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ORIGINAL ARTICLE

INTERNATIONAL LAW AND PRACTICE

Shaping new interregionalism: The EU-Singapore Free Trade Agreement and beyond

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Abstract

The article examines the theoretical concept of interregionalism in the context of the evolving framework between the European Union (EU) and the Association of Southeast Asian Nations (ASEAN). As the EU's first free trade agreement (FTA) with an ASEAN country, the EU-Singapore FTA is a pathfinder agreement that signifies a new phase of interregionalism and the EU's new Asia strategy after the Treaty of Lisbon. The article argues that the innovative designs of the EU-Singapore FTA will shape the normative development of EU-ASEAN relations in the post-pandemic era. It also cautions that a comparative analysis of EU and US agreements reveals deficiencies in the FTA that require remedies. To buttress the contention, key provisions on ASEAN cumulative rules of origin, banking and legal services and non-tariff barriers are analysed in light of contemporary Asian agreements. The research further provides insight into the effectiveness of new-generation rules on geographical indications, competition, and investor-state arbitration and mediation. Hence, the findings contribute to the understanding of interregionalism and the EU's Asia-Pacific trade and investment agreements from global and interdisciplinary perspectives.

Keywords: COVID-19; EU; FTA; investment court system; RCEP

1. Introduction

The evolving interregional framework between the EU and ASEAN is vital to a world order shattered by rising populist nationalism and the global pandemic. In particular, the entry into force of the EU-Singapore FTA on 21 November 2019 represents a milestone for interregionalism in international economic law.¹ As a 'pathfinder' agreement, the EU-Singapore FTA is the EU's first-ever trade pact concluded with an ASEAN country and signifies Brussels' new Asia strategy after the Treaty of Lisbon.² For Singapore and ASEAN, the EU-Singapore FTA buttresses their hub status in the global FTA network and ASEAN economic integration. Consolidating the cross-continental value chain also galvanizes economic resilience during the COVID-19 crisis that could decrease world trade by 32 per cent.³

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¹The Ministry of Trade and Industry, Singapore (MTI), The EU-Singapore Free Trade Agreement Enters into Force (2019), at 1; European Commission, 'The EU-Singapore agreements explained', available at ec.europa.eu/trade/policy/in-focus/eu-singapore-agreement/agreement-explained/.

²European Parliament Resolution on Regional Free Trade Areas And Trade Strategy in the European Union (2002/2044(INI)), P5_TA(2003)0237 (2003), para. D; European Commission, *ibid.*

³World Trade Organization, 'Trade Set to Plunge as COVID-19 Pandemic Upends Global Economy', 8 April 2010, available at www.wto.org/english/news_e/pres20_e/pr855_e.htm.

The EU-Singapore FTA implements Brussels' 2015 'Trade for All' strategy, which identifies a building-block approach to 'a region-to-region EU-ASEAN framework', and the 2017 EU-ASEAN Plan of Action.⁴ ASEAN is now the EU's priority on its Asia policy agenda. In fact, the ten-country bloc is Asia's third largest trade power and will ascend to the world's fourth largest economy by 2030.⁵ With a per capita gross domestic product (GDP) of more than \$64,000, Singapore is the most developed country in ASEAN.⁶ Hosting 10,000 European corporations, Singapore receives the largest amount of EU investment in Asia and is the EU's sixteenth largest trading partner.⁷ Despite its small size, the 'red dot' has played a strategic role in shaping normative foundations of region-building for the ASEAN Economic Community (AEC) and the Asia-Europe Meeting (ASEM).⁸

From a legal perspective, the EU-Singapore FTA ought to be comprehended in tandem with two intertwined instruments, the Investment Protection Agreement (IPA) and the Partnership and Cooperation Agreement (PCA). While the European Parliament gave its consent to the three agreements in February 2019, the IPA and the PCA will only come into effect after 27 national parliaments of the EU ratify them.⁹ Notably, following the landmark decision of the Court of Justice of the EU (CJEU) in 2017, the EU-Singapore FTA that initially incorporated investment protection provisions was separated into the FTA and the IPA.¹⁰ The subsequent EU-Vietnam agreements follow the same approach.

In the Opinion 2/15, the CJEU clarified the scope of the 'common commercial policy' under Article 207 of the Treaty on the Functioning of the EU.¹¹ The CJEU found that most aspects of the EU-Singapore FTA are within exclusive competence of the EU.¹² Yet, provisions on non-foreign direct investment and investor-state dispute settlement (ISDS) fall outside the common commercial policy and are matters of shared competence.¹³ Hence, consent from both the EU and its member states is required. In other words, the amended EU-Singapore FTA is an 'EU-only' agreement, whereas the IPA is a 'mixed agreement'.¹⁴ The bifurcation between the two agreements facilitates the prompt implementation of the FTA by preventing a single EU country's boycott such as the Netherlands' rejection of the EU-Mercosur pact in June 2020.¹⁵ Akin to the IPA, the PCA is a mixed agreement that stipulates trade and investment collaboration and includes the wider scope of co-operation on human rights and other non-economic issues.¹⁶

⁴European Commission, 'Trade for All: Towards a More Responsible Trade and Investment Policy', (2015), at 31–2; EU-ASEAN Plan of Action (2018–2022) (2017), para. 2.1(c).

⁵Association of Southeast Asian Nations (ASEAN), 'Investing in ASEAN: Association of Southeast Asian Nations', (2019/2020), at 5.

⁶ASEAN, 'ASEAN Key Figures 2019', (2019), at 32.

⁷European Commission and MTI, 'European Union – Singapore Trade and Investment Agreements', (2019), at 7; European Commission, 'Client and Supplier Countries of the EU 27 in Merchandise Trade (Value %) (2019, Excluding Intra-EU Trade)', (2019), at 1.

⁸Singapore Prime Minister Goh Chok Tong initiated the ASEAN Free Trade Area and the Asia-Europe Meeting. R. Severino, *Southeast Asia in Search of An ASEAN Community: Insights from the Former ASEAN Secretary-General* (2006), at 29, 334.

⁹European Commission, 'Agreement with Singapore set to give a boost to EU-Asia Trade', 13 February 2019, available at trade.ec.europa.eu/doclib/press/index.cfm?id=1980.

¹⁰A. Suse and J. Wouters, 'Exploring the Boundaries of Provisional Application: The EU's Mixed Trade and Investment Agreements', (2019) 53(3) *Journal of World Trade* 395, at 399. Note that the negotiations for provisions on goods and services and provisions on investment protection of the original EU-Singapore Free Trade Agreement (FTA) were completed in 2013 and 2014, respectively. MTI, EUSFTA, available at www.mti.gov.sg/Improving-Trade/Free-Trade-Agreements/EUSFTA.

¹¹See generally Opinion 2/15 of the Court, [2017].

¹²*Ibid.*

¹³*Ibid.* European Parliament, 'CJEU Opinion on the EU-Singapore Agreement', (2017), at 2.

¹⁴D. Kleimann and G. Kubek, 'The Signing, Provisional Application, and Conclusion of Trade and Investment Agreements in the EU: The Case of CETA and Opinion 2/15', (2018) 45(1) *Legal Issues Economic Integration* 13, at 22–4.

¹⁵R. Leering, 'Dutch Rejection of Mercosur Now Threatens Wider EU Trade Deals', *ING*, 3 June 2020, available at [think.ing.com/snaps/dutch-rejection-of-mercorsur-sign-of-the-times/](https://www.ing.com/snaps/dutch-rejection-of-mercorsur-sign-of-the-times/).

¹⁶E.g., EU-Singapore Partnership and Cooperation Agreement (PCA) (2018), Arts. 2–40.

The EU-Singapore FTA serves as a template and benchmark for future trade agreements of the EU and the post-Brexit United Kingdom (UK) with other ASEAN countries. The UK-Singapore FTA became London's first trade pact with an ASEAN country. Although the EU-UK Withdrawal Agreement mandated that the EU-Singapore FTA cease to apply to the UK at the end of the transition period in December 2020, the UK-Singapore FTA that incorporates the EU-Singapore FTA became effective in February 2021.¹⁷ Complementing FTAs with Australia, New Zealand, and Japan, the UK-Singapore FTA is a 'logical step' toward London's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).¹⁸

The article provides the most up-to-date and comprehensive account of the EU-Singapore FTA in light of regional trade strategies and domestic legislation changes. It argues that the innovative designs of the EU-Singapore FTA will shape EU-ASEAN interregionalism in the post-pandemic economy. Nevertheless, the article cautions that a comparative analysis of EU and US agreements with Asian countries reveals deficiencies of EU-Singapore FTA commitments, which need to be remedied in subsequent talks. Following the introduction, Section 2 examines the interdisciplinary theories of interregionalism and its new phase in the third wave of global regionalism. It sheds light on the evolution of the EU-Singapore FTA under the EU's new Asia policy and the approaches of Singapore and ASEAN to Europe.

Section 3 discusses the key components of the EU-Singapore FTA as a 'new generation' trade agreement.¹⁹ It focuses on core issues including tariff concessions and rules of origin, which enable 'ASEAN cumulation' and make the FTA the first agreement to allow Asian food products to enter Europe tariff-free.²⁰ Banking and legal services will be explored to illustrate the challenges to services trade liberalization. The section also examines issues of electronic commerce (e-commerce) and non-tariff measures essential to the automotive and pharmaceutical industries. Section 4 assesses the impact of new-generation provisions such as those on geographical indications (GIs), competition, investor-state arbitration and mediation, sustainable development, and human rights. Finally, Section 5 highlights the legal and political implications of the EU-Singapore FTA for EU-ASEAN interregionalism that could contribute to the post-pandemic recovery amid the Doha Round impasse.

2. The EU-Singapore FTA in the global context

The article provides insight into the structure and commitments of the EU-Singapore FTA, which underpins the new European Commission's enhanced economic and security strategy toward 'democratic Asia' to prepare the EU for 'the arrival of the Asian century'.²¹ The findings fill

¹⁷Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 2019/C 384 I/01 (2019), Arts. 2, 126–7; United Kingdom -Singapore FTA (2020), Art. 1; Enterprise Singapore, 'United Kingdom – Singapore Free Trade Agreement', available at www.enterprisesg.gov.sg/non-financial-assistance/for-singapore-companies/free-trade-agreements/ftas/singapore-ftas/uksfta.

¹⁸Department for International Trade & The Rt Hon Elizabeth Truss MP, 'Press Release: UK International Trade Secretary Visits New Zealand, Australia and Japan', 16 September 2019, available at www.gov.uk/government/news/uk-international-trade-secretary-visits-new-zealand-australia-and-japan; Department for International Trade & The Rt Hon Elizabeth Truss MP, 'Press Release: Liz Truss Kick-starts Trade Negotiations with Japan', 12 May 2020, available at www.gov.uk/government/news/liz-truss-kick-starts-trade-negotiations-with-japan; Department for International Trade, 'An Update on the UK's Position on Accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)', 17 June 2020, available at www.gov.uk/government/publications/uk-approach-to-joining-the-cptpp-trade-agreement/an-update-on-the-uks-position-on-accession-to-the-comprehensive-and-progressive-agreement-for-trans-pacific-partnership-cptpp?fbclid=IwAR2Ld4DkNU_Q_2pC6GsojqWfP82PQO-S1cc_WkL2-VUCmROXOne_RYqRjg.

¹⁹Forward by EU Trade Commissioner Cecilia Malmstrom, in European Commission and MTI, *supra* note 7, at 3.

²⁰European Commission and MTI, *ibid.*, at 10–11.

²¹European External Action Service, 'Annual German Ambassadors' Conference 2020: Opening remarks by High Representative/Vice President Josep Borrell', 25 May 2020, available at eeas.europa.eu/headquarters/headquarters-homepage/79817/annual-german-ambassadors-conference-2020-opening-remarks-high-representative-vice-president_en.

the gap in the existing theoretical and empirical literature, as they demonstrate the latest normative development of bilateralism vis-à-vis interregionalism. By deciphering ASEAN and Singaporean perspectives, the article carefully avoids the oft-criticized Eurocentric view of regionalism study and offers a balanced analysis of EU-ASEAN interactions in international economic law.²²

2.1 Theoretical concepts and the new phase of interregionalism

This research on the EU-Singapore FTA enriches the interdisciplinary concept of interregionalism and constructs a legal roadmap to connectivity between the EU and ASEAN, the world's 'two most advanced regional integration initiatives' that share similar features.²³ Undoubtedly, notable differences between the two blocs continue to exist. Guided by shared values of democracy, rules of law and human rights enshrined in the Treaty of Lisbon, EU integration has consolidated political, economic, and legal systems. The EU was created as an intergovernmental and supranational institution and its legislation prevails over national laws in selected areas under the EU constitutional framework.

However, ASEAN countries' post-colonial mindset, divergent views on values and the vast development gap have led to the so-called 'ASEAN way', which rests upon non-interference and consensus-based principles. Operating as a pure intergovernmental organization, ASEAN itself was not accorded authority to override decisions of constituent states. In the arena of economic integration, ASEAN constitutes an FTA-plus structure rather than the EU-style customs union or economic community. The two blocs' different integration approaches therefore make EU-ASEAN interregionalism unique and fundamentally different from the EU's trade agreements with other individual countries such as China, Japan, and Korea.

Beyond the conventional understanding of customs unions and free trade areas under World Trade Organization (WTO) law, the scope and definition of interregionalism has been subject to scholarly debate.²⁴ Known as a 'double regional project', interregionalism accelerates the 'process of widening and deepening political, economic, and social interaction between international regions'.²⁵ Interregionalism thus represents 'cooperation between the two specific regions composed of states within an interregional framework'.²⁶

Political scientists contended that the typology of interregionalism is not confined to 'pure interregionalism', which denotes bilateral group-to-group relations such as the EU-ASEAN framework.²⁷ The fact that the EU as a single entity concluded a trade agreement with Singapore, an ASEAN member, makes the EU-Singapore FTA a case of 'quasi or hybrid interregionalism'.²⁸ The development of ASEAN's external FTAs also evidences that distinct types of interregionalism are actually intertwined. The pathfinder EU-Singapore FTA functions as a

²²For criticism on the view of Eurocentrism see, e.g., A. Acharya, *Whose Ideas Matter? Agency and Power in Asian Regionalism* (2009), 27; F. Söderbaum, *Rethinking Regionalism* (2016), at 7–8, 175.

