

CARECO

# CASTING OFF THE CHAINS OF UNFAIR TRADE

A CALL FOR SUSTAINABLE ALTERNATIVES  
TO THE EU-ASEAN TRADE REGIME

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CARECO is a research collective that works for organizations and initiatives active in the fields of human rights, environmental protection, and animal rights with over 15 years of international experience in various areas of campaigning. The collective aims to apply its experience and skills to projects and campaigns through practical and long-term support.

JAN SCHNEIDER and NIKOLAI SCHNARRENBARGER were involved in the research and writing of this study while working for Careco.

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# 1 INTRODUCTION TO THE POTENTIAL EU-ASEAN FTA

## 1.1 AIM OF THE REPORT

This report explores the effects of existing trade agreements between ASEAN and EU states, takes a look at possible effects induced by potential developments of these trade agreements, and discusses alternatives to their approach to organizing ASEAN and EU trade relations.

We seek to offer an understanding of the positions of the various layers and the general mechanisms behind historical and present developments around the emergence of a free trade regime leading us to FTA negotiations between ASEAN and the EU. This has to be contextualized with the general criticism on Free Trade Agreements (FTAs) and the concrete opposition to the FTAs in the ASEAN region.

As we are very aware of the shortcomings of our perspective as researchers from the Global North in approaching this study, we have made the very fundamental decision to be exploratively guided by the perspectives and voices of relevant local actors and international activists. A left vision or alternative to the bilateral or inter-regional trade agreement between the EU and ASEAN can only be developed by including the multiple perspectives of resistance against and development of alternatives to the various mechanisms of exploitation connected to the history and present of free trade and FTAs in particular.

A comprehensive overview of all major political, economic, and social impacts of trade between Europe and the ASEAN and its potential alternatives is impossible. Necessarily, complexity has to be narrowed down without ending in simplistic stencils. Talking about “the EU”, “the ASEAN”, or even about countries is like implying they are consistent monolithic blocs. Instead, all of the related concepts are complex entities with different bodies and diverging interests and perceptions. With all due precision in the presentation, we try not to sacrifice readability and comprehensibility for this circumstance. This kind of reports bears the danger of methodological nationalism, especially when following the perspective of government officials and their announcements. We are aware of this issue and try to highlight other voices and experiences from civil society advocates where possible.

### Structure

The first chapter provides background on the methodology and the limitations of this study. Another important context is provided with a brief history and background of free trade and liberalization as point of origin for FTAs.

The second chapter presents an overview of ASEAN — EU relations, its history and economic context. This leads to an examination of the initiative of an inter-regional free trade agreement between the ASEAN as a block on the one side and the EU on the

other. We will touch the shift towards bilateral FTA negotiations and the current situation.

The third part tries to point out what the most influential aspects of opposition and criticism are when we look at ASEAN — EU trade negotiations. We will discuss the impacts of existing agreements with individual examples. The section also attempts to assess the effects of current trade agreements and of potential developments of these, by looking at the specific situation and taking into account similarities and differences. The third chapter will also make use of case studies, providing information on important and insightful examples to make specific tangible effects of ASEAN — EU free trade agreements apparent and understandable.

The fourth chapter dives into the mosaic of alternatives and visions. From very tangible improvements of existing or pending regulations to alternative visions, we will offer a range of perspectives and set them into relation with ASEAN and the EU to help find bearings towards a socio-ecological transformation of trade.

## 1.2 METHODOLOGY

The informational basis for the entire report is based on a mixture of literature and data research of publicly available resources and on interviews of knowledge bearers, researchers, activists and other people connected to the subject of FTAs. The structure of interviews and the selection of interviewees was designed to limit a structural bias. Perspective matters, as we have learned from previous struggles about the topic of free trade agreements. The study undoubtedly covers the topic from a Eurocentric angle. Therefore, we intend to be fully transparent about the decisions and choices that we have made, as well as how we have addressed structural biases in this process.

While the first two chapters depend less on the interviews undertaken, chapters three and four are largely dependent on those interviews. Apart from providing specific pieces of information that can be found as citations, the body of knowledge emerging from the interviews played a vital role in giving this report direction and substance.

We conducted three rounds of interviews and tried to address potential structural biases by the choice of interview partners. The first phase was strongly driven by the idea to scratch the surface of the topic and by getting in contact with professional and institutionalized stakeholders specialized in working on trade politics and collating their opinions. The selection of the non-European interview partners was based on gaining interview partners from countries with closed bilateral FTAs, reaching out to partners in countries with the highest impacts, and identifying partners with a conclusive criticism and articulated alternatives and visions. The second phase was about bringing in addi-

tional aspects and gathering further information on rather specific case studies from the ASEAN region, to explore them in more detail. We conducted interviews with environmental and civil society activists putting particular focus on alternative visions for trade in general and free trade agreements in particular. While in the first phase we might have easily gathered voices of European stakeholders, we tried to compensate the bias at this point.

In terms of perspectives from ASEAN countries, we also wanted to achieve as comprehensive a picture as possible in order to reflect the different situations in the ten member states. In the third phase, we held in-depth interviews and supplemented the previous perspectives where we identified gaps. The content objective of this part was to define and concert alternative visions in detail. In addition, we wanted to meet economic experts to learn more about the free trade narrative within ASEAN. The semi-structured interview guidelines were evaluated and adopted according to the specific background of the interview partner.

The vast majority of our interview partners had an academic background, most of them conduct research or are active campaigners within the NGO sector. At this point, we have to acknowledge the fact that we were not able to meet the intended selection of interview partners to a satisfying scope. We were able to conduct 18 qualitative interviews, 10 of which were with partners based in the ASEAN region, but only covering the countries Indonesia, Malaysia, Thailand, the Philippines and Vietnam. These methodological shortcomings of course neglect smaller ASEAN member states and have to be kept in mind for further consideration. Other limitations for the interviews were given by the interview setup via video-conferencing. For further information on the individual interviewees, please refer to section 6.1 in the annex.

Our capacity to interview sources from ASEAN member states was also limited by language barriers. As such, we had to rely on international and open-access sources for further contextualization. The compendium of data is shaped by institutional publications from ASEAN and European institutions, together with data from the OECD, World Bank, World Trade Organization (WTO), and the United Nations Conference on Trade and Development (UNCTAD).

### **1.3 DIGGING DEEP, BUT FIRST SHARPENING THE SPADE**

We need to acknowledge the complexities of trade agreements. If we first look at the volume and text corpus of the publications, it seems highly incomprehensible. FTAs negotiated by the EU consist of thousands of pages of bureaucratic and legalistic language. The FTA with Vietnam alone has 1,400 pages, including attachments<sup>1</sup>, not to mention various volumes of proposals for negotiations, mandatory Sustainability Impact Assessments, statements of member states,

position-papers of stakeholders, and civil society dialogue. And, of course, other existing agreements must also be taken into account, alongside supranational and international regulations and frameworks such as WTO rules.

The complexity of talking about FTAs itself is a problem. As one of our interview partners noted, half-jokingly: FTAs are designed that way, intentionally or deliberately.<sup>2</sup> Although they have an enormous impact on people's lives, they are only discussed by experts. This makes it extremely difficult for independent researchers to gain insight. This also has an impact on the possibility of discussing alternatives.

