The Evolution of EU-ASEAN Relations: Legal Framework and Policy Change

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ABSTRACT

This article looks at the evolution of EU-ASEAN relations, covering legal framework and policy change. By examining major legal instruments, it illustrates how the legal framework governing the EU-ASEAN relation becomes deeper by adding Cooperation Agreements and Partnership and Cooperation Agreements with individual ASEAN member countries to the 1980 EC-ASEAN Cooperation Agreement. It also exposes the dynamic nature of EU-ASEAN relations spurred by the Global Europe strategy and highlights the EU’s ambition to play a greater role in South-East Asia through its Partnership and Cooperation Agreements with individual ASEAN member countries. It then assesses the shift from region-to-region approach to individual ASEAN member country approach and probes into future directions of EU-ASEAN relations.

Keywords: EU-ASEAN Relations, Partnership and Cooperation Agreement, Essential Element, Global Europe, Interregionalism
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Politically, the agreement with Indonesia will serve as a milestone for PCAs with other countries in the region. The PCA will allow the EU to assume greater responsibility and influence in a region which traditionally tends to be orientated towards and influenced by China and the US. By virtue of the PCA, the EU will promote European values and enhance concrete cooperation in a wide range of areas of mutual interest. Finally, the Agreement will be regarded as a positive example for a partnership of civilizations, given that Indonesia is the third most populous country in Asia and the largest Muslim country in the world.

-European Commission, COM (2009) 492 final-

I. INTRODUCTION

In 2012, the European Union (EU) and the Association of Southeast Asian Nations (ASEAN) held the 19th ASEAN-EU Ministerial Meeting in Bandar Seri Begawan, Brunei Darussalam, and the EU and ASEAN celebrated the 35th anniversary of EU-ASEAN Dialogue Relations. The two sides stressed the EU’s early accession to the Treaty of Amity and Cooperation in Southeast Asia (TAC), after all the High Contracting Parties ratified the Third Protocol Amending the TAC, which provides the legal basis for accession of regional organisations.¹ The two sides referred to the Nuremberg Declaration on an EU-ASEAN Enhanced Partnership which underlines the contributions of regional integration to sustainable peace, security and prosperity.² At the 2012 Ministerial Meeting, the two sides also reiterated the “importance of the bilateral FTAs between individual ASEAN Member States and the EU as ‘building blocks’ for a region-to-region FTA”.³ On its face, the two sides seem not to have given up on the region-to-region approach; in practice however, most of the efforts have shifted to bilateral FTAs.

The EU is widely regarded as the most successful example of regional

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¹. Co-Chairs’ Statement of the 19th ASEAN-EU Ministerial Meeting, Bandar Seri Begawan, Brunei Darussalam (Apr. 26-27, 2012). The TAC is a non-aggression and cooperation agreement signed in 1976 by ASEAN founding member countries aiming to “promote perpetual peace, everlasting amity and cooperation among their peoples which would contribute to their strength, solidarity and closer relationship”. The accession to the TAC is a pre-requisite for ASEAN membership. The Contracting Parties to the TAC cover all ten ASEAN member countries and non-member countries, such as China, India, Japan, South Korea, Russia, Australia and the United States. When the EU applied for the accession to the TAC, the TAC was amended in order to provide a legal basis for regional organisation to join it. With the entry into force of the amendment, the EU finally signed the TAC on 12 July 2012.

². European Commission, Nuremberg Declaration on an EU-ASEAN Enhanced Partnership, Nuremberg, Germany, 1st pmbl. (Mar. 15, 2007).

³. Co-Chairs’ Statement of the 19th ASEAN-EU Ministerial Meeting, ¶ 16.
integration, and the ASEAN economic community has explicitly taken
the EU as a role model. At the same time, the EU is a keen proponent
of interregionalism targeting ASEAN (in addition to Mercado
Común del Sur, the Mercosur). But the EU’s engagement with
ASEAN is not limited to economic relations. Politically, the EU (then:
the EEC) was one of the first dialogue partners of ASEAN. The EU,
via the Permanent Representatives Committee, established formal
relations with ASEAN in 1977 and signed a Cooperation Agreement
with the member countries of ASEAN in 1980. It also acceded
to the TAC in Phnom Penh on 12 July 2012. These efforts are
reflective of the EU’s ambition to act beyond the European
continent and to play a bigger role in international political and
economic relations.

At this point, it suffices to note that EU FTAs tend to be
comprehensive and to pursue WTO-plus agreements, while
ASEAN FTAs focus mainly on the elimination and reduction of
tariff barriers and touches slightly upon foreign
direct investments, trade in services and intellectual property
rights. It should also be pointed out that the potential gains accruing
to ASEAN member countries from the EU-ASEAN FTA may amount
to two percent of GDP by 2020, whereas the benefits the EU enjoys
are quite limited. At the Asia-Europe Foundation in 2002, Pascal
Lamy, then the EU trade commissioner, seemed to agree that
there was a strong case for EU and Singapore to strengthen
their economic and political ties through an FTA. However,
subsequent informal discussions raised the fear that the EU would
target a single, high-income, small economy and alienate it from other

4. The success of EU-ASEAN interregionalism is highly contested.
Julie Gilson argues that EU-ASEAN relationship is pursued partly
through region-to-region ministerial meetings and partly under
the EU-ASEAN Cooperation Agreement. She also argues that
the owing to the central role of ASEAN, Asia-Europe Meeting, which
has become a new form of interregionalism, came from the
Singaporean Prime Minister Goh Chok Tong. See Julie Gilson,
New Interregionalism? The EU and East Asia, 27(3) J. EUR. INTEGRAT.
307, 311-12 (2005). By contrast, David Camroux argues that ‘the
EU may ‘talk’ interregionalism but it essentially ‘walks’ bilateralism and
multilateralism’. Building upon the idea of “two-level game” as advanced
by Robert Putnam and the third intra-regional level added by Lee
Ann Patterson and Hans Günter Deutsch, he also argues that
interregionalism only adds a minor fourth level in international
relations bargaining. See David Camroux, Interregionalism or Merely a
Fourth-Level Game? An Examination of the EU-ASEAN Relationship,
27(1) E. ASIA 57, 72 (2010).

5. Lay Hwee Yeo, Political Cooperation between the EU and ASEAN: Searching for
a Long-Term Agenda and Joint Projects, in EU-ASEAN: FACING ECONOMIC
GLOBALISATION 45, 46 (Paul J. J. Welfens et al. eds., 2009).

6. Cooperation Agreement between the European Economic Community and Indonesia,
Malaysia, the Philippines, Singapore and Thailand — member countries of the
Association of South-East Asian Nations, 1980 O.J. (L 144) 2 [hereinafter the
1980 Cooperation Agreement].

and Cooperation in Southeast Asia, Phnom Penh (July 12, 2012).

8. Ludo Cuyvers, An EU-ASEAN Free Trade Agreement: Reflections on Issues, Priorities,

9. Houssein Boumellassa et al., Economic Impact of a Potential Free Trade Agreement (FTA)
between the European Union and ASEAN 2 (CEPII-CIREM final report, 2006).
ASEAN member countries, resulting in the adoption of the region-to-region approach.\(^{10}\) The great expectations in advance of the EU-ASEAN FTA in 2007 proved to be unfounded, and thus, due to stagnation in the negotiation process and the realisation of limited benefits from the EU-ASEAN FTA, the EU shifted focus to forging an EU-Singapore FTA in 2009.

The return of the EU to a focus on approaching individual member countries raises two questions. The first is the relevance of the EU to the process of ASEAN regionalisation, and strengthening the capacity of ASEAN as a negotiator. Is there a solid basis to the EU’s ambition to counterbalance the influence of the United States and China in Southeast Asia, as stated by the European Commission in its explanatory note to the framework agreement of partnership and cooperation between the EU and Indonesia? The second question relates to whether this change implies that the EU is in retreat from interregionalism when it comes to dealing with ASEAN. In answering these two questions, this article aims to examine the legal framework governing EU-ASEAN relations and the change in EU trade policy toward ASEAN, to evaluate progress in EU-ASEAN FTA talks, and to explore possible directions of future FTA negotiations between the EU and individual member countries of ASEAN.

With this aim, this article will investigate the evolution of the legal framework governing EU-ASEAN relations and the policy shift in the past decades. By taking account of the latest legal framework, the article contributes to academic literature on EU-ASEAN relations by offering a clear understanding of the real nature of legal instruments governing EU-ASEAN relations. It also helps to answer whether the legal framework is capable of sustaining a strong EU-ASEAN partnership – an objective the EU aims to pursue with a view to counterbalancing the power of the US and China. In tracing the latest policy changes, this article enriches the academic debates on EU-ASEAN relations by suggesting possible EU responses to the political situation in Myanmar/Burma. This article also points to the importance of rules of origins, as contained in individual ASEAN member country FTAs with the EU, in addressing the development gap within the ASEAN, and in contributing to regional integration.

As will be seen below, the legal framework has become “thicker” with a three-layered legal framework in place. The first layer from the bottom is the 1980 Cooperation Agreement between the EU and ASEAN which lays down the basic regulatory regime governing EU-ASEAN relations. This layer has been continuously extended to new ASEAN member countries and enjoys the widest coverage. Nine out of ten ASEAN member countries, with the

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exception of Myanmar/Burma, are parties to this 1980 Cooperation Agreement. The intermediary layer is the cooperation agreement between the EU and individual ASEAN member countries. These cooperation agreements were signed before their accession to the ASEAN and might have overlapped with the 1980 Cooperation Agreement when the latter was extended to new ASEAN member countries. The third layer is comprised of recently concluded partnership and cooperation agreements (PCAs) between the EU and individual ASEAN member countries, namely, Indonesia, the Philippines and Vietnam.

