ASEAN FTA. As stated by the European Commission, the EUSG FTA “will level the playing field in Singapore and is a stepping stone to a greater engagement across Southeast Asia”.²⁵ EU negotiations with Malaysia started in October 2010 and in June 2012 with Vietnam, while negotiations with Thailand opened on 6 March 2013. Scoping exercises are well underway with Indonesia and under discussion with the Philippines, while Brunei may be offered a tweaked version of the Singapore Agreement at the appropriate time.

6.1 Status of the negotiations with Malaysia

Negotiations for a Malaysia-EU FTA (MEUFTA) were officially launched in October 2010. So far, seven rounds of talks have taken place, of which the last one in April 2012. The next round will be scheduled after the Malaysian General Elections, to take place at the latest by 27 June 2013. In the meantime, preparatory work is carried out by technical working groups. Both the ruling party and the Malaysian opposition are considered trade-friendly, so the election is expected not to have a major impact on trade negotiations, neither with the EU, nor with the US in the framework of the TPP.

Malaysia is considered to be halfway on the path towards concluding an FTA. It is no secret that although both the EU and the US are pushing for reforms in the same areas, such as transparency or competition, they are competitors in the Asia-Pacific region. Regarding some specific issues their opinions diverge significantly, e.g., the protection of GIs.

The agreement between Brussels and Kuala Lumpur is expected to be a very comprehensive one, covering the entire range of trade-related issues: market access for goods, services and

²⁴ Pollet-Fort, “The EU-Korea FTA and its Implications for the Future EU-Singapore FTA”.

²⁵ European Commission, Memo/12/993, 16 December 2012.

investment, rules of origin, regulatory measures (SPS, TBT), competition, IPRs, public procurement and sustainable development. However, if Malaysia's previous FTA negotiations need to be scrutinised in order to shed some light on a future agreement with the EU, Malaysia's track record could appear as rather worrisome. Negotiations with the US have been paused since 2009, as Malaysia could not resolve 58 contentious issues tabled in 2007 by Washington. Nonetheless, Kuala Lumpur is now involved in several negotiation processes, such as the TPP and the RCEP, and is thus acquiring experience and knowledge on trade-related issues, which may facilitate talks with the EU.

Malaysia is the EU's second largest trade partner in ASEAN, mostly exporting machinery and transport equipment (63,3%), chemicals and related products (11,6%) and manufactured goods (9,4%), while importing machinery and transport equipment (62,1%), chemicals products (12,2%) and manufactured goods (10,8%). Trade in services – a key sector for the EU - is still limited but has been growing steadily in recent years.

6.1.1 Key sectors in the negotiations

As is the case for every trade negotiation, some issues attract more attention and require more time to be concluded than others. Issues that Malaysia never addressed in previous FTA negotiations, such as public procurement, competition or IPRs, constitute some of those key topics.

Government procurement (GP)

Some areas of government procurement are very sensitive for Malaysia, as like many developing countries, it considers public procurement as a policy tool. Malaysia has never before included a chapter on public procurement in its previous FTAs and is not a member of the WTO GPA. Kuala Lumpur even formed a coalition to resist the inclusion of a multilateral agreement on public procurement in the WTO Doha round.²⁶ Hence, discussions on GPA commitments are politically sensitive for Malaysia and the level of ambition is challenging. Besides, Malaysia often questions the openness of the European procurement market, pointing at de facto obstacles such as language barriers. Indeed, as detailed offers are often only available in Member States' official languages, it is a very challenging task for Malaysian companies to respond to calls for tender.

Given the chances of the EU settling on a GP chapter only addressing transparency issues or containing too many exceptions, are low and this part of the agreement is anticipated to require lengthy discussions.

²⁶ See Tham "Negotiating for a Malaysia-EU FTA – Contesting Interest from Malaysia's Perspective".

Intellectual Property Rights (IPR)

The EU and Malaysia may encounter difficulties in discussing IPR issues, notably in the field of pharmaceuticals. Many NGOs raised concerns on a potential increase in the prices of medicines. The Malaysian authorities responded to criticisms by a thorough explanation of safeguards measures and other mechanisms available to deal with the expressed concerns, which proves the government will be ready to put in some efforts to convince its population.²⁷ It seems that the EU and Malaysia are sharing the same views on access to generic medicines but in this agreement they will need to strike the right balance between allowing for access to medicines and ensuring protection of innovative medicines.

Malaysia has a different system of patenting, applying the concept of global and not national exhaustion. So far, the question has not been resolved during negotiations but the EU has proposed a compromise..