²³EU Mission to ASEAN, 'Blue Book: EU-ASEAN Natural Partners', (2010), at 11; EEAS, 'EU-ASEAN: Natural Partners', (2013), at 1.

²⁴For WTO law see, e.g., General Agreement on Tariffs and Trade (1994), Art. XXIV.8.

²⁵J. Gilson, 'New Interregionalism? The EU and East Asia', (2005) 27(3) *European Integration* 307, at 309; R. Roloff, 'Interregionalism in Theoretical Perspective: State of the Art, in J. Rüländ, H. Hänggi and R. Roloff, *Interregionalism and International Relations: A Stepping Stone to Global Governance?* (2005), 17, 18.

²⁶F. Söderbaum and L. Van Langenhove, 'Introduction: The EU as a Global Actor and the Role of Interregionalism', (2005) 27(3) *European Integration* 249, at 258.

²⁷V. K. Aggarwal and E. A. Fogarty, 'Between Regionalism and Globalism: European Union Interregional Trade Strategies', in Aggarwal and Fogarty (eds.), *EU Trade Strategies: Between Regionalism and Globalism* (2004), 1, 5–6; Söderbaum, *supra* note 22, at 176–7; J. Rüländ, 'Balancers, Multilateral Utilities or Regional Identity Builders? International Relations and the Study of Interregionalism', (2010) 17(8) *Journal of European Public Policy* 1271, at 1272.

²⁸Aggarwal and Fogarty, *ibid.*, at 5; H. Hänggi, 'Interregionalism as a Multifaceted Phenomenon: In Search of a Typology', in Rüländ, Hänggi and Roloff, *supra* note 25, at 31, 40–1.

normative basis for the EU-ASEAN FTA. For Brussels, realizing the region-to-region FTA remains challenging. There have been persistent concerns about differences in national interests that would lower standards to the lowest common denominator and derail the EU's objective to build an ambitious WTO-plus FTA. Politically speaking, issues on human rights violations by authoritarian regimes including Cambodia and Myanmar constitute additional hurdles to EU-ASEAN interregionalism. The EU-Singapore FTA should thus be seen as a start for advancing interregional relations. The negotiations and contents of the FTA contribute to the understanding of interregionalism in international economic law and international relations.

To assess the potential impact of the EU-Singapore FTA on EU-ASEAN ties, it is critical to understand the theoretical debates that underpin the concept of interregionalism. While various theoretical lenses will be introduced, the theoretical framework will focus on realism and constructivism. The former is one of the most established theories on which political scientists have relied to decipher integration driven by mercantilist competition, whereas the latter represents a new trend for understanding interregionalism from an identity-based view.²⁹

Realists posit that the purpose of interregionalism is to fortify the hegemonic status or ensure the balance of power in world politics.³⁰ For instance, the EU's main motivation is to magnify its 'normative power' or the 'Brussels effect' in international regulatory standards, whereas ASEAN aims to involve the EU to ensure 'ASEAN centrality' in the Asia-Pacific.³¹ The empirical analysis based on the choice of norms under the EU-Singapore FTA helps evaluate the EU's normative power in promoting European or universal values that the Treaty of Lisbon mandates. Given the EU's declining economic and political power and its strong strategic interest in Asia's economic architecture, it is vital to consider if Asian countries made the EU more 'flexible' about FTA norms and mechanisms. More profoundly, these developments provide an insight into the question of whether the EU-Singapore FTA can actually benefit interregionalism and create more equitable global economic relationships.

Other than realism, functionalism assumes that super-national institutions under the interregional framework will 'spill over' into the arena of 'high politics' between regions.³² Pursuant to institutionalism, the interregional system that establishes new norms and practices will shape state behaviour and enhance co-operation.³³ Both functional and institutional theories are largely premised on the EU's internal integration but have not been substantiated in the EU's interregional ties with ASEAN.³⁴ Indeed, as the EU-Singapore FTA merely indicates the inception of the EU-ASEAN framework, discussions on the tangible impact on high politics and interregional schemes remain premature.

Another focus of the theoretical framework relates to ontology-premised constructivism. As a relatively new angle to understand non-EU regions including ASEAN, scholars turn to constructivism and perceive regional integration as an identity-building process.³⁵ Interregional relations

²⁹L. Fawcett and A. Hurrell, *Regionalism in Theoretical Perspective*, in *Regionalism in World Politics: Regional Organization and International Order* (1995), 37, 48–9; J. Gilson, *Asia Meets Europe: Inter-regionalism and the Asia-Europe Meeting* (2002), 15–30.

³⁰*Ibid.*, at 50; Rüländ, Hänggi and Roloff, *supra* note 25, at 295, 300–1; A. Hardacre and M. Smith, 'The EU and the Diplomacy of Complex Interregionalism', (2009) 4 *Hague Journal of Diplomacy* 167, at 170.

³¹H. Hai Hoang and D. Sicureli, 'The EU's Preferential Trade Agreements with Singapore and Vietnam: Market vs. Normative Imperatives', (2017) 23(4) *Contemporary Politics* 369, at 371–2; A. Bradford, *The Brussels Effect: How the European Union Rules the World* (2020), 26–36; Council of the EU, 'Joint Statement of the 22nd EU-ASEAN Ministerial Meeting', 21 January 2019, available at www.consilium.europa.eu/en/press/press-releases/2019/01/21/joint-statement-of-the-22nd-eu-asean-ministerial-meeting/.

³²Fawcett and Hurrell, *supra* note 29, at 59–60.

³³Rüländ, Hänggi and Roloff, *supra* note 25, at 302–3.

³⁴Fawcett and Hurrell, *supra* note 29, at 60; Rüländ, Hänggi and Roloff, *ibid.*, at 303.

³⁵E.g., A. Acharya, *The Making of Southeast Asia: International Relations of A Region* (2012), 11–12; T. Lenz and G. Marks, *Regional Institutional Design*, in T. A. Börzel and T. Risse (eds.), *The Oxford Handbook of Comparative Regionalism* (2016), 513, 520–1.

are considered as promoting collective identity-building.³⁶ Divergent from realism's emphasis on the pursuit of material interests, constructivism posits that in the subjective world system, recognition of identity by other entities also propels state actions.³⁷

In the view of constructivism, the EU and ASEAN have functioned as the 'other' in their respective development. Identifying itself as a global rule-maker, the EU has promoted 'regional replication' by externalizing institutional experiences to ASEAN.³⁸ Brussels' recognition of ASEAN as a bargaining power also accords ASEAN a distinct identity with prestige.³⁹ In particular, the development of the EU-Singapore FTA enhances the understanding of whether the agreement promotes collective identity in the politically sensitive areas of sustainable development and human rights. In the long run, the normative development of the EU-ASEAN FTA may also buttress the identity of ASEAN on par with that of the EU at the global stage.

Significantly, it is inaccurate to characterize the EU as 'the' model for ASEAN. Although the EU evolution provides a valuable reference, ASEAN has never intended to pursue EU-style integration. Former Singapore Prime Minister Lee Kuan Yew predicted 'Europe's inevitable decline' because of integration challenges.⁴⁰ Arguably, Lee's prediction bolsters the constructive understanding of changing EU-ASEAN ties. The EU's declining share of world trade and GDP have altered Brussels' perception of ASEAN as a rule-taker or 'protégé'.⁴¹ The European debt crisis and Brexit further propelled ASEAN leaders to deliberately assess the selective adoption of EU institutional norms.

Contextualizing EU-ASEAN interregionalism in the global context helps understand the EU-Singapore FTA from more holistic historical and political perspectives. Interregionalism between the two blocs has rapidly evolved in the third wave of global regionalism, which I referred to as the 'Third Regionalism'.⁴² Jagdish Bhagwati propounded the term, the 'First Regionalism', in reference to the first wave of regional integration that commenced in the 1950s.⁴³ However, meaningful regionalism was limited to the European Economic Community (EEC), the precursor to the EU.⁴⁴ As evidenced by the sluggish liberalization following the founding of ASEAN in 1967, political interferences and the import-substituting mindset led to the failure of integration outside Europe. In the 'Second Regionalism' in the 1980s and 90s, other successful examples such as the North American Free Trade Agreement and the ASEAN Free Trade Area, emerged on the world stage.⁴⁵

In my view, the world ushered into the 'Third Regionalism' parallel with the Doha Round in the 2000s.⁴⁶ New interregionalism was initially illustrated by the transformation from the Lomé Convention with African, Caribbean and Pacific (ACP) countries to the Cotonou Agreement

³⁶Rüland, Hänggi and Roloff, *supra* note 25, at 308–9; Hardacre and Smith, *supra* note 30, at 170.

³⁷A. Wendt, 'Collective Identity Formation and the International State', (1994) 88(2) *American Political Science Review* 384, at 384–5; P. L. Hsieh, 'Rethinking Non-recognition, Taiwan's New Pivot to ASEAN and the One-China Policy', (2020) 33(2) *Cambridge Review of International Affairs* 204, at 207–8.

³⁸Aggarwal and Fogarty, *supra* note 27, at 18–19; I. Manners and R. Whitman, 'The "Difference Engine": Constructing and Representing the International Identity of The European Union', (2003) 10(3) *Journal of European Public Policy* 380, at 385.

³⁹B. Ong, 'Recognizing Regions: ASEAN Struggles for Recognition', (2012) 25(4) *Pacific Review* 513, at 525–6.

⁴⁰L. Kuan Yew, *One Man's View of the World* (2013), 112–13.

⁴¹The EU's share of world trade in goods and services is 16.7% and its GDP is expected to fall from 15% to 9% by 2050. Trade Policy Review, Report by the Secretariat, European Union, WT/TPR/S/395, 10 Dec. 2019, at 25; PWC, 'The Long View: How Will the Global Economic Order Change by 2050?', (2017), at 4; L. Hwee Yeo, 'EU-ASEAN Security Cooperation', in S. Economides and J. Sperling, *EU Security Strategies: Extending the EU System of Security Governance* (2018), 67, 77.

⁴²P. L. Hsieh, 'Reassessing The Trade-Development Nexus in International Economic Law: The Paradigm Shift in Asia-Pacific Regionalism', (2017) 37(3) *Northwestern Journal of International Law & Business* 321, at 335.

⁴³J. Bhagwati, *Termites in the Trading System: How Preferential Agreements under Free Trade* (2008), 29–31.

⁴⁴WTO, 'World Trade Report 2011 – The WTO and Preferential Trade Agreements: From Co-Existence to Coherence', (2011), at 52, available at www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report11_e.pdf.

⁴⁵Bhagwati, *supra* note 43, at 31–5; WTO, *ibid.*, at 52–3.

⁴⁶Commentators described the new developments as the third-generation or post-hegemonic regionalism. Söderbaum and Van Langenhove, *supra* note 26, at 256–7; M. Telo, 'Introduction: Globalization, New Regionalism and the Role of the European Union', in M. Telo (ed.), *European Union and New Regionalism: Competing Regionalism and Global Governance in a Post-Hegemonic Era* (2014) 1, 5.

and its pertinent economic partnership agreements. Distinct from the ‘constructed’ ACP region, ASEAN denotes a defined region and an international organization with legal personality conferred by the ASEAN Charter.⁴⁷ As the EU stressed, the shift of the world’s centre of economic gravity to Asia will make ASEAN the largest exporter and the EU intends to engage in ASEAN-led security architecture in the Asia-Pacific.⁴⁸ Compared with the EU’s interregional ties with ACP countries or Mercosur, Brussels’ relations with ASEAN feature more salient North-South ties from economic and political perspectives.

In the Third Regionalism, fundamental global changes have shaped EU-ASEAN interregionalism. First, mega-FTAs have surfaced amid the stalled Doha Round. The CPTPP and the ASEAN-based Regional Comprehensive Economic Partnership (RCEP) have become the priority for regional countries. ASEAN countries’ participation in these pacts would augment the bloc’s leveraging power toward the EU and other trade partners. EU FTAs with Singapore and eventually with ASEAN could minimize the trade diversion effect and enable European businesses to benefit from the Asian FTA network. Importantly, the RCEP and the prospective adoption of the EU-ASEAN FTA may signal diverse normative approaches to regionalism. Different from modern EU FTAs, it is significant to note that the RCEP lacks provisions on state-owned enterprises (SOEs), labour and environmental standards. The RCEP thus represents a unique model that departs from modern EU FTAs that focus on the comprehensiveness and values-based provisions on sustainable development and human rights.

Second, US unilateralism that the Trump administration has championed led to ‘hegemonic instability’ in the international economic order. Washington’s dominant power provided for post-war hegemonic stability on which the neoliberal economic order was based.⁴⁹ However, rising populist nationalism has disrupted such stability, causing escalating US conflicts with China and even the EU. As the domino theory posits, the US-Singapore FTA and ASEAN’s FTAs with China and Japan energized the EU’s trade negotiations with Singapore and ASEAN.⁵⁰ In 2017, the halted talks of the US-EU Transatlantic Trade and Investment Partnership (TTIP) further prompted the relaunch of the EU-ASEAN FTA negotiations that were suspended in 2009.⁵¹

Lastly, the spread of COVID-19 has damaged global value chains and proliferating protectionist trade measures have aggravated de-globalization. The EU and ASEAN will likely sink into a deeper recession because the GDPs of the two regions are expected to fall by 7.5 per cent and 10 per cent, respectively.⁵² Under the EU’s 2020 policy of ‘open strategic autonomy’, global trade constitutes a ‘growth engine and will be essential for Europe’s recovery’.⁵³ The pandemic will thus give an extra push to conclude EU FTAs with ASEAN countries after the agreements with Singapore and Vietnam. From ASEAN’s perspective, the RCEP and the EU-ASEAN FTA form an intertwined two-pronged strategy to revitalize competitiveness.

⁴⁷Charter of the ASEAN (2007), Art. 3.