In becoming thicker, this three-layered legal framework has also widened in scope and deepened in its commitments. The wider scope and deeper commitments correspond with the EU’s ambition to play a greater role in Southeast Asia; this tendency is most visible in these newly concluded PCAs. In other words, legal instruments are a major vehicle for achieving and sustaining EU policy objectives. With the aims of counterbalancing the influence of the US and China, promoting European values, and contributing to a partnership between civilisations, these PCAs include important elements covering political and security cooperation – a cornerstone of EU external cooperation agreements. The essential element of these PCAs is that they provide evidence of the commitment of the EU to the promotion of European values, such as human rights and democracy. The participation of civil society helps to foster stronger partnerships between the people of two sides. Whereas the third layers have wider scope and allow for deeper commitments, they are narrower in the scope of their application, each being limited to a single ASEAN member country.

In addition to the deepening and widening of process, EU-ASEAN relations have shifted from interregionalism to bilateralism. With the extension of the 1980 Cooperation Agreement to new ASEAN member countries, the legal framework governing EU-ASEAN relations has been consistently applied across all of ASEAN. By virtue of the 1980 Cooperation Agreement, the EU has been able to engage with the ASEAN as a whole. In an earlier stage, when the EU pursued FTA talks with ASEAN, it followed the same region-to-region approach, but soon abandoned that approach. So far, the EU has concluded PCAs with three individual ASEAN member countries; concurrent PCA and FTA negotiations are being undertaken between the EU and other ASEAN member countries. In conferring the negotiation mandate to the European Commission, the Council has set the conclusion of PCAs as a condition for the signing of FTAs. In this way, the PCA may become comprehensive and wide-ranging, while FTAs continue to focus on economic and trade matters.

In this article, I argue that targeting individual ASEAN member countries and setting out corresponding priorities seems to be a good strategy
for the EU; nonetheless, on the ASEAN side, this approach may prevent ASEAN from reaching a consensus on those issues in which they have mutual interests. In pursuing FTA with the EU through individual FTAs, individual ASEAN member countries may weaken and delay the regional building process through integration in the ASEAN Economic Community, which would undermine the centrality of the ASEAN. In addition, the turn of the EU to individual PCA/FTA negotiations with ASEAN member countries may also distance the EU from the ASEAN regionalisation process. Whereas this policy shift may be partly excused by the limited capacity of the ASEAN to act as a whole, it may undermine the EU’s preference for interregionalism and compromise its ambition to assume greater responsibility in the region.

This article is organised as follows. After this introductory section, Section II examines the major elements of the fundamental legal instrument governing EU-ASEAN relations: the 1980 Cooperation Agreement. Section III records recent developments on EU-ASEAN relations covering the EU-ASEAN FTA talks, partnership and cooperation agreements signed by the EU and individual ASEAN member countries. Section IV then illustrates changes in EU trade policy toward ASEAN dating back to the Lisbon Strategy. Section V will take stock of the progress in EU-ASEAN relations and probe into their future prospects. Finally, a short conclusion summarising the main findings and major arguments will be provided in Section VI.

II. LEGAL FRAMEWORK GOVERNING EU-ASEAN RELATIONS

A. 1980 Cooperation Agreement and Extension Protocols

The 1980 Cooperation Agreement—signed when the EEC had not yet consolidated its internal market and Thailand was not yet a Contracting Party to the General Agreement on Tariffs and Trade (GATT)—set down the basic legal framework governing EU-ASEAN relations and marked the beginning of a new stage of cooperation. The 1980 Cooperation Agreement signals the Parties’ interests in deepening their economic cooperation and trade relations, but remains a declaration of principles and a statement of good and positive intentions without concrete measures and specific commitments. In the Council Regulation concerning the 1980 Cooperation Agreement, the Council not only pointed to the necessity of concluding a cooperation agreement between the Community and ASEAN member countries, but also

11. Yeo, supra note 5, at 47.
12. Joergen Oerstroem Moeller, ASEAN’s Relations with the European Union: Obstacles and Opportunities, 29(3) CONTEMP. SOUTHEAST ASIA 465, 466 (2007).
made it clear that some matters of economic cooperation as covered in the 1980 Cooperation Agreement went beyond the scope of common commercial policy. The Council thus referred to Article 235[308] of TEC, in addition to Article 113[133] for its legal basis. The 1980 Cooperation Agreement contains few substantive commitments and loosely regulates commercial, economic and development cooperation between the EU and ASEAN member countries.

Article 1 of the 1980 Cooperation Agreement provides for the provision of Most-Favoured-Nation treatment (MFN treatment) to each other in accordance with the provisions of the GATT. In essence, this article reiterates their obligations to each other under the GATT. Given that Thailand did not join the GATT until 1982 and that the EEC was never officially a Contracting Party to it, the protocol to the 1980 Cooperation Agreement specifies the scope of application of the MFN treatment in terms of the obligations of the EEC and a Party that is not a Contracting Party to the GATT. Today, the EU has become a Member of the WTO and all ASEAN Members have completed their WTO accession process (the latest being Lao PDR of which the accession decision was adopted by the General Council on 26 October 2012). Legally speaking, the MFN obligation may lose force; nonetheless the 1980 Cooperation Agreement continues to be the foundation of EU-ASEAN relations.

In addition to MFN treatment, the 1980 Cooperation Agreement covers three main themes: commercial cooperation, economic cooperation and development cooperation. The 1980 Cooperation Agreement also provides a very primitive institution. Commercial cooperation, as provided in Article 2 of the 1980 Cooperation Agreement, aims to develop and diversify reciprocal commercial exchanges between the Parties and to eliminate trade barriers with special emphasis on non-tariff or quasi-tariff barriers. Economic cooperation then focuses on the establishment of closer links through investment; the encouragement of technological and scientific progress; opening up of new sources of supply and new markets; and on the creation of new employment opportunities. With respect to development cooperation, the 1980 Cooperation Agreement underlines the importance of the development of ASEAN countries and of the region as a whole with the objective of enhancing the self-reliance and economic resilience of ASEAN,

15. The 1980 Cooperation Agreement, art. 2.1.
16. The 1980 Cooperation Agreement, art. 2.2.
17. The 1980 Cooperation Agreement, art. 3.1.
as well as the well-being of its peoples. A Joint Cooperation Committee, to be convened at least once a year, also operates under the 1980 Cooperation Agreement to promote and review those activities.

The 1980 Cooperation Agreement also makes it clear that, without prejudice to the provisions of the TEC, this cooperation agreement does not affect the powers of the EU member states to conclude economic cooperation agreements with ASEAN member countries. In cases where the provisions of subsequently concluded agreements are incompatible with those contained in 1980 Cooperation Agreement, the former shall prevail. At this stage, the two Parties did not exclude the possibility of new economic agreements being concluded between individual EU member states and ASEAN member countries and superseding the 1980 Cooperation Agreement. However, as it turns out, this has not been the trend of EU-ASEAN relations. Rather, the territorial application of the 1980 Cooperation Agreement was widened through the accession of new ASEAN member countries. Besides, while the EU signs cooperation agreements with individual ASEAN member countries, individual EU member states rarely sign cooperation agreements with ASEAN member countries. Instead, the EU and a few ASEAN members have upgraded several framework agreements on partnership and cooperation.

The 1980 Cooperation Agreement was extended to Brunei-Darussalam in 1985 after Brunei-Darussalam joined ASEAN in 1984. When Vietnam acceded to ASEAN in 1995, this Cooperation Agreement was again extended to Vietnam. In 1997 and 1999, Myanmar/Burma, Lao PDR and Cambodia were admitted into ASEAN. Following the same pattern, the 1980 Cooperation Agreement was again extended to Cambodia and Laos through protocols. Regarding the extension of the 1980 Cooperation Agreement to new ASEAN member states, Cambodia, Laos, Myanmar/Burma, and Vietnam (CLMV), some points deserve further elaboration.

The first point to be made is that the 1980 Cooperation Agreement was not extended to Myanmar/Burma due to its internal political situation.

18. The 1980 Cooperation Agreement, art. 4.1.
19. The 1980 Cooperation Agreement, art. 5.
20. The 1980 Cooperation Agreement, art. 3.3.
22. Protocol on the extension of the Cooperation Agreement between the European Economic Community and Indonesia, Malaysia, the Philippines, Singapore, and Thailand, member countries of the Association of the South-East Asian Nations, to Brunei-Darussalam, 1985 O.J. (L 81) 2.
24. Protocol on the extension of the Cooperation Agreement between the member countries of ASEAN and the European Community to the Kingdom of Cambodia, 2000 O.J. (C 337E) 168; Protocol on the extension of the Cooperation Agreement between the member countries of ASEAN and the European Community to the Lao People’s Democratic Republic, 2001 O.J. (C 240E) 42.
Secondly, in adopting the Council Decisions to conclude the extension protocols, the Council of the EU referred to Articles 133 and 181 in conjunction with the first sentence of Article 300(2) of the TEC as the legal basis.\footnote{European Commission, \textit{Proposal for a Council Decision concerning the conclusion of the Protocol on the extension of the Cooperation Agreement between the European Community and Brunei-Darussalam, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam member countries of the Association of South-East Asian Nations, to Laos}, at 2, COM (2000) 430 final (July 7, 2000); European Commission, \textit{Proposal for a Council Decision concerning the conclusion of the Protocol on the extension of the Cooperation Agreement between the European Community and Brunei-Darussalam, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam member countries of the Association of South-East Asian Nations, to Cambodia}, COM (2000) 423 final (July 6, 2000); The Council Decision to conclude the extension protocol between the EU and Vietnam relies upon the same legal bases, but the relevant article numbers predate the Amsterdam consolidated version and are thus Articles 113 and 130Y. Council Decision 1999/295/EC of 26 April 1999 concerning the conclusion of the Protocol on the extension of the Cooperation Agreement between the European Community and the member countries of ASEAN to the Socialist Republic of Vietnam, 1999 O.J. (L 117) 30.} Article 133 (now, TFEU, Article 207) regulates the common commercial policy and falls within the exclusive competence of the Union. Article 181 (now, TFEU, Article 211) regulates cooperation on development between the EU and its member states on the one hand, and third countries and international organisations on the other. This competence in development cooperation is shared by the EU and its member states. The extension protocols related to both the EU’s exclusive competence and shared competence and are thus mixed agreements. Thirdly, before the entry into force of these extension protocols, the EU signed cooperation agreements individually with Vietnam, Lao PDR and Cambodia.\footnote{Cooperation Agreement between the European Community and the Socialist Republic of Vietnam, 1996 O.J. (L 136) 29 [hereinafter EU-Vietnam CA]; Cooperation Agreement between the European Community and the Lao People’s Democratic Republic, 1997 O.J. (L 334) 15 [hereinafter EU-Laos CA]; Cooperation Agreement between the European Community and the Kingdom of Cambodia, 1999 O.J. (L 269) 18 [hereinafter EU-Cambodia CA].} Again, the legal relationship between the 1980 Cooperation Agreement and the individual cooperation agreements signed between the EU and these three countries needs to be clarified. A clause stating that the respective extension protocol and the resultant application of the 1980 Cooperation Agreement to these three countries should not affect the application of their individual cooperation agreements with the EU was thus inserted in the extension agreement.\footnote{EU-Vietnam CA, art. 3; EU-Laos CA, art. 3; EU-Cambodia CA, art. 3.}