The practical shape of free trade today is complex, as are its individual components, which often play a silent but important role. We want to disentangle these components without stumbling on the mass of detail. What we mean by the term "free trade" here does not only refer to trade in goods and services. In our understanding, free trade is both a regime and an ideology, and includes many other aspects whose connection to trade is not immediately apparent. For example, it is also about intellectual property (IP) and patent rights, public procurement, product standardization, or investment protection. Recently, the field has also expanded into the sphere of digital trade.

Although all these components have a perceptible impact on the countries involved, we cannot capture all aspects of them here. A huge volume of research on FTAs and their impact has been conducted referring to existing agreements outside the EU-ASEAN connection over the years. Our approach is to draw on the cases highlighted by interview partners and stakeholders and exemplify the links of general FTA criticism, where applicable to EU-ASEAN. We believe that large parts of this previous research gives obvious guidance to the case of EU-ASEAN agreements. One important example is the EU-Mercosur Agreement. Here, we allow ourselves to borrow helpful indications.

For our analysis of current trade flows, we chose to stay on a broad region-to-region level instead of losing oversight of trade profiles between 27 EU countries on the one hand, and 10 ASEAN countries on the other. In addition, a quantitative analysis of economic effects of a potential EU-ASEAN FTA has various limitations.<sup>3</sup> The development of regional or national economic indicators, such as gross domestic product (GDP) or GDP per capita, is dependent on many variables apart from the trade regime with the EU (ranging from internal politics over impact from other trade agreements to global economic effects). Therefore, an isolation of the effect of trade changes with the EU cannot be covered in this context.

However, our explorations of visions and alternatives move beyond traditional trade policies' fixation on enhancing trade and economic or GDP growth. Instead, they also take well-being, equality, and sustainability into account.

#### 1.4 BACKGROUND AND HISTORY OF FTAS AS PART OF FREE TRADE LIBERALIZATION

This chapter provides a background to the history of free trade and gives an overview of the architecture and its development. We touch on this topic more broadly at first, but focus on the EU in the end.

Among liberal economists, there seems to be little doubt about the universal scope of what we call free trade ideology. FTAs have their soaring flight as the key instrument of neoliberal trade policy. With unprecedented generality, the economic doctrine propounds the concept of free trade as a guarantee of economic growth and welfare. There is a widely accepted trust in the power of trade also as a stimulus for employment and increasing wages.<sup>4</sup>

This fundamental belief can be identified within the architecture of the most influential international organizations, such as the preambles of the WTO,<sup>5</sup> the OECD,<sup>6</sup> and the World Bank.<sup>7</sup>

Following the premise of comparative advantage by British economist David Ricardo (1772–1823), free trade is supposed to generate wealth for countries in an economic relationship by reducing or abolishing tariffs on imported foreign goods.<sup>8</sup> Hereby, countries tend to specialize in the export of goods, which can be manufactured comparatively cheaper, and purchases other goods in exchange.

Since the industrial revolution, the volume of production and trade has intensified continuously, with only small dents caused by economic depressions and World Wars in the first half of the twentieth century. The post-war period was marked by sorting the global order into the newly created framework of the United Nations. The first attempt for a multilateral framework was concluded in 1947 with the General Agreement on Tariffs and Trade (GATT).<sup>9</sup>

Contrary to the free trade orientation, GATT offered already industrialized nations extensive loopholes to provide special protection from imports for specific industries and groups of goods.<sup>10</sup> During the 1960s, developing countries pushed the issue of systematic trade disparities and disadvantages compared to industrialized countries. This led to the creation of UNCTAD as a sub-organization of the UN.<sup>11</sup> One of its major achievements was to get industrialized nations to make unilateral concessions on tariffs in the so-called Generalized System of Preferences (GSP), which we will examine in more detail later.<sup>12</sup>

However, the growing independence movements and the more independent behaviour of the Global South made the UN increasingly unattractive for the assertion of the interests of industrialized countries. In the 1960s, global production and trade began their continuous rise. But, in the 1980s, trade volumes experienced a significant upsurge. Since then, the so-called second wave of globalization has swept the world, driven by liberalization of markets, cross-border capital flows, and a worldwide decrease in tariffs.<sup>13</sup>

The establishment of the WTO in 1994, which developing countries failed to repel, sought to provide a multilateral framework for these developments. The WTO framework is a bundle of regulations and existing trade agreements on tariffs, trade, services, and IP. It can be seen as an explicit liberalization agency, which embodies and cements the trade rules of industrialized countries.<sup>14</sup>

In the following era, as the WTO was further institutionalized, developing countries tried to thwart the WTO's liberalization agenda, fearing they would be overrun by industrialized countries.<sup>15</sup> In response, the US and Europe pushed a vastly growing number of bilateral and supra-regional agreements to complement and expand the WTO framework by shaping global standards.<sup>16</sup> The WTO framework is the basis of most of the known trade agreements, whether regional, inter-regional, or bi- and pluri-lateral. Furthermore, arising bilateral and regional trade agreements like the Canada-US FTA (CUFTA) and the North American FTA (NAFTA) had a leverage effect to push reluctant countries into the increasingly comprehensive WTO framework.<sup>17</sup> Most of the notified 354 agreements the WTO secretary has knowledge of are FTAs designed to reduce tariffs, export restrictions, import quotas, and national standardization (so-called non-tariff trade barriers).<sup>18</sup>

Non-tariff barriers have become increasingly important compared to the conventional facilitation of trade. In new-generation FTAs, the term "non-tariff barriers" is