⁴⁸Commissions of the European Communities, ‘Communication from the Commission: A New Partnership with South East Asia’, COM (2003) 399 final (2003), at 6; EU-ASEAN Plan of Action (2018-2022) (2017), para. 1.2(b).

⁴⁹M. C. Webb and S. D. Krasner, ‘Hegemonic Stability Theory: An Empirical Assessment’, (1989) 15(2) *International Studies Review* 183, at 185–6.

⁵⁰R. Baldwin, ‘A Domino Theory of Regionalism’, (1993) *NBER Working Paper Series*, Working Paper No. 4465, at 2–5; European Services Forum, Letter to the Commissioner for Trade, 12 July 2020, at 1–2; A. C. Robles, Jr, ‘An EU-ASEAN FTA: The EU’s Failure as An International Actor’, (2008) 13 *European Foreign Affairs Review* 541, 542; D. Camroux, ‘Interregionalism or Merely a Fourth-Level Game? An Examination of the EU-ASEAN Relationship’, (2010) 27 *East Asia* 57, at 67.

⁵¹Editorial, ‘Is There An EU-ASEAN Trade Deal on the Horizon?’, *ASEAN Today*, 18 December 2019, available at www.aseantoday.com/2019/12/is-there-an-eu-asean-trade-deal-on-the-horizon/; European Commission, ‘Overview of FTA and Other Trade Negotiations’, Updated February 2020, at 2, available at trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf.

⁵²I. Monterosa et al., ‘Trade in Time of Corona: What’s Next for the EU?’, *ECIPE*, June 2020, available at ecipe.org/blog/trade-in-time-of-corona/; VOA News, ‘Virus-Fueled Recession Interrupts ASEAN Path to Middle-Income Status’, *VOA News*, 28 April 2020, available at www.voanews.com/covid-19-pandemic/virus-fueled-recession-interrupts-asean-path-middle-income-status.

⁵³European Commission, ‘Europe’s Moment: Repair and Prepare for the Next Generation’, (2020) COM(2020) 456 final, at 13.

Given that global investment may drop by 40 per cent due to COVID-19 and that the EU is the largest investor in ASEAN, a bilateral agreement that stabilizes European investment is essential to development.⁵⁴ Moreover, six of the world's top ten exporters of medical and personal protective products are EU countries.⁵⁵ An FTA that decreases tariffs and non-tariff barriers for these products undoubtedly enhances ASEAN authorities' control over the coronavirus crisis.

2.2 Evolving frameworks on EU-ASEAN economic relations

The contextual background of the EU-ASEAN relationship in the Third Regionalism has influenced the EU's Asia and global trade policies, EU-ASEAN legal frameworks and the approach of Singapore. In 1972, Singapore and four original ASEAN countries took the initiative to broaden ties with the EEC by creating the Brussels-based Special Coordinating Committee of ASEAN Nations.⁵⁶ After the EEC became ASEAN's first dialogue partner in 1977, the two regions concluded the 1980 ASEAN-EEC Cooperation Agreement.⁵⁷ This agreement stipulates commercial, economic and development co-operation and fits within ASEAN's external relations goals, which aim to secure trade relations and technical assistance for regional projects.⁵⁸ Notably, the agreement includes only best-endeavour clauses without concrete agendas.

In the first decade, ASEAN's concern primarily related to the EEC's generalized scheme of preferences (GSP) and access to the European market. Singapore and Malaysia worried about losing their commonwealth preferences to the British market following the UK's accession to the EEC in 1973.⁵⁹ ASEAN countries considered their GSP benefits insufficient compared with concessions that ACP countries received under the Lomé Convention.⁶⁰ The ASEAN Inter-Parliamentary Organization (AIPO) passed various resolutions to urge the EEC 'to refrain from imposing restrictive and unilateral measures' and complained about the EEC's 'extremely slow' implementation of the 1980 agreement.⁶¹ Different from the European Parliament, the AIPO that later became the ASEAN Inter-Parliamentary Assembly (AIPA) did not possess legislative power and its resolutions are not legally binding.⁶² However, parliamentary members' resolutions reflect ASEAN countries' frustrations over Brussels' passive stance.

The 1992 regulation constitutes the EU's legal basis for providing financial and technical assistance to ASEAN.⁶³ To respond to the changing global economic and security context, the EU started envisioning 'a new Asia strategy' that would proactively increase the EU presence in Asia.⁶⁴ ASEAN was identified as a top priority.⁶⁵ With the support of French president

⁵⁴European Commission and MTI, *supra* note 7, at 7; United Nations Conference on Trade and Investment (UNCTAD), (2020) World Investment Report 2020, at 2.

⁵⁵WTO, 'Trade in Medical Goods in the Context of Tackling COVID-19', (2020), at 5.

⁵⁶Commission of the European Communities, 'Creating a New Dynamic in EU-ASEAN Relations', (1996) COM(96) 314 final, at 66.

⁵⁷ASEAN Secretariat's Information Paper, 'Overview of ASEAN-European Union Dialogue Relations', (2019), at 1.

⁵⁸Cooperation 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), Arts. 2–4; S. Pushpanathan, 'ASEAN's Strategy Towards Its Dialogue Partners and ASEAN Plus Three Process', 2003, available at asean.org/?static_post=asean-s-strategy-towards-its-dialogue-partners-and-asean-plus-three-process-by-s-pushpanathan.

⁵⁹P. J. Lim, 'ASEAN's Relations with the EU: Obstacles and Opportunities', (2012) *EU External Affairs Review* 46, at 47.

⁶⁰A. J. Crozier, 'The Trade and Aid Policy of the European Union: A Historical Perspective', in P. J. J. Welfens et al. (eds.), *EU-ASEAN: Facing Economic Globalisation* (2009), 57, at 69; Severino, *supra* note 8, at 330.

⁶¹ASEAN Inter-Parliamentary Organization (AIPO), Resolution of the Sixth AIPO General Assembly on ASEAN-EC Economic Cooperation, (1983), 6GA/RES.11/83 at 1; AIPO, Resolution of the Ninth General Assembly of AIPO on the ASEAN-EC Economic Cooperation, (1988), WC/GA9/88/KL/29/6, at 1.

⁶²L. Vandewalle, *The ASEAN Inter-Parliamentary Assembly (AIPA): A Privileged Interlocutor for the European Parliament in South East Asia* (2015), 1–6.

⁶³Council Regulation (EEC) No 443/92 of 25 February 1992 on Financial and Technical assistance to, and Economic Cooperation with, the Developing countries in Asia and Latin America (1992).

⁶⁴Commission of the European Communities, Towards a New Asia Strategy, (1994) COM(94) 314 final, at 3–8.

⁶⁵*Ibid.*, at 9, 24.

Jacques Chirac, Singapore Prime Minister Goh Chok Tong's proposal to create a trans-continental forum, known as the ASEM, materialized in 1996.⁶⁶ The ASEM became an EU-ASEAN summit with the presence of other Asian countries. As states participate in the ASEM in individual capacity rather than as a group, the ASEM can be seen as a structure of transregionalism that benefits interregionalism.⁶⁷ The ASEM has been criticized for lacking concrete achievements because of the forum's overly broad topics and the reluctance of Singapore and other Asian members to respond to the EU's human rights agenda.⁶⁸

At the inception of the Third Regionalism, the European Commission advocated for EU-Asia 'enhanced partnerships', which would provide ASEAN with much-needed economic reform assistance after Asian and global financial crises.⁶⁹ In its 2003 action plan for 'a new partnership' that aims to revitalize ties with ASEAN, the Commission proposed the Trans-Regional EU-ASEAN Trade Initiative (TREATI).⁷⁰ It is a flexible 'dialogue mechanism involving the EU and more than two ASEAN countries' and centres on trade and investment issues that will provide a foundation for a prospective EU-ASEAN FTA.⁷¹ A similar mechanism also applies to the Regional EC-ASEAN Dialogue Instrument (READI) that focuses on development co-operation.⁷²

2.3 Bilateral FTAs-based approach

The historical and political differences between the EU and ASEAN led to different legal systems that govern integration. The EU follows the hard-law, top-down approach, whereas ASEAN operates primarily under the soft-law model that promotes horizontal harmonization. The negotiation and ratification of the EU-ASEAN FTA involve the legal competence of various EU institutions. Under EU law, an authorization of the Council of the EU (Council) to commence trade negotiations is based on the European Commission's recommendation.⁷³ The conclusion and effect of a trade agreement, which is negotiated by the Commission, will be subject to the Council's adoption and the European Parliament's ratification.⁷⁴ While the Council and the Commission prioritize the EU's material interests in trade pacts, the Parliament that represents citizens rather than states often focuses on ideological values such as democracy and human rights.⁷⁵

Unlike EU law, the treaty-making power provision of the ASEAN Charter does not extend to treaties that will 'create obligations upon individual' states.⁷⁶ Premised on the practice of ASEAN's external FTAs, ten members negotiate as a caucus, but each of these FTAs essentially encompasses ten sets of schedules and commitments. The effect of an ASEAN FTA depends on national

⁶⁶Severino, *supra* note 8, at 334.

⁶⁷Aggarwal and Fogarty, *supra* note 27, at 5; C. Dent, 'From Inter-regionalism to Trans-regionalism? Future Challenges for ASEM', (2003) 1 *Asia European Journal* 223, at 231–2.

⁶⁸N. Moranda, 'Europe and Southeast Asia: ASEAN-EU Interregionalism between Pluralist and Solidarist Societies', (2012) 4(3) *Review of European Studies* 89, at 96; M. Manea, 'Human Rights and the Interregional Dialogue between Asia and Europe: ASEAN-EU Relations and ASEM', (2008) 21(3) *Pacific Review* 369, at 379.

⁶⁹Commission of the European Communities, *Europe and Asia: A Strategic Framework for Enhanced Partnerships*, (2001), COM(2001) 469 final, at 21.

⁷⁰Commission of the European Communities, *A New Partnership with South East Asia*, (2003), COM(2003) 399 final, at 4, 31.

⁷¹*Ibid.*, at 31.

⁷²Joint Co-Chairman's Statement of the 15th ASEAN-EU Ministerial Meeting Jakarta, (2005), para. 8; L. Hwee Yeo, 'Political Cooperation between the EU and ASEAN: Searching for a Long-Term Agenda and Joint Projects', in Welfens et al., *supra* note 60, at 45, 53–4.

⁷³Consolidated Version of the Treaty of the Functioning of the European Union, (2012), OJ C 326/47 (TFEU), Art. 207(3).

⁷⁴*Ibid.*, Arts. 207, 218; Trade Policy Review, *supra* note 41, at 34.

⁷⁵L. Mckenzie and K. L. Messiner, 'Human Rights Conditionality in European Union Trade Negotiations: The Case of the EU-Singapore FTA', (2017) 55(4) *Journal of Common Market Studies* 832, at 838.

⁷⁶Charter of the ASEAN (2007), Art. 41(7); Rules of Procedure for Conclusion of International Agreements by ASEAN (2011), rule 1.

procedures instead of the AIPA's ratification. These legal distinctions are critical to the shaping of EU-ASEAN interregionalism.

In 2006, the European Commission launched the 'Global Europe' strategy.⁷⁷ ASEAN emerged as the EU's FTA priority based on the criteria of market potential and protection levels that European businesses encountered.⁷⁸ Recognizing ASEAN's 'extremely heterogeneous' composition, the EU-ASEAN Vision Group's report identified obstacles to FTA negotiations and urged the utilization of existing TREATI and READI mechanisms.⁷⁹ After obtaining the Council's mandate, the Commission started negotiations with seven ASEAN states in July 2007.⁸⁰ The European Parliament also stressed that a PCA, which includes 'enforceable human rights clauses', is required as a prerequisite to an FTA.⁸¹

However, the EU-ASEAN joint committee decided to pause FTA talks in March 2009.⁸² The challenges included the liberalization level and flexibilities for Myanmar and other least-developed ASEAN members, as well as WTO-plus issues on government procurement and sustainable development.⁸³ Markedly, given the limited progress, the Commission envisioned a parallel, fast-track approach to negotiating with ASEAN's sub-group of 'forerunners'.⁸⁴ This complementary approach similarly failed because only negotiations with Singapore remained constructive on most issues.⁸⁵

Since its independence in 1965, Singapore has upheld a foreign policy of pragmatism not ascribed to any ideology.⁸⁶ Such pragmatism does not equate realism premised on the pursuit of powers, as the policy also stresses the significance of international law to small states. Singapore has maximized its economic and political space amid big powers by strongly supporting regional mechanisms such as ASEAN.⁸⁷ In line with this strategy, Singapore's free trade policy and absence of agricultural exports made it a popular choice as an FTA partner. Prior to the EU-Singapore FTA and IPA, Singapore was a party to 24 global FTAs and concluded 12 bilateral investment treaties (BITs) with EU states.⁸⁸ The failure of EU-ASEAN FTA negotiations turned Brussels' approach to bilateralism, using pathfinder agreements as the foundation for the region-to-region FTA.⁸⁹

Against this backdrop, negotiations between the EU and Singapore launched at the end of 2009 and were completed in 2014.⁹⁰ Given the CJEU's Opinion 2/15, both sides split the agreement into the FTA and the IPA in 2017 and signed both instruments in the following year.⁹¹ In Singapore law and practice, the Singapore Parliament's consent is neither sought nor required for a trade

⁷⁷European Commission, 'Global Europe: Competing in the World: A Contribution to the EU's Growth and Jobs Strategy', (2006), COM(2006) 567 final, at 1–3.

⁷⁸*Ibid.*, at 9.

⁷⁹The ASEAN-EU Vision Group, 'Report of the ASEAN-EU Vision Group: Transregional Partnership for Shared and Sustainable Prosperity', (2006), at 8–15.

⁸⁰Commission of the European Communities, 'Report on the State of Play of the FTA Negotiations with ASEAN, India, the Andean Community and Central America', (2009), SEC(2009) 681 final, at 4; European Commission, *supra* note 51, at 2.

⁸¹European Parliament, European Parliament Resolution of 8 May 2008 on Trade and Economic Relations with the Association of South East Asian Nations (ASEAN), (2008), P6_TA(2008)0195, para. H.

⁸²Commission of the European Communities (2009), *supra* note 80, at 5.