**B. Cooperation Agreement between EU and Individual ASEAN Member Countries**

Prior to the extension of 1980 Cooperation Agreement to Vietnam, Laos and Cambodia, these three ASEAN member countries concluded individual
cooperation agreements with the EU. As noted above, the legal status of each remained intact as the 1980 Cooperation Agreement was extended to these three countries. Compared to the rudimentary 1980 Cooperation Agreement, the EU’s cooperation agreements with these three ASEAN member countries contain wider scope and deeper integration commitments and are more in line with the model of EU third-generation cooperation agreements. Cooperation on trade and commerce, economic and development cooperation continue to form the backbone of these three agreements; nonetheless, some new elements are also visible: “essential elements”; environmental cooperation; drug control; and a more developed institutional design.28 The following will take the EU-Vietnam CA as an example as it is the first of the three cooperation agreements, which greatly resemble one another.

1. **Basis and Objectives**

   The concept of essential elements is introduced into the EU-Vietnam CA. In the very first article, the EU-Vietnam CA pronounces that the cooperation between the Parties is built on the basis of respect for human rights and democratic principles, which also constitute essential elements of the cooperation agreement.29 This clause is generally referred to as a human rights clause and acknowledged as one of the major characteristics of EU external economic agreements.30 Nonetheless, the EU-Vietnam CA does not provide any mechanism for imposing sanctions in case the essential element is violated. In light of this defect and in response to violation of human rights and democracy by the Vietnamese government, the European Parliament, in 2008, passed a resolution on “Democracy, human rights and the new EU-Vietnam Partnership and Cooperation Agreement”.31 The Parliament called on the European Commission and the Council to – in addition to the inclusion of a clear human rights and democracy clause accompanied by a mechanism for its implementation – raise the need for the Vietnamese government to stop the “systematic violation of democracy and human

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28. According to former Minister/Deputy head of EU delegation to Japan, Michael Reiterer, 1980 Cooperation Agreement should be regarded as the second-generation agreement since it covers only trade and economic aspects, but not the political and security or democratic promotion or human rights protection. In this view, the PCAs signed between the EU and individual ASEAN member countries fall within the scope of the third generation agreements in light of the essential elements and fundamental elements as contained in the agreements. See Michael Reiterer, *Interregionalism as a New Diplomatic Tool: The EU and East Asia*, 11 EUR. FOREIGN AFF. REV. 223, 232 (2006).

29. EU-Vietnam CA, art. 1.


rights” before finalising the partnership and cooperation agreement.32

The EU-Vietnam CA also speaks of its objectives to promote bilateral trade and investment; to support sustainable economic development of Vietnam and improve living conditions of its poor population; to help Vietnam to restructure its economy and transit towards a market economy; and to support environmental protection and sustainable management of natural resources.33

2. **MFN Treatment and Trade Liberalisation**

Since this cooperation agreement was concluded when Vietnam had not yet joined the WTO, it contains some obligations which mirror the WTO Agreement. The EU and Vietnam confer on each other MFN treatment in accordance with provisions of the GATT 1994, excluding those advantages granted on the basis of a customs union, free trade area or an area of preferential treatment.34 Regarding trade and commercial cooperation, the Parties aim both to develop and diversify their commercial exchanges and to improve access to each other’s markets.35 To improve the terms of market access, they commit to granting each other the most favourable conditions for imports and exports and, at the same time, to explore ways to eliminate trade barriers, notably, non-tariff barriers.36 Similar to Article XX of the GATT 1994, the EU-Vietnam CA also provides a general exception for the protection of public health and morals, environment, animal and plant life, and essential security. It then cautions that these exceptions should not be taken as constituting arbitrary and unjustifiable discrimination, or as a disguised restriction on trade.37

The Parties then go beyond trade in goods and touch upon intellectual property rights and investments. Nonetheless, MFN treatment is not applicable in these aspects. The Parties also aim to ensure adequate and effective protection of intellectual property rights and, to this end, the EU should provide its counterpart with technical assistance.38 Discrimination on intellectual property rights should also be avoided and consultations held if problems affecting trade relations arise.39 The Parties also aim to encourage further investment by establishing a favourable climate for private investments, in particular the conditions for transfer of capital and exchange

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32. Id. at ¶ 3.
33. EU-Vietnam CA, art. 2.
34. EU-Vietnam CA, art. 3.
35. EU-Vietnam CA, art. 4.1
36. EU-Vietnam CA, art. 4.2.
37. EU-Vietnam CA, art. 4.3.
38. EU-Vietnam CA, art. 6.1.
39. EU-Vietnam CA, art. 6.2.
of information. Investment promotion and protection agreements based on principles of non-discrimination of reciprocity between the EU member states and Vietnam should also be encouraged and supported.\footnote{EU-Vietnam CA, art. 5.}

3. Economic Cooperation and Development Cooperation

Regarding economic cooperation, the Parties point to three broad fields: Vietnam’s access to the EU’s know-how and technology; facilitation of contacts between economic operations; and mutual understanding of their economic and social environments.\footnote{EU-Vietnam CA, art. 7.1.} Particular emphasis should be placed on efforts to contribute to Vietnam’s transition to a market economy.\footnote{EU-Vietnam CA, art. 7.2.} In that regard, the EU-Vietnam CA directs the Parties to promote scientific and technological cooperation with a view to fostering the transfer of know-how and technology, and to disseminating information and expertise.\footnote{EU-Vietnam CA, art. 8(a).} This, in turn, is expected to open up opportunities for future economic, industrial and trade cooperation.\footnote{EU-Vietnam CA, art. 8(b).}

In terms of development cooperation, it should be conducted under Regulation (EEC) 443/92\footnote{This Regulation is repealed by Council Regulation (EC) No. 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation, 2006 O.J. (L 378) 41.} which sets out the framework for financial and technical assistance to, and economic cooperation with, Asian and Latin American developing countries. In that regard, actions within Vietnam to enhance regional economic integration are highlighted.\footnote{EU-Vietnam CA, art. 8(b).} Cooperation between the Parties may also be extended to actions adopted in the context of cooperation with other Southeast Asian countries with a special focus on the promotion of intra-regional trade and support for regional projects and initiatives.\footnote{EU-Vietnam CA, arts. 10.2(a), 10.2(b).} In Annex I, the EU also declared that Vietnam would have access to the EU market under the Generalised Scheme of Preferences. The EU and Vietnam also endorsed the idea that environmental protection forms an integral part of economic and development cooperation.\footnote{EU-Vietnam CA, art. 11.1.} In response to the threat drug abuse poses to Vietnamese social and economic development, the EU-Vietnam CA lists a number of areas of cooperation, including seeking for alternative economic opportunities and monitoring trade in precursors of controlled drugs, narcotics and psychoactive substances.\footnote{EU-Vietnam CA, art. 13(2)(c).}
Above all, as the EU-Vietnam CA covers activities which may be defined as a competence shared by the EU and its member states, Article 16 makes it clear that this cooperation agreement does not affect the power of the EU member states to undertake bilateral economic activities or to conclude new agreements with Vietnam. Nevertheless, in Annex I, the EU also declared that, subject to Article 16, the provisions of the EU-Vietnam CA would replace those which are identical to, or incompatible with, those contained in the agreements signed by Vietnam and EU member states.

C. Short Conclusion

At the early stage, the EU-ASEAN relations were mainly governed by the 1980 Cooperation Agreement. With the enlargement of the ASEAN, the scope of its application was extended to the new ASEAN member countries. By virtue of this extension, the EU successfully maintained a region-to-region approach linking all the ASEAN member countries. Further, the 1980 Cooperation Agreement, even after it was extended to new ASEAN member countries, coexists with the cooperation agreement signed between the EU and these individual member countries concerned. We may say that the 1980 Cooperation Agreement constitutes the backbone of EU-ASEAN relations and helps to preserve the spirit of region-to-region approach. At this stage, the legal obligations arising from the 1980 Cooperation Agreement or cooperation agreements between the EU and individual ASEAN member countries relate mainly to MFN treatment. While the Parties touched upon tariffs and non-tariff barriers, aggressive trade liberalisation was not their main concern.

The newly concluded cooperation agreements between the EU and individual ASEAN member countries can be categorised as third-generation agreement in light of the essential elements contained therein. The inclusion of essential elements suggests that the EU is trying to bring its engagements with ASEAN more in line with its practices in external economic agreements and reflects the EU’s value preference to promote rule of law, consolidate democracy and respect human rights. Whereas these cooperation agreements include an essential element of the respect for human rights and democratic principles, they are not always equipped with sanction mechanisms. For example, the EU-Vietnam CA does include respect for human rights and democratic principles as essential elements; nonetheless, it does not provide any sanction mechanism for the violation thereof. In contrast, the EU-Laos CA and EU-Cambodia CA, in Article 19, do provide a sanction mechanism for its non-execution.