Finally, Malaysia does not have a dedicated register to protect GIs, yet its legal arrangement is TRIPS-consistent, providing for additional protection for spirits and wines. Creating such a specific system – similar to Singapore's - will have a significant cost in terms of resources required, and once created, the register would apply to all trade partners, without reciprocity, except in the EU. Subsequently, Malaysia will need time to assess its potential gains from the establishment of an EU-style register and whether it would be beneficial on a long-term basis.

Competition

Malaysia has introduced a new Competition Act, effective since January 2012. However, it reflects an approach that is very different from European competition law, focusing mostly on antitrust matters while the EU's is offering an overarching vision, addressing transparency issues and subsidies. Considering the recentness of the legislation, Malaysia will require some time to figure out its efficiency before settling on a final competition chapter with the EU. In addition to those areas that are new to negotiations for Malaysia, some other chapters may be more difficult to conclude due to national sensitivities.

Services

Services will be crucial for the EU, as foreign ownership in Malaysia is capped in most subsectors. Key areas would be business, financial, communication and transport services. The Malaysian government has taken several unilateral initiatives such as opening 27 subsectors in 2009 in the field of computer and related services, health and social services, tourism, transport, rental and leasing, supporting and auxiliary transport and business services, with another 18 subsectors to be opened in 2012.²⁸ Even if these commitments are unilateral and do not automatically imply that Malaysia will agree on enshrining them within an international

²⁷ *Ibidem.*

²⁸ <http://myservices.miti.gov.my/web/guest/autonomous>

instrument, it seems to set a clear trend and the Malaysian authorities will have to take these commitments into account while negotiating trade agreements with third partners.

The issue of opening the service sector is a very sensitive one, as an opening to a 100% foreign ownership implies the end of the policy of positive discrimination of the Bumiputras, which ensures a mandatory 30% Bumiputras ownership for services, a rule that has already been withdrawn for manufactures. This sensitivity was reflected in the need felt by the Malaysian authorities to precise that their 27 subsectors liberalised in 2009 were sectors in which the Bumiputra were not really present.

The EU requested to discuss several areas such as postal and mail services, maritime services and telecommunication. It also brought up financial and professional services, such as legal services and architecture, both more sensitive to Malaysia. Discussions may heat up if the EU sets too many country exceptions to opening up individual EU service sectors, as Malaysia feels that once it opens a sector, it does so entirely. Therefore, the idea of excluding several EU Member States, depending on the sector, may not be accepted easily by the Malaysian counterpart.

The presence of the Malaysian government in the service sector will not facilitate the talks, as they will be more reluctant to compromise.

Palm oil

Malaysia's key offensive sector is palm oil. Indeed, the sector has great significance for its economy and the EU is the second export destination for that product, after China. Negotiations on the liberalisation of palm oil are still ongoing. Outside the FTA process, Malaysia has raised concerns about the sustainability criteria in the RED Directive. Using 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. This qualification will have an impact as the EU Renewable Energy Directive (RED) allows granting tax credits to renewable fuel sources when the sustainability criteria of at least 35% less greenhouse gas emissions than traditional fossil fuels, is met. Emitting only 19% less greenhouse gas, palm oil biofuel made in Malaysia cannot qualify for the tax credit and Kuala Lumpur has thus criticised the directive as arbitrary, even threatening to bring the case before the WTO. Without the tax credit, Malaysian biofuel is unable to compete with the European rapeseed oil biofuel, which qualifies for the tax credits as it emits 38% less greenhouse gas than traditional fossil fuels. Moreover, the presence of the government and state in the sector through equity ownership will increase the pressure and reluctance to compromise.

Automotive Sector

The automotive sector will be Malaysia's first defensive interest. Indeed, the local market is very well protected by import duties and excise duties, approved permits, sales taxes and other

NTBs. The local automotive industry is a national symbol of pride and has given birth to two Malaysian cars: the Proton, created in 1983, and Perodua, created in 1993. Perodua, having gained important market share, is partly owned by Daihatsu, a subsidiary of Toyota, which means better R&D funding and better management of problems linked to economies of scale. After the conclusion of an MEUFTA, the Malaysian car industry will have to meet international standards, which is seen in Malaysia as an efficient way to increase its competitiveness in the sector. Looking at the economic partnership agreement Malaysia concluded with Japan in 2005, it is likely that Kuala Lumpur will accept to reduce at least tariffs in the sector. Concessions to be made on other NTBs such as excise duties or sales taxes remain however to be seen.

Sustainable Development

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 hence should comply with its social and environmental standards.