1 European Commission: *EU-Vietnam : Texts of the Agreements*, accessed 20th Jun. 2022, [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-regions/vietnam/eu-vietnam-agreement/texts-agreements\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/vietnam/eu-vietnam-agreement/texts-agreements_en). 2 Scasserra, Sofia: *Expert Interview with Sofia Scasserra on Digital Free Trade* interview by Schnarrenberger and Schneider, Zoom, 2nd May 2022. 3 To look at trade data helps to understand the global flow of goods and services. But there is a decisive limitation to trade data when we look at it to learn about global value chains. In times of highly sophisticated production and supply chains parts for a single machine are produced and shipped from all over the world. This results in a lack of clarity, where the traded goods are actually forwarded, processed, sold, and consumed. Matthew C. Klein and Michael Pettis elaborate on this point. Klein, Matthew C. and Michael Pettis: *How Global Value Chains Distort Trade Data* Yale University Press, 7th Sep. 2021, accessed 28th Jun. 2022, <https://yalebooks.yale.edu/2021/09/07/how-global-value-chains-distort-trade-data/>. 4 Schoeller, Wolfgang: *Globalisierung Und Paradigmenwechsel in ZÖSS Discussion Paper No. 6* (Zentrum für ökonomische und soziologische Studien, 2014), accessed 26th Jul. 2022, <https://epub.sub.uni-hamburg.de/epub/volltexte/2014/34282/pdf/DP06.pdf>. 5 WTO: *WTO Agreement Preamble*, Dec. 2021, accessed 26th Jul. 2022, [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/wto\\_agree\\_preamble\\_jur.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/wto_agree_preamble_jur.pdf). 6 OECD: *Convention on the Organisation for Economic Co-Operation and Development*, accessed 26th Jul. 2022, <https://www.oecd.org/general/conventionontheorganisationforeconomicco-operationanddevelopment.htm>. 7 World Bank: *International Bank for Reconstruction and Development – Articles of Agreement*, 27th Jun. 2012. 8 Südekum, Jens: *Globalisierung unter Beschuss. Eine Bestandsaufnahme des Freihandels, Aus Politik und Zeitgeschichte*, no. 4–5 (2018): 4–10. 9 Bieling, Hans-Jürgen: *Internationale Politische Ökonomie: eine Einführung, 2., aktualisierte Aufl.*, Studienbücher Außenpolitik und Internationale Beziehungen Lehrbuch (Wiesbaden: VS Verl. für Sozialwissenschaften, 2011). 10 Bieling, Hans-Jürgen: *Internationale Politische Ökonomie*, 2011. 11 Toye, John: *UNCTAD at 50: A Short History* (n.d.): 154. 12 Toye, John: *UNCTAD at 50: A Short History*. 13 Südekum, Jens: *Globalisierung unter Beschuss. Eine Bestandsaufnahme des Freihandels*, 2018. 14 Toye, John: *UNCTAD at 50: A Short History*. 15 Tandon, Yash: *Trade Is War*, First Edition. (New York: OR Books, 2015). 16 Hopfmann, Arndt: *Free Trade with All – at All Costs Rosa-Luxemburg-Stiftung*, Feb. 2019, accessed 10th Mar. 2022, <https://www.rosalux.de/en/publication/id/400011/free-trade-with-all-at-all-costs>. 17 Bieling, Hans-Jürgen: *Internationale Politische Ökonomie*, 2011. See also the figure 16 (annex) on the rising number of bilateral trade agreements under the WTO framework in the annex. 18 WTO: *Regional Trade Agreements Gateway*, Mar. 1, 2022, accessed 22nd Sep. 2022, [https://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](https://www.wto.org/english/tratop_e/region_e/region_e.htm).

applied quite broadly, flexibly, and diversely: Regulatory measures like environmental protection, product safety, licensing procedures, or consumer-product labelling are increasingly considered to be non-tariff barriers.<sup>19</sup>

An attempt to establish extensive free trade guidelines on a global level within the WTO failed with the Doha round in the first decade of the twenty-first century. From then on, the EU pushed the “harmonization” of regulatory practices with its trade partners bilaterally. For that reason, the EU has been pursuing comprehensive bilateral trade agreements, or PTAs (preferential trade agreements). Often, the addressed trade issues are also referred to as “deep” trade issues. Originally describing the trade of goods, deep trade agreements are now compilations containing the liberalization of capital flows such as investment, public procurement, IP rights, services, data, and environmental issues. The emerging agreements are contracts between countries but also among regional entities such as the EU, ASEAN, or the Mercosur group.<sup>20</sup>

### Growing Resistance

The WTO conference in Seattle in 1999, flanked by intense protest from a growing anti-globalization movement, was used to set up another multinational negotiation round. In this so-called Millennium Round, the US and EU demanded further liberalization of markets in terms of public procurement, services, and new regulations on IP. Simultaneously, the Clinton

administration wanted to introduce social and environmental clauses into the WTO framework due to the pressure of trade unions and NGOs. However, transnational companies and developing countries were strongly opposed, the latter because they regarded it to be a new form of protectionism.<sup>21</sup>

Despite the fact that the opening of markets in China and Eastern Europe came with huge increases in GDP, the free trade agenda has not exactly had an easy standing among civil society in industrialized countries.<sup>22</sup> In 2015, the EU was about to negotiate a bilateral trade agreement with Canada (CETA) and the US (TTIP). In response, an unprecedented number of citizens mobilized to protest for a different kind of foreign trade policy. Civil society organizations established networks and trade unions closely engaged with FTA negotiations.<sup>23</sup> The promises of free trade go hand-in-hand with the increasing marginalization of groups in society, environmental damage, and adaptation pressures on the workforce.<sup>24</sup>

Nevertheless, it is important to keep in mind that, while we try to understand the character of ASEAN-EU trade relations and their criticism, criticism of the WTO and its free trade agenda in general is not central to this study. Therefore, we will focus on the mid-2010s debate on European trade deals, while also drawing from criticism and movements against an EU FTA with Mercosur. From here on, we explicitly focus on criticism of FTAs as distinct from a general criticism of liberal trade.

<sup>19</sup> Dessewffy, Éva: *Handelsverträge Der Neuen Generation – Wie Durch Regulierungskooperation Schutzstandsards in Frage Gestellt Werden in AK-Globalisierungskompass. Orientierungshilfe Für Eine Gerechte Weltwirtschafted.* AK Wien, Abteilung EU & Internationales (Wien, 2021), accessed 7th Apr. 2022, <https://www.anders-handeln.at/wp-content/uploads/downloads/2021/06/AK-Globalisierungskompass.pdf>. <sup>20</sup> Mercosur is the name of the common market in South America. <sup>21</sup> Bieling, Hans-Jürgen: *Internationale Politische Ökonomie*, 2011. <sup>22</sup> Bluth, Christian: *Attitudes to Global Trade and TTIP in Germany and the United States*, Global Economic Dynamics, 2016, accessed 8th Nov. 2022, [https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/Graue-Publikationen/NW\\_Attitudes\\_global\\_trade\\_and\\_TTIP.pdf](https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/Graue-Publikationen/NW_Attitudes_global_trade_and_TTIP.pdf). <sup>23</sup> Südekum, Jens: *Globalisierung unter Beschuss. Eine Bestandsaufnahme des Freihandels*, 2018. The negotiations for the Transatlantic Trade and Investment Partnership (TTIP) remained frozen since 2016. Finally in 2019 the European Council suspended its negotiation directive. European Commission: *Transatlantic Trade and Investment Partnership (TTIP) – Documents*, accessed 15th Nov. 2022, [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/united-states/eu-negotiating-texts-ttip\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/united-states/eu-negotiating-texts-ttip_en). Whereas the EU-Canada Comprehensive Economic and Trade Agreement (CETA) has entered into force provisionally in 2017. But full implementation requires ratification by the EU member states. To this end, the German government launched a new initiative in July 2022. Bundesregierung: *CETA: Handelsbeziehungen mit Kanada ausbauen, Die Bundesregierung informiert | Startseite*, Jul. 1, 2022, accessed 15th Nov. 2022, <https://www.bundesregierung.de/breg-de/bundesregierung/bundesministerien/bundesministerium-fuer-wirtschaft-und-klimaschutz/ceta-ratifizierung-2059226>. <sup>24</sup> Krätke, Michael and Gunter Willing: *Freihandel, Historisch Kritisches Wörterbuch Des Marxismus*, 1999, accessed 8th Nov. 2022, [https://www.inkrit.de/e\\_inkritpedia/e\\_maincode/doku.php?id=f:freihandel](https://www.inkrit.de/e_inkritpedia/e_maincode/doku.php?id=f:freihandel).