50. EU-Vietnam CA, art. 16.
If either Party considers the other Party to have failed to fulfil an obligation under this cooperation agreement, it may take appropriate measures. Before taking the measures, except in an urgent event, the aggrieved Party should supply the relevant information to the Joint Committee with a view to reaching a mutually acceptable solution. The EU-Laos CA also instructs the aggrieved Party, in deciding on appropriate counter-measures, to give priority to the measures least disruptive of the proper functioning of the agreement, and to immediately notify the Joint Committee. The consultation mechanism as contained in the agreement may also be initiated in case of the adoption of appropriate measures. Annex I clarifies the meaning of “cases of special urgency” and “appropriate measures”. The term “cases of special urgency” is defined as “cases of the material breach of the Agreement by one of the Parties” which consists in: “repudiation of the Agreement not sanctioned by the general rules of international law” and “violation of essential elements of the Agreement set out in Article 1”. Annex I also qualifies the “appropriate measures” to be those taken in “accordance with international law”. Therefore, in cases of repudiation of the EU-Laos CA and EU-Cambodia CA not sanctioned by general rules of international law or in opposition to human rights or democracy may trigger the initiation and adoption of appropriate measures. However, to be “appropriate” those measures should be in conformity with international law and the Party against which the measures are taken may avail itself of the dispute settlement mechanism under the auspice of the Joint Committee by requesting for consultation.

III. FRAMEWORK AGREEMENT ON PARTNERSHIP AND COOPERATION

Starting in 2004, just ahead of the EU-ASEAN FTA talks, the Council authorised the European Commission to negotiate framework agreements on partnership and cooperation with Thailand, Indonesia, Singapore, the Philippines, Malaysia and Brunei. Subsequently, in 2007, the Council decided to extend its mandate to Vietnam and also authorised the European Commission to initiate PCA negotiations with Vietnam. As of 1 December 2012, the EU has concluded PCA negotiations with three ASEAN member

51. EU-Laos CA, art. 19.1; EU-Cambodia CA, art. 19.1.
52. EU-Laos CA, art. 19.2; EU-Cambodia CA, art. 19.2.
53. Annex I to the EU-Laos CA, ¶ (a); Annex I to the EU-Cambodia CA, ¶ (a).
54. Annex I to the EU-Laos CA, ¶ (b); Annex I to the EU-Cambodia CA, ¶ (b).
55. Annex I to the EU-Laos CA, ¶ (a); Annex I to the EU-Cambodia CA, ¶ (a).
countries; in chronological order, they are: Indonesia, the Philippines and Vietnam. According to the Commission’s explanatory memoranda, the PCAs will supersede the 1980 Cooperation Agreement and EU cooperation agreements with individual ASEAN member countries, if any, and create a modern framework for bilateral relations.58 These PCAs also contain legally binding commitments on respect for human rights and counter-terrorism obligations, and constraints on weapons of mass destruction. They also touch upon the issue of the Rome Statute of the International Criminal Court.59 The scope of cooperation envisaged in the PCAs stretches further, ranging from environmental issues such as climate change, to energy, science and technology, maritime and air transport.60 They also address issues such as illegal migration, money laundering, illicit drugs, organised crime and corruption. The PCA would constitute a steppingstone and prerequisite for FTAs between the EU and individual ASEAN member countries.61 According to the Commission, the PCAs would allow the EU to assume greater responsibility in Southeast Asia, a region traditionally oriented towards, and influenced by, the US and China. The EU, by virtue of the PCAs, may also promote European values and enhance a wide range of concrete instances of cooperating in their mutual interest.62 It should thus be noted that the PCA is not merely economic in nature but also an instrument for the EU to pursue its wider external policy goals on the international scene.

Since the EU-Indonesia PCA is the first of these three PCAs, the following analysis focuses on the EU-Indonesia PCA. The EU-Indonesia PCA, in addition to conventional issues, expands on the concept of essential elements, strengthens the institutional framework, and touches upon a number of wider issues, such as political and security dialogue, justice and security cooperation, civil society, and migration. The analysis is built upon the existing literature on the 1980 Cooperation Agreement and cooperation agreements between the EU and individual ASEAN member countries, and investigates the expansion of the coverage of the legal framework governing the EU-ASEAN relations. In other words, it explores those elements included in the PCAs and illustrates the evolution of these agreements, starting with the 1980 Cooperation Agreement, via these cooperation agreements signed by individual ASEAN member countries, to the more

59. Id.
60. Id.
61. Id.
62. Id.
recent PCAs.

A. Political Dialogue and Security Issues

The EU-Indonesia PCA firstly declares the general principles underpinning the PCA and speaks of its aims regarding cooperation. It then addresses the political and security dialogue, conventional trade and investment issues, and cooperation in other sectors. The Parties express their respect for democratic principles and fundamental human rights, as enshrined in the UN Declaration of Human Rights and other international human rights instruments and agree that this element constitutes an essential element of the PCA.63 The Parties then confirm their shared values as expressed in the UN Charter, their commitment to sustainable development, including addressing the challenges of climate change and realising the Millennium Development Goals, and to the Paris Declaration of 2005 on Aid Effectiveness, and their attachment to principles of good governance and rule of law.64

With respect to political and security dialogue, the EU-Indonesia PCA firstly addresses non-proliferation,65 legal cooperation (in relation to crimes of concern to the international community as a whole)66 and combating terrorism,67 it also deals with relevant issues, such as migration,68 organised crime and corruption,69 illicit drug70 and money laundering71 under Title V of cooperation in other sectors.

The EU-Indonesia PCA firstly underlines the threat to international stability and security posed by weapons of mass destruction and their means of delivery.72 It then directs the Parties to cooperate and to contribute to countering the proliferation of weapons of mass destruction both by ensuring full compliance and effective implementation of their existent obligations under the multilateral disarmament, non-proliferation agreements, or other relevant international legal instruments under the auspice of UN Charter.73 The EU-Indonesia PCA then enshrines this provision as one of its essential elements. It also instructs the Parties to take steps to strengthen their domestic implementation of existing international obligations relating to

63. EU-Indonesia PCA, art. 1.1.
64. EU-Indonesia PCA, arts. 1.2-1.5.
65. EU-Indonesia PCA, art. 3.
66. EU-Indonesia PCA, art. 4.
67. EU-Indonesia PCA, art. 5.
68. EU-Indonesia PCA, art. 34.
69. EU-Indonesia PCA, art. 35.
70. EU-Indonesia PCA, art. 36.
71. EU-Indonesia PCA, art. 37.
72. EU-Indonesia PCA, art. 3.1.
73. EU-Indonesia PCA, art. 3.2.
disarmament and non-proliferation, to sign, ratify or accede to other relevant international instruments, and to cooperate towards the establishment of an effective export controls on WMD-related goods – the breach of which invites the imposition of effective sanctions.74

The EU-Indonesia PCA, in Article 4, regulates legal cooperation with a view to enhancing, inter alia, the effectiveness of legal systems, laws and legal institutions. It highlights the importance of mutual legal assistance in criminal matters and extradition.75 It further declares that crimes of concern of international community as a whole should not go unpunished. Those who are accused of such crimes should be brought to justice and duly punished if found guilty.76 It also directs the Parties to prepare for the ratification and implementation of relevant international legal instruments, such as the Convention on the Prevention and Punishment of the Crime of Genocide, and the Rome Statute on the International Criminal Court.77 Nonetheless, the EU-Indonesia PCA – in contrast to the stabilisation agreements between the EU and Montenegro and Serbia where full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) are defined as an essential element78 – does not consider the obligation to accede to these two international legal instruments to be an essential element.

Another aspect of political dialogue and security cooperation addressed by the EU-Indonesia PCA is the cooperation on combating terrorism which would be conducted in accordance with relevant international laws and instruments relating not only to UN Global Counter-Terrorism Strategy, the EU-ASEAN Declaration on cooperation to combat terrorism of 28 January 2003, but also to human rights and international humanitarian laws.79 In this connection, the Parties thus agree to cooperate in combating terrorism through exchanges of information and views on means and methods for this objective and through cooperation on law enforcement and border control and management.80

The Parties further commit to cooperate in, and contribute to, the fight against organised economic and financial crimes and corruption, including

74. EU-Indonesia PCA, arts. 3.3-3.5.
75. EU-Indonesia PCA, art. 4.1.
76. EU-Indonesia PCA, art. 4.2.
77. EU-Indonesia PCA, art. 4.3.
78. Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, art. 2, 2010 O.J. (L 108) 3, 6; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, art. 2 (Council decision pending); Interim Agreement on trade and trade-related matters between the European Community, of the one part, and Bosnia and Herzegovina, of the other part, art. 1, 2008 O.J. (L 169) 13, 17.
79. EU-Indonesia PCA, art. 5.1.
80. EU-Indonesia PCA, art. 5.2.
the recovery of assets and funding, through strict adherence and full implementation of mutual obligations stemming from existent international legal instruments. This provision also constitutes an essential element of the EU-Indonesia PCA.\footnote{EU-Indonesia PCA, art. 35.} The EU-Indonesia PCA further directs the Parties to ensure a comprehensive and balanced approach through effective action and coordination to reduce the supply, trafficking and demand of illicit drugs and to prevent the diversion of chemical precursors used for the illicit manufacture of narcotic drugs and psychotropic substances.\footnote{EU-Indonesia PCA, art. 36.1.} Cooperation should be pursued in accordance with commonly agreed principles and in line with relevant international conventions, and with the Political Declaration and Special Declaration on the guiding principles of drug demand reduction approved by the UNGA Special Session on Drugs in June 1998.\footnote{EU-Indonesia PCA, art. 36.2.} These activities should also cover the exchange of views on legal frameworks and best practices, and promotion of sustainable alternative development policies.\footnote{EU-Indonesia PCA, arts. 36.3, 36.4.}