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 be concluded easily. 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. Negotiations are on hold due to ongoing policy reviews on the Malaysian side and the recent elections. Negotiations on investment protection will commence once the Commission has obtained the mandate foreseen for the second half of 2013 and as soon as Malaysia is again ready to take some important political decisions in the aftermath of the recent general elections.

6.2 Status of the negotiations with Vietnam

The EU started its negotiations on the Vietnam-EU FTA (VEFTA) in June 2012, shortly after a renewed Partnership and Cooperation Agreement (PCA) was concluded by the two partners. The negotiations aim at reaching a comprehensive agreement covering not only tariff issues but also NTBs, public procurement, regulatory issues (like Sanitary and Phytosanitary measures, SPS), competition, services and sustainable development.²⁹ Currently, only 38% of the Vietnamese exported goods enter the EU duty-free under MFN treatment and another 14.5% are eligible for this under the EU GSP.

²⁹ European Commission, "Overview of FTA and Other Trade Negotiations", updated on 14 January.

So far, three rounds of negotiations have taken place. The first one in Hanoi in October 2012, the second one in Brussels in January this year and the third one in April in Ho Chi Minh City. All issues have been discussed, including inter alia foods and services, investment, intellectual property, TET, SPS, government procurement, trade and sustainable development.³⁰ As Vietnam needs to address further domestic reforms, the talks might however turn out to be complex on several issues.

Vietnam is only the 5th partner of the EU in ASEAN, with Hanoi mostly exporting manufactured articles (41,1%), machinery and transport equipment (29%), food and live animals (18,6%), while importing machinery and transport equipment (47,2%), chemicals or related products (16%) and manufactured goods (12,3%). In the past, Vietnam faced several anti-dumping duties, notably on bicycles and leather footwear.

6.2.1 Key topics

The agreement aims at tariff elimination for 90% of the products, which will mainly help the EU exporters of the many products that are currently protected in Vietnam by high tariffs, such as cars, machinery and automatic appliances, steel, chemicals and pharmaceuticals, food and alcoholic beverages. Vietnam will probably focus on tariff elimination by the EU for textiles, garments, footwear and food.

As for services, equity participation caps should be addressed by the EU negotiators, especially in the banking sector. Enforcement of IPR commitments, transparency of tendering procedures and the introduction of protections for GIs should also be addressed.

Unlike Singapore, Vietnam does not have an efficient competition policy and state-owned enterprises (SOEs) are currently absorbing most of the available credit without producing proportional growth and employment. Negotiating a Competition chapter with the EU may well help Vietnam's government to push for more commercially-oriented SOEs.

On issues related to customs and trade facilitation, technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS), the EU will pursue commitments that go beyond what Vietnam already agreed to at the WTO level. Furthermore, the aim is to insert a comprehensive sustainable development chapter in the agreement.

³⁰ http://www.aseanaffairs.com/vietnam_news/trade/vietnam_eu_trade_talks_begin

6.3 Implications of the EUSG FTA for a future EU-ASEAN FTA

6.3.1 The EU's view: a future model

The EUSG FTA is a starting and turning point for future negotiations with other ASEAN countries. Taken into account that it covers every WTO+ aspect of trade, the EUSG FTA can be considered as a benchmark, if not a model, for future negotiations with other ASEAN countries. The temptation is even stronger than in the case of the EUROK FTA since, unlike South Korea, Singapore is a proper ASEAN member and therefore the EUSG FTA will have impact when a region-to-region FTA will be under discussion. The European Union clearly inserted elements in the agreement, such as the chapter on public procurement and sustainable development, that are less relevant to Singapore, only with due regard of future negotiations and the precedent the EU thus created. The EUSG FTA not only provides a strong baseline but also reflects the EU's expectations in sensitive fields, hence allowing ASEAN member states to be better prepared when entering negotiations with their European partner.

On the EU side, there is a clear willingness to use the text as a model, especially for the norms it puts into place in trade in services, investment, public procurement or sustainable development. Yet, the near absence of tariffs and the high quality of Singapore's regulations clearly facilitated the process of negotiations, a situation which will not be possible to reproduce in negotiations with other ASEAN members. The EU has to keep in mind that its other Southeast Asian trade partners may neither be as willing nor able to liberalise their markets according to the Singapore model. Even in the regional context of the ASEAN Trade in Goods Agreement (ATIGA), Singapore liberalised its market more than other ASEAN countries such as e.g., Malaysia, which only opened 60-65% of its market. Moreover, the internal agenda of the individual ASEAN countries will be a key criterion, like in South Korea where the FTA negotiations helped pushing for the modernisation of the service sector. On the one hand, no FTA is possible without an internal reform agenda, but on the other hand, internal resistance can also make it impossible to reach an agreement, especially on certain chapters.