## 2 THE EU-ASEAN RELATIONSHIP

### 2.1 HISTORY AND BACKGROUND

ASEAN and the EU did not just bump into each other while strolling through the world's flea market. This section explains the geopolitical context of EU-ASEAN relations. Starting with colonialism, we take a brief look at how the current situation arose and how this connects to the EU's Indo-Pacific strategy. Here, we also pay attention to the influences of other world powers and important regional players, namely China and the US.

#### 2.1.1 From Colonialism to Intra-Regional Cooperation

Acknowledging the influence of colonialism is crucial to understanding today's EU-ASEAN relations. In the context of trade relations, this means exploring the colonial relations between European countries and ASEAN in general terms and the impacts it has for today's perspectives of ASEAN and the EU of each other. Anti-colonialism as a reason for regional integration is an aspect we will meet later.

The emergence of the countries existing today is a result of the highly complex exploitive mechanisms of colonialism. National borders were drawn by colonial powers based on circumstances and political considerations rather than following language frontiers, cultural areas, or pre-colonial configurations. Existing countries do not necessarily rely on entities with a shared history, tradition, or imagination.<sup>25</sup> However, it should be noted that the extent to which countries suffer from this problem differs massively depending on the specific country.

Anti-colonial movements and post-colonial governments tried to integrate complex heterogeneity into the ideas of a common nation. Still, conflicts about the recognition of governments and national authority are pending. Academics are pointing out that the South East Asian region has a heritage of high regional integration mainly due to extensive trade networks and longstanding economic interdependencies. Existing local channels and routes of commerce and trade, like highly-sophisticated ports and sea-routes, were the steppingstone for colonial powers to expand, invade, and establish themselves in the region.<sup>26</sup>

With the exception of Thailand, all ASEAN member states were colonized by France, the UK, the Netherlands, or Spain. Portugal also had a short period of colonization of modern-day Indonesia. The Spanish occupation of the Philippines was defeated by an anti-colonial uprising. However, it was just superseded by US subjugation at the start of the twentieth century. During the Second World War, Japan occupied most of the area.<sup>27</sup>

Later, the post-war-period of anti-colonial movements paved the way for ASEAN countries to gather in a non-aligned bloc. However, South East Asia became

a theatre of hot confrontation between the US and the Soviet Union during the Vietnam War, as well as the mass-persecution of alleged and actual communists in Indonesia and Malaysia. Today, despite the heterogeneity of ASEAN, with a spectrum of governmental systems ranging from dictatorships and monarchies to lively democracies, most countries are interconnected by trade and worker migration.<sup>28</sup> Even today, conflicting territorial claims and independence movements, such as in the Indonesian Aceh Province, still play an important role in the region's politics. In addition, ethnic groups and transnational communities are connected across national borders and, in some cases, still carry the legacy of simmering conflicts.<sup>29</sup>

On 8 August 1967, Indonesia, Malaysia, the Philippines, Singapore, and Thailand established ASEAN. Today, it is Asia's premier regional organization.<sup>30</sup> By now, ASEAN also includes Brunei, Cambodia, Laos, Myanmar, and Vietnam. East Timor is a candidate for accession in the near future, while Papua New Guinea might retain observer status.<sup>31</sup>

An ongoing challenge is how the Western perspective refuses to acknowledge the huge differences in ASEAN. These differences are of great importance in a region where economic, political, and military power are unevenly distributed. This is also partly why the original intention of ASEAN was cooperation, not integration.<sup>32</sup>

#### 2.1.2 The Emergence of ASEAN Intra-Regional Cooperation

ASEAN is characterized by strong heterogeneity. As Termsak Chalermpanupap puts it: "The political spectrum in ASEAN is mind-boggling. It includes authoritarian communist party rule in Laos and Vietnam, at one end, and the absolute monarchy in Brunei Darussalam, at the other end, with different shades of democracy in between the two extremes".<sup>33</sup>

Regionalist projects like ASEAN are often driven by the geographical advantages of short transportation routes and lower costs for resource supply chains.<sup>34</sup> Today, the Western understanding of regionalism is shaped by the metaphor of regional integration as a

<sup>25</sup> Derichs, Claudia: *Grundzüge der Geschichte Südostasiens Politik und Zeitgeschichte*, no. 40–41 (2014), accessed 21 Jun. 2022, <https://www.bpb.de/shop/zeitschriften/apuz/191934/grundzuege-der-geschichte-suedostasiens/>. <sup>26</sup> Derichs, Claudia: *Grundzüge der Geschichte Südostasiens*, 2014. <sup>27</sup> Derichs, Claudia: *Grundzüge der Geschichte Südostasiens*, 2014. <sup>28</sup> Derichs, Claudia: *Grundzüge der Geschichte Südostasiens*, 2014. <sup>29</sup> Croissant, Aurel and Christoph Trinn: *Culture, Identity and Conflict in Asia and Southeast Asia* (2009): 39. <sup>30</sup> Jürgen Rüländ: *From Trade to Investment: ASEAN and AFTA in the Era of the "New Regionalism"* 2017. <sup>31</sup> ASEAN: *Joint Communiqué of the 55th ASEAN Ministers' Meeting*, 3rd Aug. 2022, accessed 18th Sep. 2022, [https://asean.org/wp-content/uploads/2022/08/Joint\\_Communique-of-the-55th-AMM-FINAL.pdf](https://asean.org/wp-content/uploads/2022/08/Joint_Communique-of-the-55th-AMM-FINAL.pdf). <sup>32</sup> Hein, Christoph: *ASEAN, der übersehene Riese – Essay Aus Politik und Zeitgeschichte*, no. 40–41 (2014), accessed 21 Jun. 2022, <https://www.bpb.de/shop/zeitschriften/apuz/191934/grundzuege-der-geschichte-suedostasiens/>. <sup>33</sup> Chalermpanupap, Termsak: *A Few Things That ASEAN Has Outdone the EU*, in *ASEAN-EU Partnership – The Untold Story*. Tommy T. B. Koh and Lay Hwee Yeo (Singapore: World Scientific, 2020). <sup>34</sup> Bieling, Hans-Jürgen: *Internationale Politische Ökonomie*, 2011.

stepping stone in the race for pole position in liberal globalization, rather than a protective strategy.<sup>35</sup> At the beginning, however, economic cooperation was not the main focus. Cooperation was slow and national industries were quite protected. The focus was, rather, on decolonization and creating a common area of independence and neutrality. This faded shortly after, in the shared experience of US-led allyship against Soviet and Chinese influence. Therefore, one could say that, during early ASEAN integration, the focus was not on economics but on diplomacy, security, and culture.<sup>36</sup> Soon, the growing power of the Japanese economy and foreign direct investment (FDI) in ASEAN led to technology transfer and created an Asian role model. In the post-cold-war reorientation towards a multi polar world-order, integration in the early 1990s was driven by a response to marginalization.<sup>37</sup> In 1992, deeper economic integration of an ASEAN free trade area (AFTA) came with geographical expansion when Vietnam, Myanmar, Laos, and Cambodia joined the organization. AFTA can, rather, be seen as an attempt to attract FDI rather than boost inter-regional trade.<sup>38</sup>