Another important element closely linked to the aforementioned criminal activities of drug trafficking, organised crime, corruption or terrorism is the combating of money laundering, which may include the proceeds or financial resources of criminal activities. Article 37.1 of the EU-Indonesia PCA explicitly delineates the relationship between drug trafficking or corruption and money laundering.\footnote{EU-Indonesia PCA, art. 37.1.} In the following paragraph, the link between money laundering and terrorism financing is clarified,\footnote{EU-Indonesia PCA, art. 37.2.} and the document then instructs the Parties to cooperate on exchange of information and the adoption of appropriate standards to combat money laundering and terrorism financing equivalent to those of the EU or other international bodies, such as the Financial Action Task Force on Money Laundering.\footnote{EU-Indonesia PCA, art. 37.3.}

B. Trade, Economic and Development Cooperation

Regarding cooperation in trade and investment issues, the Parties underscore the importance of a multilateral framework to the advancement of their bilateral relations.\footnote{EU-Indonesia PCA, art. 8.1.} The Parties also point to the hindrance of trade barriers, notably, non-tariff barriers, to the expansion of trade\footnote{EU-Indonesia PCA, art. 8.2.} and to the
indispensable role of trade preferences to development. 90 Given that both Parties are WTO members, the EU-Indonesia PCA does not contain specific or detailed trade regulations, but merely instructs the Parties to cooperate within the WTO framework. The EU-Indonesia PCA also touches, somewhat, upon the so-called Singapore issues – excepting government procurement – by encouraging investment flows through the development of an attractive and stable environment, 91 promoting the establishment and application of effective competition rules, 92 and strengthening trade facilitation 93 and customs cooperation, with the possibility of concluding a mutual assistance agreement at later stage under the EU-Indonesia PCA framework. 94 The Parties also agree to establish a dialogue with the aims of exchanging information on their respective regulatory environments and promoting trade in services. 95 Special attention is paid to financial services under the title of cooperation in other sectors. 96

The EU-Indonesia PCA does not provide for an independent title governing economic and development cooperation. Rather, these issues are dealt with under a broad scheme of cooperation in other sectors: economic policy dialogue, industrial policy and SME cooperation, information society, science and technology, tourism, transportation, education and culture, environment and natural resources, energy, forestry, agriculture and rural development, marine and fisheries, and health. Some elements are of particular interest to this article and so special attention is paid to such issues as environment and natural resources, energy and health.

Regarding environmental and natural resources, the Parties highlight the need to conserve and manage natural and biological diversity in a sustainable manner for the benefit of current and future generations. 97 To this end, the Parties, in undertaking their cooperative activities under this PCA, should take due account of the outcome of the World Summit on Sustainable Development and other relevant multilateral environmental agreements. 98 In addition, the Parties attach great importance to capacity building on climate change and energy efficiency, 99 and thus aim to enhance their cooperation in the energy sector with a view to diversifying energy supply, developing new and renewable forms of energy, and cooperating on industrial energy activities. They aim to achieve rational use of energy and to enhance

90. EU-Indonesia PCA, art. 8.3.
91. EU-Indonesia PCA, art. 14.
92. EU-Indonesia PCA, art. 15.
93. EU-Indonesia PCA, art. 12.
94. EU-Indonesia PCA, art. 13.
95. EU-Indonesia PCA, art. 16.
96. EU-Indonesia PCA, art. 18.
97. EU-Indonesia PCA, art. 27.1.
98. EU-Indonesia PCA, art. 27.2.
99. EU-Indonesia PCA, art. 27.3(b).
cooperation in combating climate change, through various means including the Clean Development Mechanism under the Kyoto Protocol. Also, they aim to foster technology transfers for sustainable energy use and production and address the linkages between affordable access to energy and sustainable development.  

Health is a new item in EU external economic agreements. The EU-Indonesia PCA identifies a list of cooperative activities with special focus on communicable diseases, such as avian and pandemic influenza, HIV/AIDS and SARS. The EU-Indonesia PCA formulates means of organising cooperative activities through: exchanges of information and experience; programs on epidemiology, and decentralisation, health financing, community empowerment and administration and improvement of health services; capacity building through the technical assistance; and support of the reduction of infant and maternal mortality rates.

C. Institutional Arrangement

The institutional arrangement, as provided in the EU-Indonesia PCA, basically mirrors the cooperation agreements between the EU and individual ASEAN member countries, and is somewhat more developed than the 1980 Cooperation Agreement, but still rudimentary. A Joint Committee, composed of representatives from the highest ranks of both sides, is established under the EU-Indonesia PCA with the following tasks: ensuring the proper functioning implementation of the PCA; setting its priorities; and resolving differences arising from its application and interpretation. The Joint Committee may also make recommendations to the Parties for the prompting of the objectives of this PCA and for the settling of divergences resulting from its application and interpretation. The Joint Committee should meet no less than every two years, and may also establish special working groups to assist in its efforts. In case there is any sectoral agreement or protocol to be concluded between the Parties, it is also the Joint Committee that is responsible for ensuring its proper functioning.

Article 44 of the EU-Indonesia PCA further regulates the dispute settlement mechanism. It firstly declares that the Parties may refer any divergence in the application or interpretation of the PCA to the Joint Committee, which should resolve the divergence concerned in accordance

100. EU-Indonesia PCA, art. 23.
101. EU-Indonesia PCA, art. 31.1.
102. EU-Indonesia PCA, art. 31.2.
103. EU-Indonesia PCA, arts. 41.1(a)-(c).
104. EU-Indonesia PCA, art. 41.1(d).
105. EU-Indonesia PCA, arts. 41.2, 41.3.
106. EU-Indonesia PCA, art. 41.4.
with Articles 41.1(c) and 41.1(d) thereof. The dispute settlement mechanism authorises the Parties to take appropriate action if either Party considers the other Party to have failed to fulfil its obligations under the PCA. Before acting, with the exception of urgent cases, the dispute settlement mechanism should provide the Joint Committee with all the relevant information necessary to arrive at a mutually acceptable solution. Nevertheless, in cases of serious urgency, meaning “a material breach of the agreement” defined as the “repudiation of the agreement not sanctioned by the general rules of international law”, or “violation of an essential element of the agreement”, appropriate action may be taken first, and the Joint Committee notified immediately afterward. In selecting the appropriate action, priority should be given to those least disturbing the functioning of the PCA.

D. Short Conclusion

The EU’s initiation of PCA negotiations with ASEAN member countries signifies the EU’s renewed interests in Southeast Asia. The PCAs are a new layer in building up the EU-ASEAN relations, which may be complemented by future FTAs. In fact, the conclusion of a PCA is a pre-requisite for the conclusion of an FTA. The PCAs may thus be considered more political than economical, since the economic aspects will be covered by FTA negotiations at a later stage. The PCAs are instruments by virtue of which the EU pursues its strategic goals. With this aim, the PCAs are equipped with a more developed institutional setup and dispute settlement mechanisms, which are designed to resolve the differences arising from the suspension of the application of the PCAs due to the breach of essential elements. The sanction mechanism strengthens the effectiveness of the essential elements which may help to promote European values and contribute to the normative image of the EU. The inclusion and expansion of essential elements also help to shield the PCAs from the accusation that the proposed EU-ASEAN FTA, being not embedded with association agreements and unequipped with human rights and democracy clause, deviates from the conventional practice of the EU. As the EU makes it clear that a PCA is a prerequisite for the conclusion of FTA, the FTA is thus embedded with the PCA where human rights and democracy clauses are in

107. EU-Indonesia PCA, arts. 44.1, 44.2.
108. EU-Indonesia PCA, art. 44.3.
109. EU-Indonesia PCA, art. 44.4(i).
110. EU-Indonesia PCA, art. 44.4(ii).
111. EU-Indonesia PCA, art. 44.5.
112. See Roeline Knottnerus, EU-ASEAN—Entering a New Phase in Trade Relation, in EU-ASEAN FTA SEMINAR READER 18, 21 (Transnational Institute ed., 2007).
place. It is safe to say that the EU, in engaging the ASEAN, still adheres to its conventional value premise.

The wide-ranging issues, such as the surfacing of the international criminal law, counter-terrorism and fight against organised crime, migration, and climate change covered by the PCAs reflect the shift of the gravity in the EU external economic relations. Firstly, a new trend which can be detected in EU external economic agreements is the tendency to include provisions pertaining to climate change, which is already seen to have influenced the EU-Indonesia PCA and EU-Philippines PCA, and been further expanded in the EU-Vietnam PCA. In addition to affirming their intention to cooperate to combat climate change, the EU-Vietnam PCA pronounces the following objectives: transit to low-carbon economies; improve energy performance; promote sustainable consumption and production patterns; and adapt to the inevitable and adverse consequences of climate change.\(^\text{113}\) The EU-Vietnam PCA also provides a list of cooperation activities, including technical issues; research and development activities; mitigation and adaptation actions; capacity building and awareness raising.\(^\text{114}\) Secondly, the inclusion of international criminal law in the PCAs appears odd at first sight as it is expected of the EU external agreement to be more economic in nature. Nevertheless, such arrangement thus reminds us that the PCAs are more an instrument for the EU to pursue its strategic goal rather than economic interests. In fact, for some Balkan countries, the cooperation with the International Criminal Court constitutes essential elements of their PCAs with the EU. Therefore, the pursuit for international criminal justice and climate change diplomacy is often cited as an example for the idea of “EU as a global actor” in international relations.\(^\text{115}\) In promoting the ratification of the Rome Statute and faithful implementation of the Kyoto Protocol, the EU presents an actoriness quite different from that of the US, which has long been resistant to these two international agreements.

One of the new elements introduced into the EU-Indonesia PCA in the context of the evolving legal frameworks governing EU-ASEAN relations is the participation of civil society. In addition to the role of the Asia-Europe Foundation regarding cooperation on issues of education and culture, the EU-Indonesia PCA also attaches great importance to effective dialogue and the participation of organised elements of civil society, in particular


\(^\text{114}\) EU-Vietnam PCA, art. 31.3.