⁸³*Ibid.*, at 5–8.

⁸⁴*Ibid.*, at 5.

⁸⁵Thailand and Brunei also initially expressed interest in being forerunners. *Ibid.*

⁸⁶T. Koh, *The Quest for World Order: Perspectives of a Pragmatic Idealist* (1998), 177–8.

⁸⁷*Ibid.* L. Kuan Yew, *Hard Truths to Keep Singapore Going* (2011), 306–12.

⁸⁸WTO, 'Regional Trade Agreements Database', available at rtais.wto.org/UI/PublicSearchByMemberResult.aspx?MemberCode=702&lang=1&redirect=1; EU-Singapore Investment Protection Agreement, (2018), Ch. 4, Ann. 5.

⁸⁹Note that in 2003, the European Parliament called for commencing negotiations with Singapore 'as soon as possible'. European Parliament, European Parliament Resolution on Regional Free Trade Areas and Trade Strategy in the European Union, (2003), P5_TA(2003)0237, para. 23.

⁹⁰MTI, PowerPoint Slides: The EUSFTA: New Opportunities for Our Business, (2019), at 2.

⁹¹*Ibid.*

agreement to come into force.⁹² Hence, after the European Parliament ratified both agreements in 2019, the EU-Singapore FTA became effective, while the IPA will be subject to approval by 27 EU members.⁹³ Also, following the European Parliament's consent, Vietnam's National Assembly ratified the EU-Vietnam FTA, which came into force in 2020.⁹⁴ This FTA constitutes 'a second benchmark for engaging other' ASEAN states under the building-block approach reiterated in the EU's 'Trade for All' strategy.⁹⁵

3. Assessing the Pathfinder Agreement: Innovations and challenges

The theoretical concept of interregionalism surmises that co-operation between regions can increase under the interregional structure and that individual states in these regions will promote the process of such co-operation. Indeed, EU FTAs with Singapore and Vietnam galvanized the EU and ASEAN to work on the resumption of region-to-region FTA negotiations.⁹⁶ As political scientists argue, interregionalism galvanizes the hegemonic status and the balance of powers, as well as the shaping of identities.

Realist considerations are paramount in the EU's and ASEAN's trade and geopolitical policies. For example, the Ursula von der Leyen Commission has continued to deem ASEAN 'a central player' in the EU-Asia Connectivity Strategy.⁹⁷ This strategy is often regarded as the European version of the Belt and Road Initiative and intends to balance the influence of China, which Brussels now sees as 'a systemic rival; that undermines the EU's integrity and interests'.⁹⁸ As for ASEAN, the EU provides essential financial and technical support for intra-ASEAN regional integration such as capacity building and trade facilitation.⁹⁹ The EU-ASEAN FTA will also contribute to a key objective of 'Global ASEAN' in the AEC Blueprint 2025.¹⁰⁰ In the meantime, the region-to-region FTA will further the recognition of ASEAN's power and identity that strengthens ASEAN centrality in the regional architecture.

As a new-generation agreement, the EU-Singapore FTA is Brussels' first FTA with an ASEAN country and the third with an Asian country besides Korea and Japan. The innovative legal structure and commitments under the FTA will shape EU-ASEAN interregionalism. As the empirical analysis below demonstrates, the EU's normative power is evident in including ASEAN cumulative rules of origin and provisions of banking services and non-tariff barriers. These provisions, in turn, advance EU business interests in diverse industries and empower the EU's influences in mercantilist competition as realists predicted. From a constructivist view, the ASEAN-centred rules of origin, particularly those governing Asian food products, benefit ASEAN integration and the bloc's identity as an economic community in Asia. In the long run, FTA provisions on the movement of natural persons will further increase the collective identity of citizens in the interregional structure.

⁹²C. L. Lim and M. Mohen, 'Ch. 05 Singapore and International Law', *Singapore Law Watch*, 1 January 2015, available at www.singaporelawwatch.sg/About-Singapore-Law/Overview/ch-05-singapore-and-international-law.

⁹³MTI, *supra* note 1, at 1; European Commission, *supra* note 51, at 2.

⁹⁴K. Vu, 'Vietnam Ratifies Free Trade Deal with EU', *Reuters*, 8 June 2020, available at www.reuters.com/article/us-eu-vietnam-trade/vietnam-ratifies-free-trade-deal-with-eu-idUSKBN23F07V.

⁹⁵European Commission, *supra* note 4, at 31–2.

⁹⁶EU-ASEAN Plan of Action (2018-2022), (2017), para. 2.1(c).

⁹⁷European Commission, 'Connecting Europe and Asia – Building Blocks for an EU Strategy', (2018), JOIN(2018) 31 final, at 8.

⁹⁸European Commission and HR/VP Contribution to the European Council, 'EU-China – A Strategic Outlook', (2019) JOIN(2019) 5 final, at 1.

⁹⁹The EU support is based on the enhanced READI (E-READI) and ASEAN Regional Integration Support from the EU (ARISE) Plus schemes. Yeo, *supra* note 72, at 54; EEAS, 'Enhanced Regional EU-ASEAN Dialogue Instrument (E-READI)', 27 May 2019, available at eeas.europa.eu/headquarters/headquarters-homepage/49815/enhanced-regional-eu-asean-dialogue-instrument-e-readi_ru; ARISE, 'Background', available at ariseplus.asean.org/about/.

¹⁰⁰ASEAN, ASEAN Economic Community 2025 Consolidated Strategic Action Plan, (2017), at 46–7.

3.1 Tariff eliminations and ASEAN cumulative rules of origin

Undoubtedly, the level of tariff liberalization under the EU-Singapore FTA set the benchmark for the prospective EU-ASEAN FTA. With the exception of higher tariff rates on agricultural products, the EU's average applied tariff rate is 6.3 per cent, close to its WTO bound rates.¹⁰¹ Under the FTA, the EU is committed to eliminating tariffs in three stages, beginning with 84 per cent of Singapore exports within one year from 21 November 2019, the date on which the FTA became effective.¹⁰² Remaining duties will be removed in three and five years, respectively.¹⁰³ Importantly, EU states' political consideration influenced the tariff elimination schedule. For instance, the tariff on Singapore's 'roti pratas' will only be cut by 2025 because Italy was concerned about roti pratas substituting for pizzas.¹⁰⁴ Some fish products and vegetables such as sweet corn are also excluded from the EU's tariff liberalization.¹⁰⁵

Known as a free port, Singapore applied zero tariff on 99 per cent of its imports.¹⁰⁶ As 30.7 per cent of Singapore's tariff lines are not included in its WTO commitments and the government has flexibility to increase its currently applied rates to the level of bound rates, FTA commitments ensure predictability for European businesses.¹⁰⁷ To reciprocate the EU's tariff liberalization, the EU-Singapore FTA also eliminated Singapore's remaining tariffs on alcoholic beverages including beer, stout and samsu.¹⁰⁸

The innovative designs of the EU-Singapore FTA lie in its rules of origin that allows for 'ASEAN cumulation' and the special regime that permits Asian food products to enter the EU duty free. Rules of origin make sure that only goods from FTA partners rather than third countries are entitled to preferential treatment. As contemporary FTAs, the EU-Singapore FTA adopts co-equal rules that enable exporters to rely on either the change in tariff classification rule or the regional value content (RVC) rule.¹⁰⁹ Under the RVC rule, products that fail to meet the threshold for RVC, such as 40 per cent in most ASEAN FTAs, will be considered non-originating goods ineligible for FTA tariff preferences.¹¹⁰

As Singapore is not a major manufacturing base, the RVC rule that only takes into account Singapore-made materials would impair the effectiveness of FTAs and ignore the reality of the regional supply chain. The concept of ASEAN cumulation allows components produced in ASEAN countries to count toward the FTA's RVC benchmark and helps ASEAN to 'establish a more united market' pursuant to the AEC Blueprint 2025.¹¹¹ While the EU's GSP and 'ASEAN Plus One' FTAs recognize ASEAN cumulation in their rules of origin, this concept is rarely adopted in FTAs with individual ASEAN countries.¹¹² For instance, the ASEAN-Japan

¹⁰¹Trade Policy Review, *supra* note 41, at 62–4.

¹⁰²Annex B: Factsheet on the Key Benefits of the EUSFTA, in MTI, *supra* note 1, at 4.

¹⁰³*Ibid.*

¹⁰⁴Toh B. H., PowerPoint Slides: EUSFTA Trade in Goods: Increase Your Products' Price Competitiveness in the EU, (2020), at 16–17, available at eurocham.org.sg/wp-content/uploads/2019/12/2-EUSFTA-Seriess-II_Trade-in-Goods_Boon-Ho.pdf; M. E. Chelliah's explanations at the EU-Singapore Free Trade Agreement (EUSFTA) Outreach Series II on 4 February 2020.

¹⁰⁵Toh, *ibid.*, at 16; European Parliament, 'Free Trade Agreement between the EU and the Republic of Singapore – Analysis', (2018), at 39.

¹⁰⁶'Trade Regulations, Customs and Standards', available at 2016.export.gov/singapore/doingbusinessinsingapore/traderegulationscustomsandstandards/index.asp. In its WTO commitments, the average bound rate of Singapore is 6.9%. Trade Policy Review, 'Report by the Secretariat, Singapore', (2016), WT/TPR.S.343, at 28.

¹⁰⁷Trade Policy Review, *ibid.*, at 27–8.

¹⁰⁸*Ibid.*, at 27; Toh, *supra* note 104, at 15.

¹⁰⁹European Commission and MTI, *supra* note 7, at 10.

¹¹⁰N. H. Nguyen et al., 'The ASEAN Trade in Goods Agreement: Evolution and Regional Implications', in P. L. Hsieh and B. Mercurio (eds.), *ASEAN Law in the New Regional Economic Order: Global Trends and Shifting Paradigms* (2019), 22, 39.

¹¹¹ASEAN Economic Community (AEC) Blueprint 2025, (2015), para. 7.

¹¹²The EU grants regional cumulation to nine ASEAN countries. European Parliament, 'The Generalised Scheme of Preferences Regulation (No 978/2012): European Implementation Assessment (2018)', at 93, fn 32.

FTA contains ASEAN cumulation rules, which are absent in Japan's bilateral FTAs with seven ASEAN countries.¹¹³ Hence, the incorporation of ASEAN cumulation in the EU-Singapore FTA is unique and important to ASEAN integration.

To build a foundation for the EU-ASEAN FTA, the EU-Singapore FTA enables two types of ASEAN cumulation. First, products from any ASEAN country can benefit from cumulation rules under EU-Singapore FTA if the ASEAN country concluded an FTA with the EU.¹¹⁴ A review clause also provides the basis for both parties to review rules of origin 'to ensure coherence' after several FTAs are concluded between the EU and several ASEAN parties.¹¹⁵ Second, even in the absence of EU FTAs with ASEAN members, Singapore manufacturers can still use other ASEAN countries' raw materials and parts for selected products as Singapore-originating contents eligible for FTA preferences.¹¹⁶ Although the list of these products including cameras, microphones and petroleum gases is relatively short, it provides a mechanism to fill the gap in the interim period. Since ASEAN cumulation under the EU-Vietnam FTA extends to the first but not the second situation, regional manufacturers can benefit more from the EU-Singapore FTA.¹¹⁷

In addition, the EU-Singapore FTA marks the first agreement that contains specialized rules of origin enabling Asian food products to enter Europe without tariffs. The recognition of Asian food products under this trade pact particularly reinforces the constructivist argument that inter-regional co-operation facilitates identity-building beyond the realist discourse. These rules will diversify ASEAN exports and enrich food culture in Europe. The products listed in Annex B to Protocol 1 cover cuisines such as spring rolls, rice noodles, and wrappers for Peking Duck.¹¹⁸ While Annex B imposes the limit of non-Singaporean raw materials, Annex B(a) constitutes an exception allowing more liberal rules of origin for food products subject to an annual quota of 1,250 tonnes.¹¹⁹ For instance, under Annex B(a), the meat used for popular dim sum dishes – dumplings of poultry meat and chicken shaomai – may not originate from Singapore, but Annex B requires 'all the materials' to be 'wholly obtained' in Singapore.¹²⁰ In other words, Annex B(a) merely requires the food products to be 'made in Singapore', thus providing additional flexibility for manufacturers to use raw materials from any country.¹²¹ This is even more flexible than the Japan-Singapore FTA, which mandates that materials for selected food products come from 'a member country of the ASEAN.'¹²²

Once the Annex B(a) quota is exhausted, food exporters will fall back on Annex B rules. The European Commission manages quota on a first come, first served basis. The fact that the quota is yet to be fully utilized relates to a more profound problem of the low usage of EU and ASEAN FTAs. Only 57 per cent of EU exporters have used the EU-Korea FTA and the utilization rates of ASEAN FTAs with China and India are only 20.6 and 5.1 per cent, respectively.¹²³ What has contributed to such low utilization rates? The main reasons include the exporters' lack of understanding of FTAs' tariff preferences and complex documents qualifying for rules of origin. The

¹¹³ASEAN-Japan Agreement on Comprehensive Economic Partnership, (2008), Art. 24(c). From 2002 to 2008, Japan concluded agreements with Singapore, Malaysia, the Philippines, Thailand, Brunei, Indonesia, and Vietnam.

¹¹⁴EU-Singapore Free Trade Agreement (FTA) (2018), Protocol 1, Art. 3(2).

¹¹⁵*Ibid.*, Art. 34.

¹¹⁶*Ibid.*, Art. 3(9) and Protocol 1, Ann. D.

¹¹⁷EU-Vietnam FTA (2019), Protocol 1, Art. 3.

¹¹⁸EU-Singapore FTA (2018), Protocol 1, Ann. B.

¹¹⁹*Ibid.*, Ann. B & Ann. B(a).

¹²⁰*Ibid.*; Singapore Customs, PowerPoint Slides: Rules of Origin, (2020), at 13, available at eurocham.org.sg/wp-content/uploads/2019/12/3-EUSFTA-Series-IL_ROO_Greg.pdf.