Countries were hit by the 1997 Asian financial crisis in very different ways, followed by a huge withdrawal of foreign capital and investment. Thailand and Indonesia, in particular, were bound by strict structural adjustment programmes for inclusion in the IMF's financial assistance programmes. Market liberalization, deregulation, and privatization were implemented in many countries, while the crisis was also a "catalyst" for further regional integration.<sup>39</sup> Since 2015, the invention of the ASEAN Economic Community (AEC) pushed the integration of a common single market.<sup>40</sup>

Another driving factor for ASEAN regional integration can be seen in balancing the influence of external rival powers like India, China, Japan, and the US against each other. Termsak Chalermpananupap summarizes the main reasons for individual countries to be part of ASEAN in geopolitical terms as follows: "In the wake of US-China rivalry, ASEAN provides its members with a safe collective choice of being "pro-ASEAN" without antagonizing China or alienating the US."<sup>41</sup>

### 2.1.3 Geopolitical Situation and Powers in the ASEAN Region

Asia is rapidly becoming the world's most important area in terms of trade.<sup>42</sup> For the last two decades, economic growth and geopolitical aspects have developed hand-in-hand with trade politics. The rise of China has become the biggest challenge for the US-led post-war architecture of trade and geopolitics, and the global systemic confrontation between China and the US has its epicentre in the South East Asian Sea. The influence of China in this area raises concerns, but also the massive strategic US military presence.<sup>43</sup> While Chinese influence and power aspirations were growing, the perspective of the US regarding the

region was also changing. While the region has always been an important pillar of the US military architecture, the race for influence has recently become more pressing.<sup>44</sup>

Vietnam, Malaysia, and the Philippines feel threatened by the Chinese territorial claims, but the neighbourhood and the border with Cambodia, Laos, and Thailand also harbours the potential for conflict.<sup>45</sup> Historically, there are, for example, strong links between Cambodia and China, which are reflected in Chinese direct investment.<sup>46</sup> On the other hand, Vietnam and the Philippines are pursuing a more confrontational strategy towards Beijing, influenced by economic mistrust and suspicion due to different territorial claims and fear of Chinese dominance.<sup>47</sup> Since the beginning of the twenty-first century, China has changed its role in the region slowly by becoming the most important business partner for most countries while articulating its claim for regional hegemony and using its growing economic power with increasing persuasiveness for strategic interests.<sup>48</sup>

In November 2020, the Regional Comprehensive Economic Partnership (RCEP) was signed by the ten ASEAN countries together with Japan, China, South Korea, Australia, and New Zealand and celebrated as the largest free trade zone in the world.<sup>49 50</sup> Although the initiative for this FTA was driven by ASEAN states,

<sup>35</sup> Bieling, Hans-Jürgen: *Internationale Politische Ökonomie*, 2011. <sup>36</sup> Bieling, Hans-Jürgen: *Internationale Politische Ökonomie*, 2011. <sup>37</sup> Hein, Christoph: *ASEAN, der übersehene Riese – Essay*, 2014. <sup>38</sup> Jürgen Rüland: *From Trade to Investment: ASEAN and AFTA in the Era of the "New Regionalism"*, 2017. <sup>39</sup> Bieling, Hans-Jürgen: *Internationale Politische Ökonomie*, 2011. <sup>40</sup> Hilpert, Hanns Günther: *Neue Handelsabkommen in Asien. Liberalisierung in Zeiten geopolitischer Rivalität* (2021): 8. <sup>41</sup> Chalermpananupap, Termsak: *A Few Things That ASEAN Has Outdone the EU*, 2020. <sup>42</sup> Hilpert, Hanns Günther: *Neue Handelsabkommen in Asien. Liberalisierung in Zeiten geopolitischer Rivalität*, 2021. <sup>43</sup> Hilpert, Hanns Günther: *Neue Handelsabkommen in Asien. Liberalisierung in Zeiten geopolitischer Rivalität*, 2021. <sup>44</sup> This led to the so-called "Pivot to Asia" doctrine of foreign policy strategy under President Obama. (Heiduk, Felix: *Südostasien im Fokus der Weltpolitik* *Aus Politik und Zeitgeschichte*, no. 40–41 (2014), accessed 21st Jun. 2022, <https://www.bpb.de/shop/zeitschriften/apuz/191934/grundzuege-der-geschichte-suedostasiens/>). Here, the US was trying to contain Chinese influence, consolidating the US military presence and securing its access to trade-routes, markets, and resources. Thailand and the Philippines have military treaties with the US. Singapore and Vietnam also have close military partnerships (Deutsche Welle: *Nach Afghanistan: Konzentriert sich die US-Außenpolitik jetzt auf Südostasien?* *DW.COM*, Sep. 7 2021, accessed 19th May 2022, <https://www.dw.com/de/nach-afghanistan-konzentriert-sich-die-us-au%C3%9Fenpolitik-jetzt-auf-s%C3%BCdostasien/a-59074318>.) In 2022, the Biden administration tried to give the "Pivot to Asia" doctrine a new push, especially with the US-ASEAN summit in May 2022 under the shadow of the Russian war against Ukraine. The US and ASEAN agreed to shift from a strategic partnership to a comprehensive strategic partnership in November and the US is engaging more strongly in the region's territorial conflicts (Mason, Jeff, David Brunnstrom, and Michael Martina: *U.S. Hails "new Era" with ASEAN as Summit Commits to Raise Level of Ties* *Reuters*, 14th May 2022, sec. Asia Pacific, accessed 19th May 2022, <https://www.reuters.com/world/asia-pacific/us-tells-southeast-asian-leaders-it-will-be-region-generations-2022-05-13/>). <sup>45</sup> Deutsche Welle: *Nach Afghanistan*, 2021. <sup>46</sup> Young, Sokphea: *Cambodia between China and the West*, 2021, accessed 3rd Nov. 2022, <https://www.rosalux.de/en/news/id/44583/cambodia-between-china-and-the-west>. <sup>47</sup> Heiduk, Felix: *Südostasien im Fokus der Weltpolitik*, 2014. <sup>48</sup> Heiduk, Felix: *Südostasien im Fokus der Weltpolitik*, 2014. <sup>49</sup> Australian Government Department of Foreign Affairs and Trade: *Regional Comprehensive Economic Partnership (RCEP) Text*, Australian Government Department of Foreign Affairs and Trade, Dec. 15 2020, accessed 15th Mar. 2022, <https://www.dfat.gov.au/trade/agreements/in-force/rcep/rcep-text>. <sup>50</sup> Wissenschaftlicher Dienst des Deutschen Bundestages: *Die Regional Comprehensive Economic Partnership (RCEP) Im Kontext Bilateralen Spannungen Zwischen Mitgliedsstaaten*, Dec. 9, 2020, accessed 15th Mar. 2022, <https://www.bundestag.de/resource/blob/814854/6c3f21fe6a7cbf0d05db450de2ae6997/NWD-2-110-20-pdf-data.pdf>.