\(^\text{115}\) Martijn L.P. Groenleer & Louise G. Van Schaik, United We Stand? The European Union’s International Actoriness in the Cases of the International Criminal Court and the Kyoto Protocol, 45(5) J. COMMON MARK. STUD. 969 (2007).
academics. 116 This coming into play of civil society is a reminder of the multiple actors and diverse interests when examining the EU-ASEAN relations. 117 In fact, the reason why the PCAs give greater voice for civil society may be seen as an effort to clear the doubts cast by some non-governmental groups. In commenting on the proposed EU-ASEAN FTA, 11.11.11, coalition of the Flemish North-South Movement along with other civil society groups voiced their concerns on the adverse effects of the envisaged FTA upon access to essential services. It would also prejudice the ASEAN member countries’ sovereignty over natural resources and widen the development gap among the ASEAN member countries. 118

IV. EU TRADE POLICY CHANGE TOWARD ASEAN

Several policy documents giving voice to the EU’s trade policy toward ASEAN, date back to 1994 when the Commission published its first strategy paper on Asia entitled Toward a New Asia Strategy. 119 In addition to those policy documents addressing directly (South East) Asia, ASEAN is repeatedly mentioned within the context of overall EU external trade policy. In fact, the EU’s trade policy toward ASEAN is situated in the wider context of the EU’s external trade policies and strategies. This section thus firstly investigates the EU’s wider external trade policy, which may have a bearing on ASEAN, and then examines the policy documents directly addressing ASEAN.

A. From Lisbon Strategy to Europe 2020 Strategy

In the Lisbon European Council held in 2000, the EU states its strategic goal for the period 2000 to 2010 is to “become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.” 120 Thus, one of the major objectives of the Lisbon Strategy is to enhance the EU’s competitiveness in the global world. In the context of renewed Lisbon Strategy, Global Europe 121 then aims to contribute to the Union’s growth

116. EU-Indonesia PCA, art. 38.1.
118. 11.11.11, Coalition of the Flemish North-South Movement et al., Statement of Concerns regarding the proposed EU-ASEAN Free Trade negotiations, Bangkok (Feb. 8, 2007); see also Cuyvers, supra note 8, at 14.
and jobs and to help the Union to compete in the world. *Global Europe* stresses on the right policies at home and opening market abroad.\(^\text{122}\) One of the major features of *Global Europe* is the Union’s lift of the *de facto* moratorium on FTA negotiations.\(^\text{123}\) *Global Europe* then sets out two criteria for the priority to engage with for the FTA talks: the market potential and level of protection. Based on these two criteria, in addition to ASEAN, Korea and Mercosur are identified as the priorities, while India, Russia and Gulf Cooperation Council should also be considered.\(^\text{124}\)

One decade after the *Lisbon Strategy*, the Commission proposed its *Europe 2020 Strategy* as its main policy blueprint in the approaching decade, in which smart, sustainable and inclusive growth is prioritised. According to the *Europe 2020 Strategy*,\(^\text{125}\) the Union’s growth should be smart by “developing an economy based on knowledge and innovation”; the growth would be sustainable by “prompting a more resource efficient, greener and more competitive economy”; the growth must be inclusive by “fostering a high-employment economy delivering economic, social and territorial cohesion”. Similar to the *Lisbon Strategy*, the Commission’s major concerns lie in sustainable economic growth via knowledge innovation and thus contributing to employment.\(^\text{126}\) In *Europe 2020 Strategy*, enhancing the Union’s competitiveness remains the major objective.\(^\text{127}\) At the same time, the Commission also makes it clear that trade policy is a core component of the *Europe 2020 Strategy* and its scope must be broadened to maintain a keen competitive edge. This includes, *inter alia*, trade and investment policies.\(^\text{128}\) The Commission then adds that it will soon propose updating relevant negotiating directives to include a wider scope of investment issues, starting with Singapore, Canada and India.\(^\text{129}\)

From *Lisbon Strategy* to *Europe 2020 Strategy*, some policy changes toward ASEAN or individual member countries may be recognised. Firstly, *Global Europe* lifted the EU’s *de facto* moratorium on FTA negotiations and targeted ASEAN as a region for its FTA talk based on two criteria of market potential and level of protection. The EU soon launched FTA talks with

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122. *Id.* at 4-8.
126. *Id.* at 10.
127. *Id.* at 14.
129. *Id.* at 5-6.
ASEAN as a region in 2007; however, this region-to-region approach encountered a number of obstacles. The two sides thus agreed to take a pause, and the EU then turned to individual ASEAN member countries for FTA negotiations. During the same period, in preparation for the FTA negotiations, the EU negotiated intensively with individual ASEAN member countries on a PCA. It also aims at updating the 1980 Cooperation Agreement with ASEAN. According to the mandate of the Council, the conclusion of the PCA constitutes a prerequisite for concluding FTAs with individual ASEAN member countries.

Nonetheless, as clarified by the Commission, due to the slow progress of region-to-region negotiations, the two sides agreed to suspend the process. However, as the EU remains committed to increasing its market access into ASEAN markets with the aim to enhance its competitiveness; the Commission is thus mandated by EU member states to pursue negotiation with individual ASEAN member countries on a case-by-case basis. With the treaty revision undertaken by the Lisbon Treaty and foreign direct investment being the exclusive competence of the EU, the Europe 2020 Strategy places great emphasis on investments issues. Singapore thus becomes one of the priorities for the EU to pursue an FTA with strong investment provisions. According to the European Commission, in addition to developing a comprehensive investment policy, the Commission also “seek[s] to integrate investment protection together with investment liberalisation into ongoing trade negotiations.”132 The negotiating directives on the FTA negotiations with Singapore will be updated to include a wider scope of investment issues.133 From the above development, it can thus be seen that the EU’s external trade policy has moved from multilateralism to interregionalism and finally to bilateralism. While the EU claims that its engagements with ASEAN, and subsequently with ASEAN member countries, may constitute a stepping stone for the region-to-region negotiations or even to Doha negotiations under the multilateral WTO framework, such claims find little support in the negotiations to date.

B. From Toward a New Asia Strategy to a New Partnership with South East Asia

Regarding those policy documents addressing directly (South East)
Asia, as mentioned above, the first strategy paper dated back to the 1994 Commission communication, *Toward a New Asia Strategy*. In that communication, the Commission spelled out the EU’s overall objective to “strengthen the Union’s economic presence in Asia in order to maintain the Union’s leading role in the world economy”. The Commission firstly recalled the EU’s existent policy tools in engaging with Asia, including bilateral and multilateral relations, common commercial policy, generalised systems of preferences, development and humanitarian aid. In recognition of the inevitable increase of political weight resulting from its economic weight in world economy, the Commission then explored possible new political approaches toward Asia with special focuses on arms control and non-proliferation, human rights and drugs. The Commission then emphasised the need to adapt to the changing economy and the fact that Asia was not as dependent on Europe for their capital, know-how, or as a counter-balance to Japan or the US as was previously the case. Consequently, the EU had to raise its profile in Asia and strengthen its economic cooperation with Asia through concerted efforts with the EU member states and active participation of private sectors.

However, although the Commission was fully aware of the changing landscape of the world economy, little changed in its approach after this communication. During the years 2000 to 2003, the Commission aimed to revitalise the EU’s relations with Asia by publishing several policy documents. Firstly, in 2000, the Commission released a Commission Working Paper addressing the Asia Europe Meeting and then, in 2001, published a communication entitled “*Europe and Asia: A Strategic Framework for Enhanced Partnerships*”. The Commission went on to address specifically its relations with South East Asia in 2003. In *Europe and Asia: A Strategic Framework for Enhanced Partnerships*, the Commission again reiterated the objective of “strengthening the EU’s political and economic presence across the region, and raising this to a level commensurate with the growing global weight of an enlarged EU”.

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135. *Id.* at 4-6.
136. *Id.* at 11-13.
137. *Id.* at 17-20.
Compared to its 1994 Communication, *Toward a New Asia Strategy*, the Commission moved beyond economic presence to political presence and stressed the increased weight of the enlarged Union instead of the increased economic growth of Asian countries. After reviewing the social, political and economic development Asia and Europe had undergone and taking stock of their relation since the release of the 1994 Communication, the Commission identified six particular issues to work on: peace and security in the region and globally; mutual trade and investment flows; development of the less prosperous countries; spreading of democracy, good governance and the rule of law; global partnerships and alliances; and strengthening the awareness of Europe in Asia (and vice versa).142 The Commission then focused on the role of ASEAN and ASEAN Regional Forum in channelling political and security dialogue addressing global security questions and responding to global challenges, such as drugs and transnational crime.143 Joint efforts to support conflict prevention and better engagement with civil society to promote transparency, good governance and rule of law should also be encouraged.144 The Commission then underlined the role of regional integration and solidarity within ASEAN in contributing to a long-standing EU-ASEAN relationship.145

In 2003, the Commission published its communication on *A New Partnership with South East Asia*. In elaborating on the EU’s economic interests for enhanced relations with ASEAN, the Commission pointed to the fact that the EU’s major economic partners and competitors were forging economic partnerships and alliances with ASEAN which might challenge the EU’s economic interests therein. Consequently, the Commission proposed both offensive and defensive strategies in dealing with ASEAN trade relations by improving the EU’s position in the ASEAN market and protecting its existing economic interests.146 This statement mirrors the rationale and motive underpinning *Global Europe* which is to enhance the EU’s competitiveness for the EU to compete with the world. In addition to the economic interests, the Commission also called for a broadened