¹²¹Annex A: Key Benefits of the EUSFTA & EUSIPA, in MTI, European Union and Singapore Sign Free Trade and Investment Protection Agreements (2018), at 3, fn 2.

¹²²Japan-Singapore Economic Partnership Agreement (2002), Ann. II.A.

¹²³UNCTAD, 'The Use of the EU's Free Trade Agreements: Exporters and Importer Utilization of Preferential Tariffs', (2018), at 13–14; L. Y. Ing, 'How Do Exports and Imports Affect the Use of Free Trade Agreements? Firm-level Survey Evidence from Southeast Asia', (2016) *ERIA Discussion Paper Series*, ERIA-DP-2016-01, at 7.

EU-Singapore FTA has eased exporters' burden by adopting the self-certification scheme.¹²⁴ Going forward, making trade agreements yield more substantive benefits would require the governments help make small and mid-size enterprises more aware of FTA mechanisms and reduce barriers to export procedures.

3.2 Cases of Banking and Legal Services

Singapore is a major financial hub: 74.4 per cent of its employment concentrates on the services industry and the EU is Singapore's largest market for services exports.¹²⁵ Singapore's zero-tariff policy essentially means that the EU could not receive much concession from the city state's tariff elimination. Tellingly, Singapore is not a party to the negotiations of the Trade in Services Agreement, to which the EU is a party.¹²⁶ Thus, the expanded access to Singapore's services market became Brussels' key FTA objective and services commitments on both sides set standards for the EU-ASEAN FTA.

The EU-Singapore FTA will facilitate Singapore and the EU's enhanced market access because their commitments cover a wide range of business, computer, environmental and professional services.¹²⁷ For instance, compared with its WTO services commitments, Singapore includes the new postal services sector and extra commitments to courier services by placing no limitation on EU businesses' Mode 1 (cross-border supply) and Mode 3 (commercial presence) market access.¹²⁸ The EU-Singapore FTA is also unique in increasing labour mobility. Most FTAs facilitate intra-corporate transferees and business visitors. The EU-Singapore FTA specifically permits entry and stay of 'graduate trainees' for one year for the purposes of 'career development' or 'training in business techniques or methods'.¹²⁹ The EU-Vietnam FTA similarly includes a provision for 'trainee employees'.¹³⁰ These provisions enable young ASEAN professionals to receive training in EU-based enterprises and magnify the pro-development skill-transfer effect.

Notwithstanding WTO-plus services commitments, the EU-Singapore FTA relies on the positive-list approach for services commitments. This approach is more conservative than the negative-list approach adopted by CPTPP parties, including Singapore. Unlike EU FTAs with Canada and Korea, the services chapter of the EU-Singapore does not incorporate a general most-favoured-nations (MFN) clause.¹³¹ In other words, Singapore and the EU are not obliged to extend more liberal services commitments contained in their new FTAs with third countries. Importantly, the EU and Singapore's COVID-19 lockdowns have hindered the effective implementation of Mode 4 (movement of natural persons) market access commitments. As border restrictions are to 'meet legitimate policy objectives', they can be justified under the EU-Singapore FTA because they are considered 'necessary to protect human . . . life or health'.¹³²

¹²⁴EU-Singapore FTA (2018), Protocol 1, Ann. E.

¹²⁵Ministry of Power, 'Summary Table: Employment', 15 June 2020, available at stats.mom.gov.sg/Pages/Employment-Summary-Table.aspx; W. Wong and L. Y. Ding, 'Trades in Singapore's International Trade in Services', (2016) *Statistics Singapore Newsletter*, at 4.

¹²⁶Negotiating parties include 23 WTO members. European Commission, 'Trade in Services Agreement (TiSA)', 14 July 2017, available at ec.europa.eu/trade/policy/in-focus/tisa/.

¹²⁷MTI, *supra* note 90, at 11.

¹²⁸Singapore: Schedule of Specific Commitments, (1994), GATS/SC/76, at 17; EU-Singapore FTA (2018), ch. 8, Ann. 8-B; European Parliament, *supra* note 105, at 79.

¹²⁹EU-Singapore FTA (2018), Arts. 8.13, 8.14.

¹³⁰EU-Vietnam FTA (2019), Arts. 8.13, 8.14 and fn 24.

¹³¹European Parliament, *supra* note 105, at 13–14. M. Kono and M. Yokoi-Arai, 'Dissecting Regional Integration in Financial Services from the Competition Policy and Trade Policy Perspectives', (2009) *BIS Papers*, No. 42, at 94.

¹³²EU-Singapore FTA (2018), Arts. 8.1.4, 8.62(b).

Moreover, to gradually reopen the borders, choosing selected countries as ‘fast-lane’ or ‘travel bubbles’ partners should not ‘nullify or impair the benefits’ of FTA parties.¹³³

To buttress my argument that a comparative analysis of contemporary FTAs reveals the weaknesses of EU-Singapore FTA commitments that need to be remedied, I now turn to the liberalization of Singapore’s banking and legal services as illustrations. EU banks’ primary competitors are local and US banks. Concluded in 2003, the US-Singapore FTA represents a breakthrough in opening Singapore’s financial market.¹³⁴ Foreign banks became eligible for obtaining Qualifying Full Bank (QFB) and wholesale bank licenses, which enable their operation as full banks except for the Singapore dollar retail banking business.¹³⁵ The FTA accords preferential treatment to US banks with QFB privileges by allowing them to initially have 30 and then an unlimited number of business service locations and to join the ATM networks of local banks.¹³⁶ In comparison, EU banks under the EU-Singapore FTA are subject to less generous conditions. Although they have comparable treatment with respect to the ATM network, the FTA merely increases the number of business service locations of EU banks from 25 to 50.¹³⁷

An MFN clause in the services chapter of the US-Singapore FTA guarantees that US banks always receive the ‘best deals’ among Singapore’s FTA partners.¹³⁸ Absent a general MFN clause, the EU-Singapore FTA only includes a limited MFN clause on the banking sector.¹³⁹ The EU will be entitled to the same treatment should Singapore grant additional QFB licenses to new FTA partners or permit foreign banks with QFB privileges to operate more than 50 business services locations.¹⁴⁰ Surprisingly, this limited MFN provision excludes the United States.¹⁴¹ Such exclusion thus constitutes a compromise, making it impossible for EU banks to benefit from the potential upgrade in banking services commitments under the US-Singapore FTA.

Other than being a financial centre, Singapore is a hub for commercial dispute resolution and international law firms provide vibrant legal services that promote the regional market and foreign investment. Akin to banking services, legal services commitments under the EU-Singapore FTA reflect that the EU receives, at most, comparable treatment to what Singapore FTA partners have obtained. Australia and the United States have been on the frontier of exporting legal services. Their negative-listed FTAs with Singapore ease the legal requirements for co-operating with Singapore law firms. In particular, the two FTAs lower the minimum number of Australia and US-qualified lawyers, as well as the requirement for their minimum relevant experiences, in joint law ventures and formal law alliances.¹⁴² The EU-Singapore FTA incorporates the same treatment. In reality, these commitments have no major impact on business operations because the most prominent ‘European’ law firms and lawyers are from Britain, for whom the EU-Singapore FTA will cease to apply from 2021 onwards.

Notably, the EU-Singapore FTA lacks commitments on recognition of law degrees. Under Singapore’s FTAs with Australia and the United States, law degrees from ten Australian schools and four US schools are recognized as local degrees for the purposes of admission to the Singapore

¹³³EU-Singapore FTA (2018), Art. 8.1.4; T. T. Wei, ‘Regional ‘Travel Bubbles’ Likely in Time, Says Lawrence Wong’, *Straits Times*, 2 June 2020, available at www.straitstimes.com/singapore/health/regional-travel-bubbles-likely-in-time-says-lawrence-wong.

¹³⁴Kono and Yokoi-Arai, *supra* note 131, at 94.

¹³⁵*Ibid.* Monetary Authority Singapore, ‘Types of Deposit-Taking Institutions’, 23 June 2019, available at www.mas.gov.sg/regulation/Banking/Types-of-Deposit-Taking-Institutions.

¹³⁶United States-Singapore FTA (2003), Schedule of Singapore to Annex 10B, Sec. B.

¹³⁷EU-Singapore FTA (2018), Ann. 8-B.

¹³⁸United States-Singapore FTA (2003), Art. 8(4).

¹³⁹EU-Singapore FTA (2018), Ann. 8-B.

¹⁴⁰Only banks of Australia, China, the EU, India, Malaysia, and the United States have Qualifying Full Bank licenses. *Ibid.*

¹⁴¹*Ibid.*

¹⁴²Australia-Singapore FTA (2003), Ann. 4-1(B); United States-Singapore FTA (2003), Ann. 8A; Trade Policy Review, *supra* note 106, at 67–9.

bar.¹⁴³ A potential reason for having no such provision under the EU-Singapore FTA is the divergent legal systems among Singapore and 27 EU states, which include Ireland as the only English-speaking common-law country. This issue is more critical to UK-Singapore FTA negotiations, as Singaporean students have traditionally pursued law study in the UK, thus contributing to the revenue of British law schools. The Singapore Ministry of Law's removal of eight UK law schools from the recognized list in 2015 may decrease Singapore law students in the UK by 30 per cent as it leaves only 11 law schools on the list.¹⁴⁴ FTA commitments can help legal education services by securing the predictability of the number of recognized law schools.

3.3 Electronic commerce and non-tariff barriers

Modern provisions on e-commerce of FTAs benefit digital connectivity and innovation identified in the EU-Asia Connectivity Strategy and the Master Plan on ASEAN Connectivity 2025.¹⁴⁵ E-commerce not only facilitates trade in goods and services, but also accelerates 'Industry 4.0'.¹⁴⁶ In particular, the social distancing measures in response to the COVID-19 crisis have substantially increased the demand for paperless transactions and digital services.¹⁴⁷ E-commerce will also expedite the post-COVID 19 economic recovery. However, echoing my analysis of services commitments, e-commerce provisions of the EU-Singapore FTA left substantial room for improvement in subsequent updates. A key reason for inadequate e-commerce requirements is that relevant provisions were finalized in 2013 and were unable to encompass components in recent pacts.¹⁴⁸

The EU-Singapore FTA incorporates core obligations to eliminate customs duties on electronic transactions and permits the cross-border transfer of information by electronic means.¹⁴⁹ In contrast with the CPTPP's firm commitments, the EU-Singapore FTA merely seeks a 'better understanding' of both parties' 'electronic signatures framework'.¹⁵⁰ Nevertheless, the FTA is silent on key issues on adopting legal frameworks governing electronic transactions, online consumer protection, and the explicit prohibition of data localization.¹⁵¹ Due to these drawbacks, I recommend that the prospective EU-ASEAN FTA refer to the CPTPP and Singapore's new Digital Economy Partnership Agreements with Chile, New Zealand and Australia. These agreements further extend the scope of digital trade by providing frameworks for FinTech and artificial intelligence, which are indispensable to Industry 4.0.¹⁵²

While e-commerce has emerged as an innovative issue, non-tariff barriers are old issues that pose new challenges to interregional trade. Complementing digital connectivity, the reduction of such barriers are key to an EU-Asia 'comprehensive and rule-based connectivity' and the ASEAN

¹⁴³The law degrees include Bachelor of Laws and Juris Doctor degrees. Legal Profession (Qualified Persons) Rules (2002), First, Second, Fourth, and Fifth Schedules; P. L. Hsieh, 'Transnational Legal Services in Asia: Legal Implications of the AEC and the CPTPP', in Hsieh and Mercurio, *supra* note 110, at 168, 180.

¹⁴⁴Legal Profession (Qualified Persons) Rules (2002), First & Second Schedules; A. Teng and A. Hussain, 'Shorter List of Approved UK Law Schools Welcomed', *Straits Times*, 26 February 2015, available at www.straitstimes.com/singapore/courts-crime/shorter-list-of-approved-uk-law-schools-welcomed.

¹⁴⁵European Commission, *supra* note 97, at 5; ASEAN, Master Plan on ASEAN Connectivity 2025 (2016), at 7.

¹⁴⁶S. Borhauer, 'The Role of E-commerce in the Fourth Industrial Revolution', *Digital Commerce*, 11 January 2018, available at www.digitalcommerce360.com/2018/01/11/role-e-commerce-fourth-industrial-revolution/.

¹⁴⁷WTO, 'E-commerce, Trade and the COVID-19 Pandemic' (2020), at 4; UNCTAD, COVID-19: A 10-Point Action Plan to Strengthen International Trade and Transport Facilitation in Times of Pandemic', Policy Brief, No. 79 (2020), at 3–4.

¹⁴⁸MTI, *supra* note 90, at 2.

¹⁴⁹EU-Singapore FTA (2018), Arts. 8.26(3), 8.58.

¹⁵⁰EU-Singapore FTA (2018), Art. 8.60.

¹⁵¹See generally M. Burri and R. Polanco, 'Digital Trade Provisions in Preferential Trade Agreements: Introducing a New Dataset', (2020) 23(1) *Journal of International Economic Law* 187, at 203–15; Asian Trade Centre, 'Comparing Digital Rules in Trade Agreements', 24 July 2019, available at asiantradecentre.org/talkingtrade/comparing-digital-rules-in-trade-agreements.

¹⁵²Infocomm Media Development Authority, Media Factsheet: Digital Economy Agreements (2020), at 1.

agenda that accelerates the flow of goods and services.¹⁵³ Markedly, non-tariff measures become barriers when such measures are applied in an unjustified or discriminatory manner.¹⁵⁴ As empirical evidence demonstrates, ASEAN as a bloc has tremendously reduced internal tariffs.¹⁵⁵ However, in the meantime, non-tariff measures have grown 3.6 times and technical barriers to trade (TBT) regulations alone account for 43.1 per cent of these measures.¹⁵⁶ As the AEC Blueprint 2025 imposes neither agenda nor hard-law obligations on such measures, EU FTAs with ASEAN countries can play a critical role in eliminating these trade barriers.¹⁵⁷ EU-Singapore FTA provisions thus function as an example for the EU-ASEAN FTA and respond to ASEAN countries' concerns about European environmental and health standards.