on an international level, it is seen as a success for China and a loss of US influence.<sup>51</sup>

Besides the RCEP, another trade negotiation, the Trans-Pacific Partnership (TPP), sought to influence the balance of power in the region. The remaining countries (Australia, Brunei, Chile, Japan, Canada, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam) finished the process without initial US participation as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP or TPP-11).<sup>52</sup>

#### 2.1.4 European Foreign Policy Interests towards ASEAN and the Indo-Pacific

When the EU finally published its own Indo-Pacific strategy, it addressed its concern about ongoing political tensions in the region that are putting important trade and supply chains under strain. The EU is steering a rather cautious course in its strategy by promoting platforms like the Asia-Europe Meeting (ASEM) and the new EU-ASEAN Strategic Partnership. The EU will also update its relationship with Malaysia and Thailand through Partnership and Cooperation Agreements (PCAs).<sup>53</sup>

Concluding the 2020 Strategic Partnership Agreement between the EU and ASEAN, the plan of action for the implementation of this partnership between 2023 and 2027 contains a major part on political and security cooperation as well as technological and economic cooperation.<sup>54</sup> As for the chapter on expanding trade, business, and investment, the document is not very ambitiously worded, as it intends to “assess progress made so far” and “explore ways to move forward” to establish a framework for a future EU-ASEAN FTA.<sup>55</sup> To this end, the agreement provides for existing bilateral FTAs as a basis, while clearly seeking alternatives to an EU-ASEAN FTA. An important point is also the promotion of cooperation on IP issues by working on stronger patent enforcement and the implementation of the new ASEAN IPR Action Plan.<sup>56</sup>

Surprisingly, however, ASEAN states are not even mentioned in the latest EU Trade Policy Review (2021). The Asia-Pacific region is only mentioned in the very last point, which underlines the EU’s strategy on trade agreements. Here, FTAs are explicitly seen as a geopolitical tool “for enhanced cooperation in pursuit of our values and interests”, but relations with Asia-Pacific could be understood as market-driven.<sup>57</sup> When the EU sees its influence on international regulatory cooperation, such as technical standardization and specifications, shrinking, it seeks to pursue the “uptake of international standards in developing partner countries and facilitating compliance with new regulatory requirements”.<sup>58</sup>

With the exception of China, Asia remains largely ignored by the new EU trade policy, with little attention paid to the fact that it is the most dynamic and, in terms of trade volume, the most important economic region in the world.<sup>59</sup> The EU strategy provides for the “necessary” measures to meet China’s challenges

in trade in a defensive manner. European analysts describe the overall situation as follows: “Diplomatic support from Brussels for ASEAN is especially crucial concerning the South China Sea dispute. Forty percent of European trade passes through the South China Sea.”<sup>60</sup> However, the EU has failed to speak with one voice when Beijing did not consider itself bound by international law.<sup>61</sup>

They held back on anything that could be misunderstood by China as a wrong signal.<sup>62</sup> The question of how to deal with ASEAN is answered very differently by decision-makers in different European member states; and most importantly, it is highly connected to the question of how to face China question of how to deal with the ASEAN region is answered very differently by decision makers in different European member states; and most importantly, it is highly connected to the question of how to face China.<sup>63</sup>

## 2.2 THE ECONOMIC CONTEXT TO THE EU-ASEAN FTA NEGOTIATION PROCESS

With the preceding chapter in mind, we want to provide an overview of the trade between ASEAN and EU states in the past and present. This will provide the context for important questions which arise when talking about the process of negotiation and the effects of trade agreements.

ASEAN countries have much greater diversity, both in terms of political and economic status, than the EU.<sup>64</sup>

<sup>51</sup> The RCEP Agreement does not seem to be a very deep agreement with a high rate of standardization among the member states, and many of the countries already had bilateral trade agreements with down to zero tariff rates. However, analysts expect a subsequent process of re-negotiation and further integration, as this is one of the specifics of ASEAN-led foreign agreements (Hilpert, Hanns Günther: *Neue Handelsabkommen in Asien. Liberalisierung in Zeiten geopolitischer Rivalität, SWP-aktuell* (Mar. 2023): 8.. One key intention of the agreement will be the long-standing shift of investment-relations, value-chains and trade routes between Asian countries and other countries in the world, towards a focus on intra-regional trade (Hilpert, Hanns Günther: *Neue Handelsabkommen in Asien. Liberalisierung in Zeiten geopolitischer Rivalität*, 2023. <sup>52</sup> Hilpert, Hanns Günther: *Neue Handelsabkommen in Asien. Liberalisierung in Zeiten geopolitischer Rivalität*, 2021. On geopolitical level, the US withdrawal from TPP during the Trump administration could be identified by the EU as a possibility to step into the vacuum and on the other hand repel the dependency on infrastructure investments of ASEAN countries towards China (Pushpanathan, Sundram: *ASEAN and EU Economic Relations: A Shared Present and Future, ein ASEAN-EU Partnership – The Untold Story*. Tommy T. B. Koh and Lay Hwee Yeo (Singapore: World Scientific, 2020). <sup>53</sup> General Secretariat of the Council: *EU Strategy for Cooperation in the Indo-Pacific – Council Conclusions*, 16th Apr. 2021, <https://data.consilium.europa.eu/doc/document/ST-7914-2021-INIT/en/pdf%20p.10>. <sup>54</sup> ASEAN and EU: *Plan of Action to Implement the ASEAN-EU Strategic Partnership (2023-2027)*, 2020, accessed 16th Sep. 2022, <https://asean.org/wp-content/uploads/2022/08/ASEAN-EU-Plan-of-Action-2023-2027-FINAL.pdf>. <sup>55</sup> ASEAN and EU: *Plan of Action to Implement the ASEAN-EU Strategic Partnership (2023-2027)*, 2020. <sup>56</sup> ASEAN: *ASEAN IPR Action Plan 2016-2025 v2.0*, Jun. 2021, accessed 23rd Sep. 2022, <https://www.aseanip.org/Portals/0/PDF/ASEAN%20IPR%20Action%20Plan%202016-2025%20v2.0.pdf?ver=2021-06-10-135518-427>. <sup>57</sup> European Commission. Directorate General for Trade: *Trade Policy Review: An Open, Sustainable and Assertive Trade Policy* (LU: Publications Office, 2021), accessed 21st Sep. 2022, <https://data.europa.eu/doi/10.2781/18160>. <sup>58</sup> European Commission. Directorate General for Trade: *Trade Policy Review*, 2021. <sup>59</sup> Hilpert, Hanns Günther: *Neue Handelsabkommen in Asien. Liberalisierung in Zeiten geopolitischer Rivalität*, 2021. <sup>60</sup> Gerstl, Alfred: *CEIAS CONSIDERS: EU’s Future in the ASEAN Region* Central European Institute of Asian Studies, 28th Oct. 2021, accessed 11th Apr. 2022, <https://ceias.eu/ceias-considers-eu-asean/>. <sup>61</sup> Gerstl, Alfred: *CEIAS CONSIDERS*, 2021. <sup>62</sup> Grare, Frédéric and Manisha Reuter: *Moving Closer: European Views of the Indo-Pacific* ECFR, 13th Sep. 2021, accessed 3rd Mar. 2022, <https://ecfr.eu/special/moving-closer-european-views-of-the-indo-pacific/>. <sup>63</sup> For further information regarding selected European national Indo Pacific Strategies, please refer to section Fehler: Verweis nicht gefunden in the annex. <sup>64</sup> Koh, Tommy T. B. and Lay Hwee Yeo, eds.: *ASEAN-EU Partnership: The Untold Story*, First edition. (Singapore ; Hackensack, NJ: World Scientific, 2020).