6.3.2 What can we learn on specific issues?

As mentioned, one of the reasons that made Singapore such a good candidate for a first bilateral FTA was its previous demonstration provided by the US-SG FTA that it could deliver on a wide range of issues. As far as other ASEAN countries are concerned, the track record is less encouraging as their previously negotiated trade agreements are much more shallow or as, occasionally, such negotiations were stalled as in the case of the US-Thailand FTA.³¹ Mostly, only tariffs are addressed and sensitive sectors are excluded, which implies that many of the topics that are crucial to the EU have never been discussed in the context of an FTA negotiation by the other ASEAN countries.

³¹ On this issue, see Pupphavesa, Cuyvers, Chaisrisawatsuk. and De Lombarde, "Negotiating the Thailand-US Free Trade Agreement".

Areas like market access for investment and services or public procurement are (and will be) very important in the FTA negotiations with Malaysia and Vietnam. Investment protection, however, should not be a tough issue. Some country-specific questions may arise, like these relating to spirits or halal requirements for Muslim countries³², but following the EU's logic, no good can be left out and all should be included in a final agreement. The addition of "green aspects" in the EUSG FTA, such as the fourth NTBs annex or the accent on green growth, will probably be expected from other ASEAN partners as well.

Regarding public procurement and IPRs, the discussions with other ASEAN countries will probably not follow the path left by Singapore, but risk to replicate the EU-India FTA negotiations. Indeed, while dealing with New Delhi, the EU was already forced to lower its expectations on public procurement, taking for instance into consideration India's determination – as is the case with many developing countries – to protect its domestic 'infant' industries. Most ASEAN countries do not present the same level of existing IPRs regulations as the European Union and therefore, the IPR chapter may become a solid bone of contention. In comparison, negotiations on GIs should generally be easier, considering that several ASEAN countries have GI systems in place with similar features as the EU's. GI protection in the ASEAN countries could have a very positive impact allowing to "revitalise and help preserving rural regions, ethno-cultures and skills, increase environmental quality and bio-diversity".³³ The precedent set by the EU with Singapore will thus be very helpful as it can not only serve as a model but also allow ASEAN countries to witness the consequences of establishing an EU-style register on Singapore's economy.

In the manufacturing and agricultural sector, the EUSG FTA will not be of great help to European and Asian negotiators. On the one hand, both South Korea and Singapore do not have a strong agricultural sector and thus avoided lengthy discussions on the topic. Nevertheless, with due consideration of the economies of the other ASEAN countries, agriculture is not expected to become a difficult issue for future negotiations (only poultry in Thailand can possibly raise attention). It would be less surprising if Asia would become defensive, as the EU is the world first exporter of agricultural products.

On the other hand, concerning manufacturers, tariff elimination was easily finalised with Singapore as the country only had six tariff lines. The other ASEAN countries, however, have more tariff lines and higher tariffs to consider, and therefore have more leverage. Talks on sanitary and phytosanitary (SPS) measures should also lead to consensus as problems with

³² For instance, in Malaysia, the halal requirements that apply only to meat and meat-products are stricter than in some other Muslim countries.

³³ Wattanapruittipaisan, "Trademarks and Geographical Indications: Policy Issues and Options in Trade Negotiations and Implementation".

Asian countries are more related to food quality than to divergence in terms of norms. What will be key is the establishment of common food safety standards.

Finally, while Singapore had no car industry, the EUSG FTA does contain provisions on automotive standards. The automotive industry is a very sensitive sector in Europe and the EU needed to introduce specific provisions to serve as a model for future negotiations with the other ASEAN countries. Not many ASEAN members are representing an economic threat to the EU's automotive industry and therefore, issues relating to that sector should not become the main hurdle in negotiation with ASEAN members (with the exception of Malaysia for which the local automotive industry is one of the most important sectors and a symbol of national pride, protected by many NTBs).

7. Conclusions and issues for further consideration

7.1 Regional Dynamics

The TPP negotiations are moving forward, regardless of any EU action. In many aspects this is not a disadvantage, as the US has many requests similar to these of the EU. Two different counterparts requesting the same effort makes it easier to gain field. Only with respect to GIs is the US moving in an opposite direction in their negotiations. According to ASEAN representatives, this is not a zero-sum game, as the advantages acquired by one will also be given to the other. For instance, in the field of public procurement, the question is whether to open them to third partners and not to which third partner it should be opened. The EU also needs to seize the momentum created by the unwillingness of ASEAN nations to be left behind once the first FTA with the EU has been signed.