In practice, TBT provisions are of significance to transnational business. For example, if a company fails to meet the labelling requirement, a correction may require re-shipping and re-packaging, which would incur substantial costs borne by the exporter. Article 4.10 of the EU-Singapore FTA provides a flexible scheme by accepting 're-labelling and corrections to labelling' in the importing country.¹⁵⁸ The labelling cost can be further reduced because the FTA provision that permits 'non-permanent or detachable labels' enables the use of removable stickers in compliance with labelling rules.¹⁵⁹

In terms of specific industries, recognition of international standards and the regulatory convergence is imperative to the EU's automotive industry. Singapore is not a party to the 1958 agreement of the United Nations Economic Commission for Europe (UNECE) that harmonizes vehicle regulations. The EU-Singapore FTA requires Singapore to adopt the UNECE type-approval system that recognizes imports certified based on the system.¹⁶⁰ The elimination of duplicate certifications will lower the regulatory burden. Given its small size, Singapore cannot be a major market for automobiles, but the replication of UNECE-related provisions in FTAs with Thailand and Malaysia are critical to European car manufacturers.¹⁶¹ Singapore can also serve as a test market to gauge the effectiveness of the FTA. In 2019, the market share of Japanese cars reached 58.4 per cent, but European cars account only for 29.5 per cent of imported cars.¹⁶² The TBT provision can help the business expansion of EU-made cars, especially those from Germany since BMW and Mercedes Benz are the best-selling European cars in Singapore.¹⁶³

Also vital to the development of the fast-growing green industry, the EU-Singapore FTA includes a chapter on non-tariff barriers to trade and investment in renewable energy generation. This chapter benefits the EU and ASEAN's commitments to the Sustainable Development Goals of the United Nations (UN) and the two regions' approaches to sustainable connectivity.¹⁶⁴ It also signals a departure from other contemporary agreements that only incorporate a trade and

¹⁵³European Commission, *supra* note 97, at 2; ASEAN, *supra* note 145, at 59.

¹⁵⁴ASEAN Business Advisory Council and EU-ASEAN Business Council, 'Non-Tariff Barriers (NTBs) in ASEAN and Their Elimination from a Business Perspective', (2019), at 19.

¹⁵⁵L. Y. Ing et al., 'NTMs in ASEAN: Ways toward Regulatory Convergence', in L. Y. Ing et al., *Regional Integration and Non-Tariff Measures in ASEAN* (2019), 90, 91.

¹⁵⁶*Ibid.*, at 91–3.

¹⁵⁷ASEAN Business Advisory Council & EU-ASEAN Business Council, *supra* note 154, at 34.

¹⁵⁸EU-Singapore FTA (2018), Art. 4.10(2)(e).

¹⁵⁹EU-Singapore FTA (2018), Art. 4.10(2)(f).

¹⁶⁰EU-Singapore FTA (2018), Ann 2-b, Arts. 1–3; I. Romanchyshyna, 'Tackling Technical Barriers to Trade in EU 'New Generation' FTAs: An Example of Open or Conflicting Regionalism?', in W. Weiß and C. Furculita (eds.), *Global Politics and EU Trade Policy: Facing the Challenges to a Multilateral Approach, Special Issue: European Yearbook of International Economic Law* (2020), 41, 58.

¹⁶¹European Commission, Results of the Industry Consultation from 2010 on a Possible EU Singapore Trade Agreement (2015), available at trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153666.pdf.

¹⁶²Land Transport Authority, 'Annual Vehicle Statistics 2019', available at www.lta.gov.sg/content/dam/ltagov/who_we_are/statistics_and_publications/statistics/pdf/MVP01-6_Cars_by_make.pdf.

¹⁶³*Ibid.*

¹⁶⁴European Commission, *supra* note 97, at 2; ASEAN, *supra* note 145; United Nations Economic and Social Commission for Asia and the Pacific, 'Complementarities between the ASEAN Community Vision 2025 and the United Nations 2030 Agenda for Sustainable Development: A Framework for Action', (2017), at 40–1.

sustainable development chapter with soft-law commitments.¹⁶⁵ In particular, the EU-Singapore FTA not only addresses ‘the generation of energy’, but identifies ‘renewable and sustainable non-fossil sources’.¹⁶⁶ The FTA specifically mandates that both parties refrain from imposing local contents requirements, partnerships with local companies and discriminatory authorization procedures.¹⁶⁷ Hence, the FTA will facilitate European manufacturers of solar, hydroelectric and wind generators to use Singapore as a springboard for ASEAN operations.

To shape post-COVID 19 interregionalism, EU-Singapore FTA provisions on promoting co-operation between health authorities and, more importantly, eliminating non-tariff barriers to pharmaceutical products and medical devices buttresses the linkage between trade and health.¹⁶⁸ Mutual recognition and harmonization of TBT regulations not only benefit employment in pertinent sectors in the EU and Singapore, but also facilitate collective responses to the global pandemic. For instance, the EU-Singapore FTA includes objective and non-discriminatory criteria for ‘the listing, pricing or reimbursement of pharmaceutical products’ and accords applicants with adequate opportunities to provide comments.¹⁶⁹

Nevertheless, I argue that other EU and Singapore FTAs contain additional constructive mechanisms that the EU-ASEAN FTA should consider. To illustrate, the EU-Canada Comprehensive Economic and Trade Agreement further enhances regulatory coherence for pharmaceutical products. It includes a protocol on the mutual recognition of certificates of Good Manufacturing Practices compliance and specifies regulatory authorities for medical products for human and veterinary uses.¹⁷⁰

Also, the CPTPP stipulates that ‘sale data or related financial data concerning the marketing of specific pharmaceutical products and medical devices should not be required for the governments’ determination to grant marketing authorization.¹⁷¹ Furthermore, the determination should be ‘subject to an appeal or review process’.¹⁷² A side letter of the Singapore-India FTA includes another innovative scheme to lower technical barriers to the registration of generic medicinal products from India.¹⁷³ These products that have been approved by a recognized regulatory authority in jurisdictions including the EU, the United States and the UK will be entitled to a simplified process for obtaining marketing authorization in Singapore.¹⁷⁴

4. Enhancing new-generation issues in the post-Lisbon era

The European Commission’s 2006 Global Europe initiative marks the inception of the EU’s ‘new-generation’ FTAs.¹⁷⁵ Departing from first-generation FTAs preoccupied with tariff elimination,

¹⁶⁵Note that the EU-Singapore FTA includes Chapter 7: Non-Tariff Barriers to Trade and Investment in Renewable Energy Generation and Chapter 12: Trade and Sustainable Development, respectively.

¹⁶⁶EU-Singapore FTA (2018), Arts. 7.1, 7.3; A. Marhold, ‘Externalising Europe’s Energy Policy in EU Free Trade Agreements: A Cognitive Dissonance between Promoting Sustainable Development and Ensuing Security of Supply’, (2001) 3(1) *Europe and the World: A Law Review* 1, at 11.

¹⁶⁷EU-Singapore FTA (2018), Art. 7.4.

¹⁶⁸EU-Singapore FTA (2018), Ann. 2-C, Art. 1.

¹⁶⁹EU-Singapore FTA (2018), Ann. 2-C, Art. 3; WTO, ‘The Treatment of Medical Products in Regional Trade Agreements’, (2020), at 7.

¹⁷⁰Comprehensive Economic and Trade Agreement (2016), protocol on the mutual recognition of the compliance and enforcement programme regarding good manufacturing practices for pharmaceutical products.

¹⁷¹Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018), Ann. 8-C, Art. 11 and Ann. 8-E, Art. 12.

¹⁷²CPTPP (2018), Ann. 8-C, Art. 12(c) and Ann. 8-E, Art. 13(c).

¹⁷³L. H. Kiang to Anand Sharma, Special Scheme for Registration of Generic Medicinal Products from India (2010).

¹⁷⁴*Ibid.*

¹⁷⁵European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Implementation of Free Trade Agreements: 1 January 2016–31 December 2016, (2017), COM(2017) 654 final, at 4; European Commission, *supra* note 77, at 8–10.

'new competitiveness-driven FTAs' are expected to be 'comprehensive and ambitious in coverage'.¹⁷⁶ Notably, the Treaty of Lisbon that amended and consolidated the Treaty on the EU and the Treaty on the Functioning of the EU came into force in 2009.¹⁷⁷ The new legal basis accords the EU a more integrated constitutional power to enforce foreign trade policy.¹⁷⁸

Normative changes to trade agreements substantiate theoretical understandings of interregionalism. In particular, new-generation contents of the EU-Singapore agreements are key indicators for the prospective EU-ASEAN FTA. The EU's approach to intellectual property (IP) protection, SOEs, and the Investment Court System (ICS) have drawn much academic and professional attention. To enforce European values under the Treaty of Lisbon, incorporating sustainable development and human rights provisions into EU FTAs is even more challenging.

These new-generation, WTO-plus provisions shed light on the boundaries of the EU's and ASEAN's realist power in shaping regulatory norms. As the discussions below explain, the choice of norms and enforcing mechanisms reveal the flexibilities that EU agreements exhibit. The comparison between EU agreements with Singapore and Vietnam further illustrates the EU's different approaches. Despite inevitable difficulties that involve some authoritarian ASEAN countries, the clauses on human rights and sustainable development provisions under the EU-Singapore FTA signify the first step to creating a common identity in the interregional scheme. Overall, the EU-Singapore FTA built a constructivist foundation for EU-ASEAN ties, which facilitate the mutual recognition of both sides' identities as 'partners in integration'.¹⁷⁹

Although the EU-Korea FTA marks the first new-generation FTA, the EU-Singapore FTA represents the first agreement that responded to the CJEU's Opinion 2/15 by dividing the agreement into the FTA and the IPA. In comparison, the EU-Japan FTA that became effective in 2019 still lacks an investment chapter to be negotiated.¹⁸⁰ In 2020, the EU and China also concluded the negotiations for the Comprehensive Agreement on Investment in principle, but the text of the agreement has not been finalized.¹⁸¹ Accordingly, the full-fledged agreements between the EU and Singapore represent Brussels' most recent efforts to implement its Asian trade policy.

4.1 Protection of intellectual property and geographical indications

One of the key new-generation FTA areas relates to Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)-plus provisions.¹⁸² The EU-Singapore FTA extends the term of copyright protection from the TRIPS requirement of 50 years to 70 years following the death of an author.¹⁸³ In contrast, the copyright protection period for the EU-Vietnam FTAs remains at 50 years.¹⁸⁴ Also, the CPTPP does not oblige its members to extend the period to 70 years, as the CPTPP suspended pertinent IP provisions of the original Trans-Pacific Partnership.¹⁸⁵

The longer period of copyright protection was not new to Singapore, as the country had amended its Copyright Act to incorporate the 70-year requirement under the US-Singapore

¹⁷⁶European Commission, *supra* note 77, at 8–9.

¹⁷⁷European Parliament, 'Factsheet on the European Union: The Treaty of Lisbon', (2020), at 1.

¹⁷⁸M. Cremona, 'Distinguished Essay: A Quiet Revolution – The Changing Nature of the EU's Common Commercial Policy', in M. Bungenberg et al. (eds.), (2017) *European Yearbook in International Economic Law* 3, at 5.

¹⁷⁹Council of the EU, *supra* note 31.

¹⁸⁰European Commission, *supra* note 51, at 2.

¹⁸¹*Ibid.*, at 9–10; European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'EU-China – Strategic Outlook', Joint (2019) 5 final, at 6; European Commission, 'EU and China Reach Agreement in Principle on Investment', 30 December 2020, available at trade.ec.europa.eu/doclib/press/index.cfm?id=2233.

¹⁸²European Parliament, *supra* note 105, at 16–29.

¹⁸³EU-Singapore FTA (2018), Art. 10.5.

¹⁸⁴EU-Vietnam FTA (2019), Art. 12.11.

¹⁸⁵CPTPP (2018), Ann. 7.

FTA.¹⁸⁶ Nevertheless, the EU-Singapore FTA includes other TRIPS-plus requirements. The new rules on ‘the right to a single equitable remuneration’ for producers of phonograms and the protection of technological measures illustrate new developments.¹⁸⁷ To drive innovation and follow British and Japanese models, the EU and Singapore will also likely agree to permit the use of copy-righted material for the analysis based on text and data mining.¹⁸⁸

For European enterprises in Southeast Asia, the most salient IP provisions are presumably those on GIs, which extend protection to distinct European food and drink products such as Comté of France and Jerez of Spain.¹⁸⁹ Singapore’s original Geographical Indications Act 1998 was enacted to comply with WTO requirements. The Act provides a two-tiered scheme of protection premised on GI provisions of the TRIPS Agreement. Other than basic protection that extends to GIs if they mislead the public or result in unfair competition, enhanced protection is accorded to wines even if the GIs do not create misrepresentation.¹⁹⁰ The adequacy of the Act hinges on the provision that enables an interested party to bring an action against another party for misusing GIs. However, absent a registration system in Singapore, the provision essentially requires the complainant ‘to prove conclusively; to the court that his or her GI is entitled to be protected in the country.’¹⁹¹ In practice, this requirement has led to unsatisfactory protection, as it creates a heavy burden of proof on the part of the complainant.

To implement the EU-Singapore FTA, the Geographical Indications Act 2014 became effective in 2019. The new Act improves three main arenas. First, to address the major weakness of the previous Act, the new Act establishes ‘the Registry of Geographical Indications’ within the IP Office of Singapore. The registration of a GI serves as ‘prima facie evidence’ and the Singapore High Court is able to issue a certificate of validity of the registration of the GI when it is challenged.¹⁹² Second, the enhanced protection for wines under the previous Act is extended to GIs of agricultural products and foodstuffs.¹⁹³ Lastly, the Intellectual Property (Border Enforcement) Act 2018 will introduce new border enforcement measures. At the request of a GI right holder, Singapore Customs will be empowered to seize both imported and exported goods.¹⁹⁴

In comparison with EU FTAs with Japan and Vietnam, GI protection under the EU-Singapore FTA is exceptional because it is one-sided. Under other EU FTAs, GIs of goods from both sides are protected.¹⁹⁵ The title of Annex 10-A of the EU-Singapore FTA indicates a list of protected GIs ‘in the Territory of the Parties’.¹⁹⁶ However, while the EU lists 196 GIs (currently including Scotch Whisky from the UK) to be protected in Singapore, the island state does not list any GIs for protection in Europe.¹⁹⁷ This is primarily because Singapore intended to expedite the conclusion of the FTA, particularly given that Singapore rarely exports wines and agricultural products and the

¹⁸⁶US-Singapore FTA (2003), Art. 16.4; L. Hsu, ‘Ch. 07 Free Trade Agreements: Singapore Legal Developments’, *Singapore Law Watch*, 17 November 2018, available at www.singaporelawwatch.sg/About-Singapore-Law/Overview/ch-07-free-trade-agreements-singapore-legal-developments.