Further, bilateral FTAs between the EU as a whole and individual ASEAN countries can be regarded as stepping stones towards an inter-regional FTA. Therefore, for a more in-depth understanding of the development of inter-regional free trade, it is more important to look at ASEAN countries individually than to qualify internal differences between EU member states.

In 1972, the EU and ASEAN established a region-to-region relationship with informal dialogue aimed at market access for ASEAN exports. The value of merchandise remained small, but quite balanced. Still, trade had increased almost tenfold between 1971 and 1979. Further, trade volume increased and tripled in the 1980s. Manufactured products rose from 23.8 percent to 60 percent of total traded goods. Manufacturing started to become offshored from Europe and increased in importance in ASEAN. Subsequently, raw material exports declined from 36 percent in 1978 to 13 percent in 1988. Even so, ASEAN was not a major player in terms of trading with the EU, which focused on the Americas.<sup>65</sup>

After structural adjustment programmes in the 1990s, the economic situation of ASEAN and economic relations with the EU were on the rise. A growing young middle class in ASEAN became a potential consumer base for the EU.<sup>66</sup> EU negotiations with ASEAN on an FTA started in 2007 but were suspended in 2009. Afterwards, the EU tried to conclude bilateral trade agreements with individual ASEAN nations. Negotiations with Singapore and Malaysia started in 2010; Vietnam in 2012; Thailand in 2013; the Philippines in 2015; and Indonesia in 2016.<sup>67</sup>

Bilateral negotiations with Laos, Brunei-Darussalam, Myanmar, and Cambodia were never initiated. The

observable interest of the EU to proceed with bilateral negotiations has been openly guided by the economic importance and the estimated potential of the respective countries. FTAs are in effect with Singapore and Vietnam, having been ratified in November 2019 and August 2020, respectively.

### 2.2.1 Goods

Total trade in goods between ASEAN and EU countries has seen a fairly constant increase since 2000, with the share of manufactured products decreasing slightly. Merchandising trade increased during the 2010s to 236.7 billion euro by 2018. Manufactured goods dominated in both directions. Total trade shows a negative balance for the EU, which has greatly increased since 2010. This is mainly due to increased negative balances with Vietnam and Malaysia, whereas balances with other ASEAN countries have remained relatively stable. The only country with a negative trade balance towards the EU is Singapore, which shows an especially high volume of imported products from the EU.<sup>68</sup>

ASEAN, as a region, is the EU's fifth-most important trading partner. Meanwhile, the EU is the third-most important trading partner for ASEAN.<sup>69</sup> While the EU is at a relatively similar level of significance for various ASEAN countries, their significance to the EU varies enormously. Obviously, different EU countries would show larger variability when looked at individually. However, as current trade negotiations are on a bilateral basis between the EU and individual ASEAN countries, the large difference in significance matters greatly.

<sup>65</sup> Pushpanathan, Sundram: *ASEAN and EU Economic Relations: A Shared Present and Future*, 2020. <sup>66</sup> Pushpanathan, Sundram: *ASEAN and EU Economic Relations: A Shared Present and Future*, 2020. <sup>67</sup> European External Action Service (EEAS): *EU-ASEAN Blue Book 2022*, May 24 2022, accessed 18th Sep. 2022, <https://www.eeas.europa.eu/sites/default/files/documents/EU-ASEAN%20Blue%20Book%202022.pdf>. <sup>68</sup> *Datenbank – Eurostat*, accessed 29th Mar. 2022, <https://ec.europa.eu/eurostat/de/web/main/data/database>. <sup>69</sup> European External Action Service (EEAS): *EU-ASEAN Blue Book 2022, 2022; Association of South East Asian Nations (ASEAN) – Trade – European Commission*, accessed 2nd Mar. 2022, <https://ec.europa.eu/trade/policy/countries-and-regions/regions/asean/>.

Figure 1: Trade balance of ASEAN and the EU (in millions of €)