142. *Id.* at 15.
143. *Id.* at 21. ASEAN Regional Forum was initiated in the twenty-sixth ASEAN Ministerial Meeting and Post Ministerial Conference held in Singapore on 23-25 July 1993. The first inaugural meeting held in Bangkok 25 July 1994. The objectives of the ASEAN Regional Forum is to sustain and enhance peace and prosperity. With this view, a three-stage approach was advanced: promotion of confidence-building measures; development of preventive diplomacy mechanisms; development of conflict-resolution mechanisms. Since the coming to being of the ASEAN Regional Forum, the EU has consistently participated in this forum. In addition to the EU, other non-ASEAN actors in the ASEAN Regional Forum include Australia, Canada, China, South Korea, Japan, Russia and etc. *About The ASEAN Regional Forum, ASEAN REGIONAL FORUM*, http://aseanregionalforum.asean.org/about.html. (last visited June 17, 2013).
144. *Id.*
146. *A New Partnership with South East Asia, supra* note 140, at 8.
cooperation agenda. Specifically, the Commission identified six strategic priorities: “[s]upporting regional stability and the fight against terrorism”; 147 “[p]romoting human rights, democratic principles and good governance”; 148 “[m]ainstreaming justice and home affairs issues”; 149 “[i]njecting a new dynamism into regional trade and investment relations”, 150 “[c]ontinuing to support the development of less prosperous countries” 151 and “[i]ntensifying dialogue and co-operation in specific policy areas”.152

These six strategic priorities are more or less included in the PCAs concluded between the EU and individual ASEAN member countries. These PCAs included a number of provisions addressing security issues, such as non-proliferation. Human rights and democratic principles are enshrined as an essential element of the PCAs which may trigger the adoption of appropriate measures. Anti-corruption, money laundering, organised crime and drug control, and migration are also dealt with in these PCAs, though differently weighed. In terms of their economic effects, the PCAs widen the economic cooperation activities and deepen the economic integration. In view of this – and in contrast to the slow progress, or failure, of the EU-ASEAN FTA talk – the PCAs between EU and individual ASEAN member countries have achieved, at least partly, what A New Partnership with South East Asia envisages.

C. Short Conclusion

Southeast Asia came into the focus of the EU’s trade policy since the 1990s and gradually gained importance. At the beginning, the objective of the EU’s trade policy toward this region was to secure its economic presence and strengthen its leading role in world economy. The focus on the ASEAN was also a major element as outlined by Global Europe. The growing economic interests coupled with the EU’s political and security objective toward this region thus paved the way to PCA and FTA negotiations. In observing the EU’s trade policy changes toward ASEAN, one may find the widening of trade issues, but the corresponding deepening of every single issue is absent. Whereas the EU policy papers articulated various policy goals, they are more development cooperation or technical assistance instead of legally-binding commitments.
V. PROGRESS AND PROSPECT OF EU-ASEAN RELATIONS

A. EU-ASEAN Relations in General Context of EU External Actions

In probing the future direction of EU-ASEAN relations, the best starting point is an examination of the principles and objectives guiding the external actions of the EU. The first point to note is that the Lisbon Treaty brings the Common Commercial Policy within the general framework of EU external actions; the Common Commercial Policy is thus subject to the principles and objectives as set out in Article 21 of the Treaty on European Union (the TEU). Secondly, EU-ASEAN relations are not limited to the scope of the Common Commercial Policy and have a bearing on development, the environment, or even the Common Foreign and Security Policy. The TEU firstly declares that the EU’s external actions shall be guided by those principles “which have inspired its own creation, development and enlargements, and which it seeks to advance in the wider world”. These principles are: “democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations charter and international law”. The principles put forward by the TEU dictate that the EU consolidate and promote democracy, the rule of law, human rights and principles of international law, which are apparent in elements in the cooperation agreements between the EU and Cambodia, and the EU and Laos, and the subsequent PCAs concluded with Indonesia, the Philippines and Vietnam.

In contrast, ASEAN tends to stress “Asian values”, as proposed by the former Prime Ministers of Malaysia and Singapore, Mohamad Mahathir and Lee Kuan Yew. In addressing human rights violations within a particular member country, the “ASEAN way” amounts to non-interference. As observed by Amartya Sen, the thesis of “Asian values” stresses the culture and value differences between Asia and the West. It is claimed that universalism in human rights can be harmful if it leads to the denial of diversity. The thesis of “Asian values” places states before individuals and is more concerned with order and discipline than freedom. The defence of this “Asian values” thesis relies heavily on economic growth, arguing that authoritarianism is more conducive to economic growth than democracy.

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154. Id.
155. TEU, art. 21(2)(b).
The adherence to non-interference approach stems from the fact that when the ASEAN was found, its member countries – with the exception of Thailand – were all newly independent countries that felt it necessary to jealously guard their sovereignty. In fact, the TAC instructs ASEAN member countries to mutually respect one another’s independence, sovereignty and territorial integrity, and not to interfere in another’s internal affairs.158

The value premises on which the EU heavily relies may clash with “Asian values” or the “ASEAN way” of non-interference long embraced by the ASEAN.159 The case of Myanmar/Burma may be the most illustrative case of this clash of value premises.

B. The Missing Piece of Myanmar/Burma

In mapping EU-ASEAN relations, Myanmar/Burma has long been the odd one out as the EU has imposed sanctions against its authoritarian regime since 1988. For that reason, the 1980 Cooperation Agreement has never been extended to Myanmar/Burma, even though Myanmar/Burma joined ASEAN in 1997. Myanmar/Burma’s accession to the ASEAN has continuously tested the EU’s determination to stick to its value preference, and its capacity to influence the behaviour of the leaders of Myanmar/Burma. The tricky point here is that the more the EU asserts the importance of human rights and democracy, and the more severe the sanctions it imposes against Myanmar/Burma, the less its capacity to transform the junta. The EU thus finds itself handicapped by defending peace, free speech, law and justice.160 This is partly due to resistance from its counterpart, ASEAN, which prefers to engage with, rather than isolate, Myanmar/Burma. Further, the EU’s sanctions against Myanmar/Burma are rendered ineffective as Myanmar/Burma can obtain ongoing support from China (and India).161

However, 2011 saw a remarkable change in Myanmar/Burma. The Government initiated a number of reforms to establish a more open society and released some of the more important political prisoners, including Aung San Suu Kyi. This development was welcomed and encouraged by the EU. Firstly, in renewing the sanction measures against Myanmar/Burma, the

159. Petersson, supra note 156, at 576-78.
161. Id. at 168-73.
Council in its Council Decision 2011/239/CFSP,\textsuperscript{162} decided to suspend the restrictive measures for 12 months to the new members of government with no affiliation to the military or responsibility for dialogue with international community in order to “encourage future progress in civilian governance and to strengthen democracy and respect for human rights”\textsuperscript{163} The Council also decided to lift the ban of high-level bilateral governmental visits “with a view to encouraging dialogue with relevant parties in Burma/Myanmar”.\textsuperscript{164} In softening its sanctions against Myanmar/Burma, the EU is sending clear signals to the government of Myanmar/Burma that the EU may resume its relations with Myanmar/Burma when political, economic and social progress is made. Also, at the Foreign Affairs Council meeting on 23 January, the Council declared that the political reforms undertaken by the government and its commitment to economic and social development are “opening up important new prospects for developing the relationship between the European Union and Burma/Myanmar. The EU stands ready to respond accordingly”.\textsuperscript{165} The Council is again signaling that it may be possible to resume relations with Myanmar/Burma if the government continues to reform. In view of the Council decision and conclusion, should the EU resume relations with Myanmar/Burma, one would expect there to be a positive impact on EU-ASEAN relations. Whereas the EU’s bilateral approach may not be easily changed, it helps for ASEAN to act as a whole, without leaving aside Myanmar/Burma.

C. EU’s Ambition to Counterbalance the United States and China

With a renewed focus on the region, it is interesting to note that in Toward a New Asia Strategy, the EU aimed to counterbalance the influence of the US and Japan, whereas in the explanatory note to the EU-Indonesia PCA, China takes the place of Japan. In engaging with ASEAN, the EU faces a different scenario, with new players in the game. One is curious about the EU’s past success in counterbalancing the influence of Japan, and the influence of China in the future. Although the EU is a recognised trading power and endeavoured to exercise power beyond trade,\textsuperscript{166} it is not clear whether the EU has demonstrated trading power in relation to ASEAN, and exerted much influence in the region.

\textsuperscript{163} Council Decision 2011/239/CFSP, 4th recital.
\textsuperscript{164} Council Decision 2011/239/CFSP, 5th recital.
\textsuperscript{165} Council Conclusions on Burma/Myanmar, 3142th Foreign Affairs Council Meeting, Council of the European Union, ¶1, Brussels (Jan. 23, 2012).
So far, the institutional framework has been built upon the 1980 Cooperation Agreement and cooperation agreements with individual ASEAN member countries, which may be supplemented by PCAs and FTAs, but that framework is still too immature to sustain the EU’s ambition to counterbalance the influence of other major powers. In the policy aspect, while the EU does target Southeast Asia in some policy papers, it has not attracted much attention. While the initiation of PCA and FTA negotiations can be seen as evidence of how the EU is pursuing greater influence with ASEAN, and could very well be used in pursuit of that objective, in comparison to Mediterranean, eastern European or Balkan countries, or even African, Pacific and Caribbean countries, the EU’s interests in the region are relatively weak.

D. ASEAN’s Capacity to Act as a Negotiating Counterpart

Conversely, it is essential to examine the capacity of ASEAN to act as an effective negotiating counterpart when it comes to EU-ASEAN relations. According to Mathew Doidge, EU officials refer to ASEAN as an uninteresting partner due to that organisation’s weakness as a regional actor. The ASEAN Secretariat has even gone so far as to request assistance from the European Commission to strengthen the organisation’s capacity to negotiate as a whole. As argued above, the attachment of ASEAN member countries to national sovereignty by ASEAN member countries is responsible for ASEAN’s lack of agency, which subsequently leads to an inability to achieve substantive cooperation at the interregional level. It is interesting to speculate what Europe could offer, based on its experience that would be helpful in shaping ASEAN into a strong regional actor. The beauty of European integration lies in how European countries deal with “political sovereignty, economic competitiveness, social construction and ultimately, power”, the story that the EU can share with ASEAN concerns how to “positively implement a global vision despite true and false obstacles and puzzling games”. This is not to suggest that ASEAN necessarily needs to give up its preference for intergovernmentalism and embrace supranationalism. More important is strengthening the capacity of the ASEAN Secretariat with a view to enhance the ASEAN, by coordinating with member countries, to act as a whole during the course of negotiations.