7.2 Non-trade issues in trade

Since the Lisbon Treaty entered into force in 2009, the European Parliament (EP) has acquired new competences in trade. The European Parliament has now to assent every trade-related agreement concluded by the European Union. As the EP previously stated, no FTA will go through the Parliament without the third country prior signing a Partnership and Cooperation Agreement. Therefore, particular issues unrelated to trade may be of great importance, such as human rights, the death penalty or environmental matters. Singapore is very close to conclude its PCA negotiations with the EU and Vietnam already wrapped them up in June 2012. However, discussions with Malaysia are still on-going. Dynamics in the EP may change with the 2014 elections and the International Trade Committee may become more politicised than was the case before.

The EU-SG FTA, has so far not provoked any clash within the European Parliament. However, as it was the case with South Korea, a parallel agreement on safeguard regulations, even if the sectors that it would address are still uncertain, would be politically desirable to get the FTA

easily adopted in the EP plenary. Disagreements will probably become more salient when Vietnam and Malaysia will be discussed.

Under the Lisbon Treaty, trade is part of the EU's external policy and thus required to follow the objectives established within that framework. Trade is a foreign policy tool that the EU uses to export its core societal norms to third partners, yet not always in a coherent way. Indeed, why would the EU complain about death penalty in Singapore and Japan without raising the issue in the framework of talks with the United States? The answer has to be found elsewhere: the economic importance of the partner, the potential impact of such statements or the strategic issues then at stake.

With the financial and economic crisis which the EU is presently facing, it has an even bigger incentive to conclude FTAs with new partners. However, questions arise as to whether the EU can still bear the costs of such a normative policy. Has the EU lost too much leverage and economic attractiveness to hope for compliance from its partners? The need to gain access to new growing markets may require turning off its usual criticisms. The question is, however, to what extent this should be done and what is the subtle balance the EU must strike?

7.3 A model? Singapore, the exception in ASEAN

A model "EU-Singapore" FTA to be sold off the shelf to the rest of ASEAN and Asia is wishful and wistful thinking. The ultimate target of an EU-ASEAN FTA which is in the interest of both regions, will follow from using the EUSG FTA as a key building block within a wider framework to establish bilateral FTAs that are congruent and which can be knitted together as a single entity over time. The pace will be largely set by that of ASEAN's own economic and political integration. The region now aims at becoming an ASEAN Economic Community with free movement of goods, services, investments and skilled labour by 2015. However, as just another ASEAN+1 PTA, an EU-ASEAN FTA will not go beyond the lowest common denominator of ASEAN member states policy preferences, which is mirrored in the ASEAN acquis.³⁴

With the creation of the ASEAN Economic Community in 2015 it will be timely for the EU and ASEAN to initiate the discussion on how to combine the bilateral FTAs between ASEAN countries and the EU. By then, and from this perspective, bilateral negotiations between the EU and individual ASEAN countries should have progressed as far as possible and with as many ASEAN partners as possible. Indeed, the bigger the critical mass the EU creates, the better the final deal. For instance, a common set of legislation regarding rules of origin, thanks to bilateral negotiations between the EU and individual ASEAN members, could be very helpful in the building of a single market. However, the EU needs to remain realistic about ASEAN's ambitions in terms of liberalisation within the Asian bloc. Even if better integrated on paper, what will be the concrete result?

³⁴ On this issue, see Kleimann "Beyond Market Access? The Anatomy of ASEAN's Preferential Trade Agreements".

In this respect it is important for the EU to fully take into account that in as much as it wants to go beyond the ASEAN acquis, this mostly will materialize in the codification of cooperation provisions in its bilateral FTAs that are linked to the establishment of strong institutional mechanisms and can allow the development of economic integration disciplines in the future. One should realize that such cooperation provisions “with an institutional backbone”, will often create provisions in the future EU FTAs with ASEAN countries which will lead to commitments from the individual partner countries going beyond where the partner country for various reasons is willing or able to go. In turn, it will be these provisions in future FTAs with ASEAN countries which often will increase the number of common denominators in the bilateral FTAs and allow coverage and depth in a future EU-ASEAN FTA.

The road that leads to an EU-ASEAN FTA is evidently still long and uncertain, raising questions such as “How ASEAN will evolve and how strong the economic community will be it establishes?”, “How will the EU approach negotiations with other ASEAN countries? Will it lower - have more realistic - expectations after creating a precedent with the EU-Singapore FTA that reflects the exceptional nature of Singapore within ASEAN and the region at large?”, and last but not least, “How will trade dynamics in Southeast Asia evolve, and in which direction will it push ASEAN member states?”. All those questions will probably find an answer in the next couple of years, but it is more than likely that these answers will be the EU’s favoured ones.

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