¹⁸⁷E.g., EU-Singapore FTA (2018), Arts. 10.6, 10.9.

¹⁸⁸Ministry of Law and Intellectual Property Office of Singapore, ‘Singapore Copyright Review Report’, (2019), at 32–4.

¹⁸⁹European Parliament, *supra* note 105, at 29; European Commission, ‘Guide to the EU-Singapore Free Trade Agreement and Investment Protection Agreement’, (2018), at 11.

¹⁹⁰Geographic Indications Act (1998), Art. 3.

¹⁹¹S. H. S. Leong, ‘European Union-Singapore Free Trade Agreement: A New Chapter for Geographical Indications in Singapore’, in I. Calboli and W. L. Ng-Loy (eds.), *Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific* (2017), 235, 240; Geographic Indications Act (1998), Art. 3(1).

¹⁹²Geographical Indications Act (2014), Arts. 19, 75–76.

¹⁹³Geographical Indications Act (2014), Art. 4(6)–(9).

¹⁹⁴Intellectual Property (Border Enforcement) Act (2018), part 2; A. Yap, PowerPoint Slides: The European Union-Singapore Free Trade Agreement (EUSFTA), available at https://eurocham.org.sg/wp-content/uploads/2019/12/8-EUSFTA-Seriess-IL_IPR_Audrey.pdf; Intellectual Property Rights (2020), at 16–17.

¹⁹⁵Trade Policy Review, *supra* note 41, at 154.

¹⁹⁶EU-Singapore FTA (2018), annex 10-A (emphasis added).

¹⁹⁷Note that Singapore provides no items under Annex 10-A: Section B (Geographical Indications of Singapore).

EU's present GI regime has accorded sufficient protection.¹⁹⁸ It is expected that in the long run, the EU-Singapore FTA will provide a model for harmonizing GI systems of ASEAN.

4.2 Competition and state-owned enterprises

Known as a 'Singapore issue', competition is now commonly incorporated into trade agreements.¹⁹⁹ Important to developing countries, competition law aims to tackle anticompetitive conduct including mergers and the abuse of market power. Unlike the EU, ASEAN's regional competition framework encompasses primarily soft law commitments on cross-border co-ordination.²⁰⁰

In compliance with the AEC Blueprints 2015 and 2025, all ASEAN countries except Cambodia have enacted competition laws.²⁰¹ The Singapore Parliament passed the Competition Act in 2004 in order to put into effect the commitment under the US-Singapore FTA.²⁰² The EU-Singapore FTA requires additional rules for the competition regime. Tellingly, both the CPTPP and the EU-Vietnam FTA have separate chapters on SOEs.²⁰³ Nonetheless, the competition chapter of the EU-Singapore FTA only includes general principles on 'public undertakings and undertakings that are entrusted with special or exclusive rights' and 'state monopolies'.²⁰⁴

The EU-Singapore FTA does not define SOEs that are usually determined on the basis of the 50 per cent benchmark for shares and voting rights under other FTAs such as the CPTPP.²⁰⁵ The US-Singapore FTA provides even more stringent rules to define an entity as an SOE if a government unit can exercise 'effective control' over the entity.²⁰⁶ The EU-Vietnam FTA also stipulates a wider scope of SOEs to include entities where the government 'can exercise control over the strategic decisions of the enterprise'.²⁰⁷ Another key difference between the EU-Singapore FTA and the EU-Vietnam FTA is that only the former incorporates Article 3 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement).²⁰⁸ In fact, the EU-Singapore FTA even goes beyond the SCM Agreement by including two additional categories on prohibited subsidies.²⁰⁹ Nevertheless, except for the rules on prohibited subsidies, the competition chapter of the EU-Singapore FTA cannot be enforced via dispute and mediation mechanisms.²¹⁰ Given the lack of a SOE definition and largely unenforceable competition provisions, the EU-Vietnam FTA arguably provides a better model for the EU-ASEAN FTA.

¹⁹⁸Leong, *supra* note 191, at 247–8.

¹⁹⁹WTO, 'Investment, Competition, Procurement, Simpler Procedures', available at www.wto.org/english/thewto_e/whatis_e/tif_e/bey3_e.htm; A. Bradford and T. Bütthe, 'Competition Policy and Free Trade: Antitrust Provisions in PTAs', in A. Dür and M. Elsig (eds.), *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements* (2015), 246, 254.

²⁰⁰E.g., ASEAN Regional Guidelines on Competition Policy (2010).

²⁰¹AEC Blueprint 2015 (2008), para. B1; AEC Blueprint 2025 (2015), para. 26-17; 'Cambodian Antitrust and Competition Draft Law Near Approval', 17 April 2020, available at www.b2b-cambodia.com/news/cambodian-antitrust-and-competition-draft-law-near-approval/.

²⁰²The Act also provides the legal basis for establishing the Competition and Consumer Commission of Singapore. Competition Act (2006), Art. 3.

²⁰³CPTPP (2018), Ch. 17; EU-Vietnam FTA (2019), Ch. 11.

²⁰⁴EU-Singapore FTA (2018), Arts. 11.3, 11.4. See, e.g., C. I. Nagy, 'The Metamorphoses of Universal Service in the European Telecommunications and Energy Sector: A Trans-Sectoral Perspective', (2013) 14(9) *German Law Journal* 1731, at 1746–50.

²⁰⁵CPTPP (2018), Art. 17.1.

²⁰⁶US-Singapore FTA (2003), Art. 12.8.5; M. McLaughlin, 'Defining a State-Owned Enterprise in International Investment Agreements', (2020) 34(3) *ICSID Review* 595, at 617.

²⁰⁷EU-Vietnam FTA (2019), Art. 11.1 (g)(iii).

²⁰⁸EU-Singapore FTA (2018), Art. 11.7. Note that both EU FTAs with Singapore and Vietnam incorporate Arts. 1 and 2 of the Agreement on Subsidies and Countervailing Measures. EU-Singapore FTA (2018), Art. 11.5; EU-Vietnam FTA (2019), Art. 10.5.

²⁰⁹EU-Singapore FTA (2018), Art. 11.7.2.

²¹⁰*Ibid.*, Art. 11.14.

5. Investor-state arbitration and mediation

The original EU-Singapore FTA contains provisions on investment protection, but these provisions were carved out from the FTA and consolidated as a separate EU-Singapore IPA after the Opinion 2/15. Markedly, ISDS provisions under FTAs and BITs have encountered severe criticism because of the perceived lack of transparency and the independence of arbitrators, legal costs for host states and the ‘regulatory chill’ for public measures.²¹¹ The EU’s 2015 ‘Trade for All’ policy paper articulates Brussels’ ambition to lead ISDS reforms by transforming the investor-state arbitration regimes to the two-tiered ICS similar to the WTO panel and the Appellate Body.²¹² The objective is to build on ICS provisions and create a Multilateral Investment Court, which ensures fairness and remedies fragmented international investment law.²¹³

As negotiations on the investment protection chapter of the original EU-Singapore FTA concluded in 2014, the agreement only suggested the possibility of creating an appeals mechanism.²¹⁴ ICS first appeared in the negotiating text in the EU-US TTIP, but the Trump administration suspended TTIP talks.²¹⁵ Subsequently, ICS was incorporated into the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and the EU-Vietnam FTA.²¹⁶ As controversies arose on the scope of the EU’s competence, the CETA as a mixed agreement was provisionally applied without investment protection provisions.²¹⁷

Although Article 3(1) of the Treaty on the Functioning of the EU unambiguously identifies the common commercial policy as an area in which the EU ‘shall have exclusive competence’, the ambit of the common commercial policy under Article 207(1) remains unclear.²¹⁸ In particular, the CJEU’s Opinion 2/15 on the EU-Singapore FTA found that the ISDS regime ‘removes disputes from the jurisdiction of the courts of the Member States’ and thus their consent is required.²¹⁹ According to the CJEU, approval for ISDS falls within shared competence between the EU and member states rather than within the EU’s exclusive competence.²²⁰ As a result of this 2017 decision, investment-related provisions formed part of the new IPA. This splitting approach accelerates the ratification of the ‘EU-only’ FTA and makes the current EU-Singapore FTA and IPA a new model for the EU-Vietnam agreements and post-Lisbon pacts.

With the European Parliament’s consent in 2019, the IPA as a mixed agreement will come into effect after approval from 27 EU members. In term of its substantive and procedural provisions, the IPA came as no surprise because it codifies case law and recent agreements such as the CETA.²²¹ These elements include clauses on MFN and national treatment, detailed lists and scenarios of fair

²¹¹European Commission, *supra* note 4, at 21; N. Lavranos, ‘After Philip Morris II: The “Regulatory Chill” Argument Failed – Yet Again’, *Kluwer Arbitration Blog*, 18 August 2016, available at arbitrationblog.kluwerarbitration.com/2016/08/18/after-philipp-morris-ii-the-regulatory-chill-argument-failed-yet-again/?doing_wp_cron=1595562519.0411059856414794921875. See generally, ‘Concept Papers: Concept Papers for Academic Forum on ISDS’, available at www.jus.uio.no/pluricourts/english/projects/leginvest/academic-forum/papers/; M. Langford et al., ‘Special Issue: UNCITRAL and Investment Arbitration Reform: Matching Concerns and Solutions’, (2020) 21 *Journal of World Investment and Trade*, at 2–3.

²¹²European Commission, *supra* note 4, at 21.

²¹³European Commission, ‘Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Report on the Implementation of the Trade Policy Strategy Trade for All: Delivering a Progressive Trade Policy to Harness Globalisation’, (2017), COM 491 final (2017), at 8.

²¹⁴MTI, *supra* note 90, at 2; M. Mohan, ‘The European Union’s Free Trade Agreement with Singapore – One Step Forward, 28 Steps Back?’, in J. Chaisse and L. Nottage, *International Investment Treaties and Arbitration Across Asia* (2019), 180, 198.

²¹⁵E.g., Commission Draft Text TTIP – Investment (2015), Sec. 3.

²¹⁶C. Titi, ‘Recent Developments in International Investment Law’, in Bungenberg et al., *supra* note 178, at 392–3.

²¹⁷Kleimann and Kübek, *supra* note 14, at 30–1.

²¹⁸TFEU (2012), Arts. 3(1), 207(1).

²¹⁹Opinion 2/15 of the Court (2017), para. 292.

²²⁰*Ibid.*, para. 293; M. Cremona, ‘Shaping EU Trade Policy Post-Lisbon: Opinion 2/15 of 16 May 2017’, (2018)14 *European Constitutional Law Review* 231, at 255–6.

²²¹European Parliament, *supra* note 105, at 18–20; L. Hsu, ‘EU-ASEAN Trade and Investment Relations with a Special Focus on Singapore’, in C. Herrmann et al. (eds.), (2015) 6 *European Yearbook of International Economic Law* 233, at 243–5.

and equitable treatment and indirect expropriation.²²² A key difference between the original FTA and the IPA is the introduction of the ICS that comprises a Tribunal of First Instance and an Appeal Tribunal.²²³ Each tribunal includes six members that are experienced jurists of the EU, Singapore and third countries.²²⁴ Furthermore, the grounds for appeal go beyond the limited circumstances permitted in annulment proceedings under the International Centre for Settlement of Investment Disputes Convention.²²⁵

When negotiating with Japan, Brussels proclaimed that 'ISDS is dead' for the EU.²²⁶ However, as Japan declined to accept ICS procedures, the EU-Japan IPA has yet to be finalized despite the entry into force of the EU-Japan FTA in 2019.²²⁷ The CPTPP's suspension of various ISDS provisions and the RCEP's exclusion of ISDS made Asian states hesitant to accept the ICS, thus potentially undermining the EU's normative power in promoting the ICS.²²⁸ Although the ICS has been incorporated in EU IPAs with Singapore and Vietnam, it is unlikely that other ASEAN states will reach a consensus on the ICS. Distinct from much-criticized investor-state arbitration, investor-state mediation is a promising form of ISDS that reflects Asian culture for dispute settlement. Adopted by the UN in 2018, the Singapore Convention on Mediation (Singapore Convention) evidences the new trend.²²⁹ 53 parties including five ASEAN countries have signed the Singapore Convention, which addresses the unenforceability of mediation agreements in foreign courts, a long-standing weakness of mediation agreements.²³⁰

The Singapore Convention represents a 'game changer'. Comparable to the enforcement mechanism for arbitral awards in the New York Convention, the Singapore Convention mandates that parties 'enforce a settlement agreement' according to the Convention.²³¹ The conventional understanding suggests that the Singapore Convention applies primarily to mediation agreements between private parties. Nonetheless, a wider interpretation of 'commercial disputes' in the text and negotiating material suggests that the Singapore Convention also applies to investor-state mediation in the absence of countries' reservations.²³²

Going further than the CETA that includes general mediation procedures, EU IPAs with Singapore and Vietnam stipulate investment-specific mediation rules.²³³ To illustrate, the EU-Singapore IPA provides for the use of a voluntary mediation mechanism 'without prejudice to the legal position of either

²²²EU-Singapore Investment Protection Agreement (IPA) (2018), Ch. 2 and Ann. 1.

²²³EU-Singapore IPA (2018), Arts. 3.9, 3.10.

²²⁴*Ibid.*, Arts. 3.9.2, 3.10.2.

²²⁵*Ibid.*, Art. 3.19 ('The grounds for appeal are (a) that the Tribunal has erred in the interpretation or application of the applicable law; that the Tribunal has manifestly erred in the appreciation of the facts, including the appreciation of relevant domestic law').