167. Doidge, supra note 158, at 238.
168. Id. at 240.
169. Id. at 243.
171. Id.
Whereas this institutional weakness has contributed to the EU’s turn to bilateralism and the negotiating of FTAs with individual ASEAN member countries, a further burden on the organisation is found in ASEAN member countries negotiating FTAs with such regional heavyweights as the US, China and Japan. ASEAN member countries are not endowed with sufficient resources, human or material, to negotiate with the EU on FTAs. This, then, raises the question of how to ensure ASEAN’s centrality in engaging with various trading partners.

E. The Centrality of the ASEAN

The ASEAN Charter, in Chapter XII, regulates the external relations of the organisation. It is directed to act as the primary driving force in initiating regional arrangements, and to maintain its centrality in regional cooperation and community building. As prescribed, member countries, through the ASEAN Summit and the ASEAN Foreign Ministers Meeting, should coordinate and endeavour to develop common positions and pursue joint actions, and thereby ensure the consistency and coherence of ASEAN external relations. The Charter also provides the legal basis for ASEAN to confer on an external party the formal status of dialogue partner, sectoral dialogue partner, development partner, special observer, and guest or any other status established henceforth, which is reflective of ASEAN’s conventional practices.

The ASEAN Economic Community Blueprint (the Blueprint) adopted in 2007 also provides some guidance in formulating a coherent approach towards external economic relations. The Blueprint firstly reiterates the importance of making ASEAN a stronger and more dynamic segment of global supply chains, and of ensuring that the internal market is an attractive destination for foreign direct investment. The Blueprint thus points to an external dimension of the ASEAN Economic Community, in that it situates itself in the global division of labour and competition with other trading partners. Similarly, the Blueprint attaches great significance to “ASEAN centrality” in its external economic relations when negotiating free trade agreements and comprehensive economic partnership (CEP) agreements. Given this aim, external FTA or CEP commitments should be reviewed in light of those made with the objective of internal integration.

172. ASEAN Charter, art. 41.3.
173. ASEAN Charter, arts. 41.4-41.6.
174. ASEAN Charter, art. 44.1.
176. Id. at ¶ 64.
177. Id. at ¶ 65 (i).
should also seek to achieve common approaches and/or positions in external economic relations, and in regional/multilateral fora, through enhanced coordination. 178

As noted in the beginning, the EU was one of the first dialogue partners of ASEAN, back in the 1970s. Today, ASEAN has to engage with conventional and emergent players with interests in the region. Although the newly adopted ASEAN Charter and the Blueprint direct ASEAN to act as the primary driving force in initiating regional arrangements, and to maintain its centrality in regional cooperation and community building, 179 it nevertheless remains to be seen whether ASEAN has the capacity to deal with the US, China and the EU, or if it will merely be a region where those powers compete for influence. To date, ASEAN has remained relevant to Asian regional integration through the ASEAN + 3 processes. ASEAN may also be deemed the default centrality given the historical and political resentment of Japan in East Asian partners. However, there might be competition between ASEAN and its East Asian partners for the FTA talks with third trading partners.

In the meantime, the EU has concluded its FTA negotiations with South Korea, which is also listed as a priority in Global Europe. In contrast to the successful conclusion of the EU-Korea FTA, the EU-ASEAN FTA has ground to a halt, and perhaps an end. This may lead to pressure being exerted on individual ASEAN countries, especially Singapore given the greater similarities in industrial structure with Korea, to enter into negotiations with the EU. EU-ASEAN relations are moving forward at different rates in the different ASEAN member countries. While the EU may want to strengthen its economic and political presence in the region, the main task of ASEAN member countries remains: by acting individually, rather than as a whole, should strive to maintain its ASEAN centrality within the region and in their external relations with the EU. This need appears even more compelling in the wake of the failure of the region-to-region EU-ASEAN FTA.

F. In Search of a Third Way

The EU’s giving up of the region-to-region approach is derivative of the lack of significant progress, which is partly attributable to the inability of the ASEAN Secretariat to coordinate the actions of its member countries as a

178. Id. at ¶ 65 (ii). It should also be noted that, with the signing of ASEAN-China Framework Agreement, the Agreement on Trade in Goods, and the Agreement on Trade in Services, the deadline for tariff elimination of the AFTA was revised in order to match the ASEAN-China FTA deadline. This is regarded as the first domino to fall as a result of the ASEAN-China FTA. See Richard E. Baldwin, The East Asia Noodle Bowl Syndrome, in EAST ASIA’S ECONOMIC INTEGRATION: PROGRESS AND BENEFIT 45, 62 (Daisuke Hiratsuka & Fukunari Kimura eds., 2008).

179. ASEAN Charter, art. 41.3.
whole. Whereas political reforms in Myanmar/Burma brings some reason for optimism in EU-ASEAN relations, it does little to help break the deadlock in the EU-ASEAN FTA negotiations, particular as neither Myanmar/Burma, nor the other two new member countries, Cambodia and Laos, are included in the proposed FTA. Therefore, in determining the orientation of EU-ASEAN FTA negotiations going forward – that is, whether they will assume a region-to-region or bilateral approach – an underlying concern is the development gap between the original member countries and Vietnam (owing to its surging economic growth) and laggards Cambodia, Laos and Myanmar/Burma. The immediate threat for Cambodia and Laos (and potentially Myanmar/Burma) is preference erosion, given that other ASEAN member countries may receive zero-tariff access to the European market. Secondly, Cambodia and Laos have little to gain as their economies are “still in the periphery of the system with a very poor participation in production sharing networks and weak linkages to the industrial value chains that ASEAN5 are deeply involved in.” 180 The turn from a region-to-region approach to bilateral negotiations would leave Cambodia and Laos out of the actual negotiations and further marginalised as their economies continue to struggle and the development gap widens.181

Nevertheless, it is unrealistic to advocate a return back to the region-to-region approach due to path-dependency and the inability of ASEAN to act as a whole. And yet, the development gap within ASEAN should be addressed in bilateral negotiations. Firstly, Cambodia and Laos must benefit from the bilateral negotiations. Secondly, bilateral negotiations have to contribute ASEAN region-building. It is thus proposed that the bilateral agreements between the EU and ASEAN member countries, e.g. the EU-Singapore FTA, be replicated or extended within, or even beyond the ASEAN region. Rules of origins are an important instrument to achieve this objective. On the one hand, the ASEAN origin must be taken into account when determining the origin of products under an individual ASEAN member country FTA with the EU. On the other hand, the provisions governing rules of origins must be flexible enough to be amended with a view to including specific sectors within the ASEAN region. 183 As explained by Willem van der Geest and others, products of ASEAN origin, traded under the ASEAN Free Trade Agreement and exported by Singapore, can enter the EU and receive beneficial treatment if the EU maintains the

181. Cuyvers, supra note 8, at 14.
182. Id. at 13-14.
same or more preferential rules of origin. If more restrictive rules of origin are imposed, the benefit to other ASEAN member countries will be constrained. As argued above, when products processed in other ASEAN member countries, e.g. Indonesia or Cambodia, can enter the EU market with preferential treatment, the benefits of the EU-Singapore FTA may be extended to other ASEAN member countries by providing exceptions to specific countries or sectors. In this way, an ASEAN member country FTA with the EU may help to address the development gap within ASEAN and contribute to the regional integration.

VI. CONCLUSION

In this article, I examined the legal framework and policy change pertaining to EU-ASEAN relations. I have demonstrated that, through a “deepening” process, a three-layered legal framework is now governing the EU-ASEAN relations: 1980 Cooperation Agreement, cooperation agreements with individual ASEAN member countries and the PCAs. This three-layered framework may be complemented by a perspective fourth layer, namely, the FTA. In addition to this “deepening” process, the EU-ASEAN relations have also seen a “widening” process: the scope of coverage of the EU-ASEAN agreements, collectively or individually, has significantly stretched. The aggrandisement of the legal framework is complemented by the increased attention paid by the EU toward ASEAN in its policy papers. The trend became clearer since 1990s. However, there are still some clouds shadowing EU-ASEAN relations.

The EU’s turn to bilateralism in engaging with ASEAN may be proven to be an unfortunate development from the perspective of interregionalism, a value preference to which the EU claims to adhere. The EU’s aim to counterbalance the influence of the US and China appears to be rhetorical since the institutional framework and policy measures cannot sustain such ambitious objective. Finally, an encouraging element in EU-ASEAN relations is the perspective resumption of EU-Myanmar/Burma relations which contribute to map the complete picture of EU-ASEAN relations and the ASEAN regional grouping as a whole. Nonetheless, this article doubts the willingness of the EU and ASEAN member countries to go back to the region-to-region track due to the path-dependence and ineffectiveness of the ASEAN Secretariat to coordinate its member countries to negotiate as a regional actor. In view of this, this article argues that a set of well-designed

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184. *Id.*
rules of origin may not only help to narrow the development gap within the ASEAN but also contribute to the regional integration in that region. In this way, the EU may avoid the danger of self-contradicting with its aim to promote regional integration.
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歐盟與東南亞國協關係之演變：
法律架構與政策變遷

吳建輝

摘要

本文從法律架構與政策變遷兩個面向，探討歐盟與東南亞國協雙邊關係之演變。藉由檢視主要法律架構，本文呈現雙邊關係之深化過程：在1980年之歐洲共同體與東南亞國協合作協定之基礎上，逐漸加入合作協定與夥伴與合作協定。此外，本文並呈現在全球歐洲策略以來，雙邊關係之動態發展，並強調歐盟藉由夥伴與合作協定在東南亞扮演更積極角色之企圖。本文並分析歐盟與東南亞國協之關係，從政府間主義轉向雙邊主義對於雙邊關係可能之影響。

關鍵詞: 歐盟與東南亞國協關係、夥伴與合作協定、必要要素、全球歐洲、區域間主義