²²⁶European Commission, 'Factsheet: A New EU Agreement with Japan', (2017), at 6.

²²⁷European Commission, *supra* note 51, at 2; C. Chance, *The EU-Japan Economic Partnership Agreement: A Different Kind of Treaty?* (2018), 3.

²²⁸CPTPP (2018), annex: 2; 'ISDS Victory: RCEP Won't Allow Corporations to Sue Governments', October 2019, available at isds.bilaterals.org/?isds-victory-rcep-won-t-allow.

²²⁹The Convention will enter into force in September 2020. United Nations Commission on International Trade Law, 'Status: United Nations Convention on International Settlement Agreements Result from Mediation', available at [uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status](https://www.uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status).

²³⁰*Ibid.*

²³¹N. Y. Morris-Sharma, 'The Singapore Convention is Live, and Multilateralism, Alive', (2019) 20(4) *Cardozo Journal of Conflict Resolution* 1009, at 1014–16; United Nations Convention on International Settlement Agreements Result from Mediation (2018), Art. 3(1).

²³²United Nations Convention on International Settlement Agreements Result from Mediation (Singapore Convention on Mediation) (2018), Art. 1(1); M. Manukyan, 'Singapore Convention Series: A Call For A Broad Interpretation of The Singapore Mediation Convention In The Context Of Investor-State Disputes', *Kluwer Mediation Blog*, 10 June 2019, available at mediationblog.kluwerarbitration.com/2019/06/10/singapore-convention-series-a-call-for-a-broad-interpretation-of-the-singapore-mediation-convention-in-the-context-of-investor-state-disputes/?doing_wp_cron=1595837214.8890540599822998046875.

²³³C. Brown and P. Winch, 'The Confidentiality and Transparency Debate in Commercial and Investment Mediation', in C. Titi and K. Fach Gómez (eds.), *Mediation in International Commercial and Investment Disputes* (2019), 320, at 337.

disputing party.²³⁴ More specifically, Annex 6 stipulates procedural and implementation rules for investor-state mediation and another two annexes incorporate the code of conduct for arbitrators and mediators.²³⁵ It is also noteworthy that the EU-Singapore IPA allows a mediator to ‘offer advice and propose a solution for consideration of the disputing parties’.²³⁶ The mediator’s task thus goes beyond the conventional scope of the task to facilitate parties’ negotiations.²³⁷ Building upon these EU IPAs and the Singapore Convention, which is open to accession by ‘regional economic integration organizations’ such as the EU, new mediation rules will facilitate prospective EU-ASEAN investor-state disputes.²³⁸

5.1 Enforcing sustainable development and human rights

From global and theoretical perspectives, the EU’s mechanisms to enforce European values involving sustainable development and human rights under FTAs are the best indications of Brussels’ normative power. The acceptance of these norms by ASEAN states such as Singapore also confirms the constructivist argument about interregionalism because bridging the ideological gap may facilitate the forging of a collective identity. As the constitutional basis for the EU, the Treaty of Lisbon mandates that the EU’s external action and common commercial policy promote European values such as sustainable development and human rights.²³⁹ In the Opinion 2/15, the CJEU further stressed that it is the EU’s obligation and within its competence to integrate non-economic objectives into trade policy.²⁴⁰

The approach of the EU is distinct from that of ASEAN, which adopted a bifurcated approach to promoting ‘values’ and trade agreements. Sustainability and human rights issues are therefore included only in the ASEAN Social-Cultural Community Blueprint rather than the AEC Blueprint.²⁴¹ As illustrated by the ASEAN-Australia-New Zealand FTA, it is also uncommon for ASEAN FTAs to incorporate separate chapters on labour and environment. Against this backdrop, the EU-Singapore FTA that should be read in tandem with the PCA signifies normative changes to EU-ASEAN interregionalism.

Both the EU and ASEAN are committed to realizing UN Sustainable Development Goals. As a key step to achieve these goals, the chapter on trade and sustainable development of the EU-Singapore FTA encompasses labour and environmental provisions that oblige parties to comply with international treaties and domestic laws.²⁴² A fundamental issue lies in the enforcement mechanism. The EU-Singapore FTA reflects the EU’s consultation-based model, which excludes the chapter on trade and sustainable development from the FTA’s general dispute settlement mechanism (DSM).²⁴³ Instead, a chapter-specific mechanism includes government consultations and a panel of experts that will issue reports, which will be monitored by a jointly established board.²⁴⁴

Due to the absence of EU states’ consensus, the EU approach had been perceived as departing from the US sanction-based model that involves compensation. Nonetheless, the EU decided to

²³⁴EU-Singapore IPA (2018), Art. 3.4.2.

²³⁵EU-Singapore IPA (2018), Anns. 6, 7, 11.

²³⁶*Ibid.*, Ann. 6, Art. 4.3.

²³⁷Singapore International Dispute Resolution Academy, ‘SIDRA International Dispute Resolution Survey: 2020 Final Report’, (2020), at 24.

²³⁸Singapore Convention on Mediation (2018), Art. 12.

²³⁹TFEU (2012), Arts. 205, 207(1); Consolidated versions of the Treaty on European Union, OJ C 326/15 (2012), Arts. 3(5), 21(3).

²⁴⁰Opinion 2/15 of the Court (2017), paras. 139–52.

²⁴¹ASEAN Social-Cultural Community Blueprint 2025 (2015), paras. 13–16.

²⁴²EU-Singapore FTA (2018), Ch. 12.

²⁴³*Ibid.*, Art. 12.16.1. The CARIFORUM-EU Economic Partnership Agreement is the EU’s only FTA that applies the general dispute settlement mechanism to provisions on sustainable development. K. Hradilová and O. Svoboda, ‘Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness’, (2018) 52(6) *Journal of World Trade* 1019, at 1028–9.

²⁴⁴EU-Singapore FTA (2018), Arts. 12.16–12.17; Hradilová and Svoboda, *ibid.*, at 1025–6.

fortify the effectiveness of the FTA chapters on trade and sustainable development. In 2018, the European Commission issued a 15-point plan that calls for '[a]ssertive enforcement' of FTAs.²⁴⁵ Subsequently, the EU filed a claim against Korea pursuant to the specific DSM of the trade and sustainable development chapter under the EU-Korea FTA and the panel decided that Korea breached labour commitments in January 2021.²⁴⁶ This report will inevitably influence the stance of ASEAN states on sustainable development provisions in the EU-ASEAN FTA. Significantly, pursuant to Article 12.15(2) of the EU-Singapore FTA, both sides established the Trade and Sustainable Development Board that facilitates discussions on trade issues related energy, environment and labour.²⁴⁷ This new Board not only benefits the forging of a collective identity from a constructive view but will also shape state behaviour as institutionalists posited.

Core to the EU's normative power and values, wider issues of fundamental human rights are more challenging than sustainable development. Unlike the EU's assertive approach, the ASEAN way premised on the non-intervention principle focuses on constructive engagement rather than sanctions.²⁴⁸ Linking trade to human rights is by no means new to the EU. The GSP regulation enables the EU to 'penalize' countries by withdrawing their tariff preferences.²⁴⁹ According to the European Parliament, 'a Partnership and Cooperation Agreement (PCA), containing enforceable human rights clauses, is a prerequisite for the Union to conclude an FTA with any country'²⁵⁰ The EU-Singapore FTA also mandates that the FTA and the PCA form part of a 'common institutional framework'.²⁵¹ Unlike the EU-Singapore FTA, the approval of the EU-Singapore PCA falls within shared competence of the EU and 27 member states.²⁵²

As the political foundation for the FTA, the PCA is an agreement that addresses more sensitive issues on democracy, the rule of law and human rights. Tellingly, Singapore has been reluctant to engage in human rights dialogues with European partners at the multilateral ASEM. Brussels has criticized Singapore's 'misuse of the Internal Security Act' (ISA) and death penalty.²⁵³ The European Parliament alleged that the ISA led to 'detention, renewable every two years, without being subject to judicial review'.²⁵⁴ Singapore's criminal law also imposes the mandatory death sentence for drug offenses with rather limited exceptions.²⁵⁵ Since the 2010s, there were no major legislative changes to Singapore's ISA and Penal Code. Neither did the numbers of detainees under ISA orders and judicial executions substantially decrease.²⁵⁶

²⁴⁵Non Paper of the Commission Services, Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements (2018), at 7–8.

²⁴⁶European Commission, 'EU-Korea Dispute Settlement over Workers' Rights in Korea Enters Next Stage', 18 December 2019, available at trade.ec.europa.eu/doclib/press/index.cfm?id=2095. The EU-Korea FTA is the EU's first FTA that include a chapter on sustainable development. G. M. Durán, 'Sustainable Development Chapters in EU Free Trade Agreements: Emerging Compliance Issues', (2020) 57 *Common Market Law Review* 1, at 24–6; European Commission, 'Panel of Experts Confirms Republic of Korea is in Breach of Labour Commitments under Our Trade Agreement', 25 January 2021, available at trade.ec.europa.eu/doclib/press/index.cfm?id=2238.

²⁴⁷MTI, Inaugural Meeting of the European Union-Singapore Free Trade Agreement (EUSFTA) Trade and Sustainable Development (TSD) Board, Ann. 1.

²⁴⁸Severino, *supra* note 8, at 1–34.

²⁴⁹European Parliament, *supra* note 112, at 13.

²⁵⁰European Parliament, European Parliament Resolution of 8 May 2008 on Trade and Economic Relations with the Association of South East Asian Nations (ASEAN), (2008), P6_TA(2008)0195, para. H.

²⁵¹EU-Singapore FTA (2018), Art. 16.18.1.

²⁵²'8 EU – Singapore Partnership and Cooperation Agreement', 9 January 2019, available at publications.parliament.uk/pa/cm201719/cmselect/cmeuleg/301-xlix/30111.htm.

²⁵³E.g., European Parliament, Resolution on the Situation in South-East Asia, A3-0219/91 (1991), para. 28; EU Delegation to Singapore, EU Local Statement on the Death Penalty Case of Mr Micheal Anak Garing in Singapore (2019).

²⁵⁴European Parliament, Joint Resolution Replacing Docs. B2-514, 521 and 551/87, 1987 OC C 190 (1987), at 102 (calling for the immediate release of '16 leaders or militants of humanitarian Catholic organizations . . .').

²⁵⁵Misuse of Drugs (Amendment) Act 2012.

²⁵⁶See R. Nadarajan, 'Number of Radicalised Individuals on ISA Orders at Highest in 7 Years', *Today*, 4 August 2019, available at www.todayonline.com/singapore/number-radicalised-individuals-isa-orders-highest-7-years ('Self-radicalised

Nevertheless, during EU-Singapore FTA negotiations, European institutions focused on promoting the ICS model and commercial interests, but scarcely mentioned Singapore's human rights records.²⁵⁷ The condemnation of death penalty cases has been limited to 'local statements' issued by the EU Delegation to Singapore rather than by the European Commission.²⁵⁸ With respect to human rights, the European Parliament in fact showed 'little interest in promoting conditionality in negotiations with Singapore', despite the clear divergence between the two sides.²⁵⁹

To a certain extent, the EU-Singapore PCA exhibits Brussels' concession. As 'an integral part of' the PCA, a side letter reiterates that neither side is aware 'of any of each other's domestic laws, or their application, which could lead to the invocation of' the non-execution mechanism.²⁶⁰ The statement denotes the EU's implicit endorsement of the fact that current Singapore law and practice will not be challenged. In comparison, the Canada-EU Strategic Partnership Agreement stipulates that 'a particularly serious and substantial violation of human rights' can 'serve as grounds for the termination of the' CETA.²⁶¹ The EU-Singapore PCA contains no such provision that will affect the validity of the FTA. In other words, 'enforceable' human rights clauses are confined to soft-law obligations for co-operation and consultations.²⁶² Arguably, these designs evidence the EU's flexibility in terms of promoting European values in trade agreements.

6. Conclusion

The article examined the concept of interregionalism in the global context and focused on legal and economic issues surrounding the EU-Singapore FTA, which is to be understood in tandem with the IPA and the PCA. The EU-Singapore FTA represents the EU's first trade agreement with an ASEAN country and signifies Brussels' new Asia strategy. As a pathfinder agreement, the EU-Singapore FTA constitutes an essential building block for the prospective EU-ASEAN FTA. Against this backdrop, this article argued that innovative designs of the EU-Singapore FTA are essential for enhanced EU-ASEAN interregionalism in the post-pandemic economy. It further contended that a comparative analysis between EU and US trade agreements reveals weaknesses in the EU-Singapore FTA that requires remedies.

Critical to the global value chain and ASEAN economic integration, the research unveiled the unique aspects of the EU-Singapore FTA's rules of origin that enable ASEAN cumulation and facilitates the export of Asian food product to Europe. Commitments on services liberalization, e-commerce and the reduction of non-tariff barriers will also yield salient impact on industry and buttress public-private responses to the COVID-19 crisis. Moreover, new-generation rules on GIs and investor-state arbitration and mediation notably expands the scope of economic pacts. Consequently, the detailed analysis of the EU-Singapore FTA enriched the understanding of interregionalism from interdisciplinary perspectives, as well as the EU's new trade and investment strategy towards the Asia-Pacific.

individuals make up the bulk of the 50 currently issued with ISA orders . . .'). The cases of death penalty range from 2 to 13 from 2014 to 2019. Judicial Executions, available at data.gov.sg/dataset/judicial-executions.

²⁵⁷Hoang and Sicureli, *supra* note 31, at 373; McKenzie and Messiner, *supra* note 75, at 841–2.

²⁵⁸E.g., EU Delegation to Singapore, *supra* note 253.

²⁵⁹McKenzie and Messiner, *supra* note 75, at 842.

²⁶⁰EU-Singapore PCA (2018), side letter; *ibid.*, at 841.

²⁶¹European Parliament, 'Human Rights in EU Trade Agreements: The Human Rights Clause and its Application', (2019), at 9–10; Canada-EU Strategic Partnership Agreement (2016), Art. 28.7.

²⁶²EU-Singapore PCA (2018), Arts. 23, 44.

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