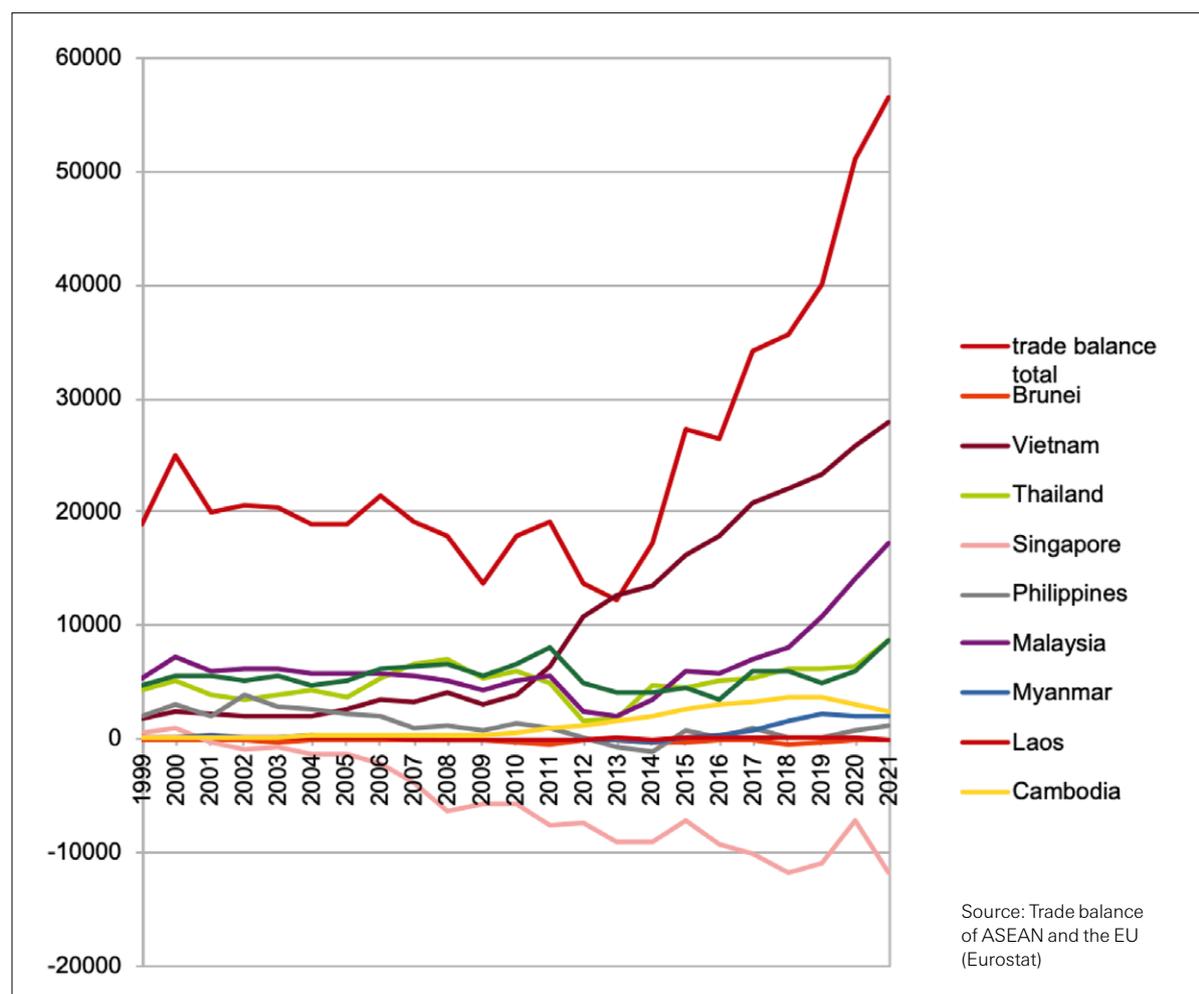


Figure 2: Importance of ASEAN countries as EU trading partner

	Importance as a trading partner			
	EU rank in total trade	EU percent of total trade	Rank in total trade for EU	Percent of total EU trade
ASEAN	3	10.3	5	5.1
Vietnam	4	8.7	16	1.1
Singapore	4	8.8	20	1
Malaysia	4	8.1	22	1
Thailand	4	7.3	25	0.8
Indonesia	4	6.8	31	0.6
Philippines	4	7.9	39	0.4
Cambodia	5	9	62	0.1
Myanmar	4	9.4	75	0.1
Laos	4	4.1	127	0
Brunei	12	2	146	0

Source: Importance of ASEAN countries as EU trading partner (European External Action Service (EEAS): EU-ASEAN Blue Book 2022)

The export of goods from the EU to ASEAN has increased significantly over recent decades. The share of manufactured goods is still over 80 percent. But this has decreased slightly as the export of agricultural raw materials has become more significant. While machinery and transport equipment has fallen in significance slightly, it still makes up around 50 percent of EU exports. The share of chemicals has increased significantly (see Figure 17 in the Annex). Further major goods exported to ASEAN include electrical machinery, general industrial machinery and equipment, industry-specific machinery, power-generating machinery, and telecommunications and transport equipment.<sup>70</sup>

Similar to the export of goods from the EU to ASEAN, the export of goods from ASEAN to the EU has increased significantly over recent decades. The share of manufactured goods has been relatively steady and is now roughly 85 percent. Machinery and transport equipment still make up around 50 percent of ASEAN exports. Meanwhile, the share of chemicals has increased to 10 percent (see Figure 18 in the Annex). Today, the main goods exported to the EU are office machines, electrical machinery, telecommunications, apparel and clothing accessories, organic chemicals, and footwear.<sup>71</sup>

Singapore is by far the most important country in terms of exports from EU and has been for a long time. The other main import destinations are Malaysia, Indonesia, and Thailand. The main development of note here is the rise of exports to Vietnam, which has steadily increased over the last 20 years (see Figure 21 in the Annex).<sup>72</sup>

Looking at imports into the EU from ASEAN, Vietnam has risen to be the major exporter (with 30 percent) while Singapore has declined in significance. Indonesia's share has also fallen slightly, while Malaysia and Thailand both remain major exporters. The increase in Vietnamese exports to the EU is a key factor contributing to a widening negative trade balance for the EU (see Figure 21 in the Annex).<sup>73</sup>

Cambodia, Myanmar, Laos and Brunei Darussalam play minor roles with a combined share of 3.5 percent of the total trade in goods.

Key observations of important sectors or products per country:

- Indonesia: The EU mostly exports machinery and chemicals to Indonesia.
- Philippines: Imports machinery and chemicals but also animals and food. Exports mostly machinery, most of which is telecommunications equipment.
- Vietnam: Imports machinery and chemicals. Exports mostly machinery, a big part of which is telecommunications equipment. Food products and clothing also play a role.
- Thailand: Exports mostly machinery, a big part of which is telecommunications equipment.

- Myanmar: Exports almost exclusively clothing; imports machinery and chemicals.
- Malaysia: Exports mostly machinery, a lot of which is office and telecommunications equipment. Imports machinery and chemicals
- Cambodia: Almost all exports to the EU are textiles and clothing (77 percent).
- Laos: Main trading partner is Thailand (almost 50 percent). Exports mainly clothing (over 50 percent).
- Singapore: "Position as a regional trading, sourcing, and distribution hub and financial centre."<sup>74</sup>
- Brunei: Imports mostly chemicals and machinery; exports mostly machinery. Main trading partner is Singapore.

A few other key observations of a more general nature where made in relation to trade in goods:

- Germany, Netherlands, France, Italy, and Belgium are the top-five trading partners of ASEAN within Europe.
- Germany, France, and Italy export as much as they import from ASEAN. However, the Netherlands, Belgium, and Spain import much more than they export.
- In terms of trade volume, Cambodia, Myanmar, Laos, and Brunei play a very small role, accounting for roughly 0.2 percent of the EU's total external trade and roughly 2 percent of the EU's total external trade with ASEAN.

### 2.2.2 Services

Trade in services has increased steadily over the last 10 years rather evenly in both directions. While service exports from the EU to ASEAN almost doubled from roughly 20 billion to 40 billion euro, they grew slightly more in the other direction before dropping to roughly 40 billion from 2019 to 2020. The position of Singapore accounting for 61 percent of total trade in services is singular.<sup>75</sup> Similar to trade in goods, Cambodia, Myanmar, Laos, and Brunei Darussalam play minor roles with a combined share of 1.6 percent of total trade in services.

<sup>70</sup> *Datenbank – Eurostat*. <sup>71</sup> *Datenbank – Eurostat*. <sup>72</sup> *Datenbank – Eurostat*. <sup>73</sup> *Datenbank – Eurostat*. <sup>74</sup> ECORYS Nederland BV: *Trade Sustainability Impact Assessment for the FTA between the EU and ASEAN* (Rotterdam, Nov. 28, 2008), accessed 16th Dec. 2022, [https://trade.ec.europa.eu/doclib/docs/2009/january/tradoc\\_142063.pdf](https://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142063.pdf). <sup>75</sup> *Association of South East Asian Nations (ASEAN) – Trade – European Commission*, ; *Datenbank – Eurostat*.

Figure 3: Trade in Services between ASEAN and EU

	Trade in Services EU with ASEAN		
	imports [billion €]	exports [billion €]	balance [billion €]
ASEAN	40.7	41.9	1.2
Vietnam	1.5	4.2	2.7
Singapore	28.7	21.6	-7.2
Malaysia	2.8	3.9	1
Thailand	3.2	4.9	1.7
Indonesia	1.4	4.5	3.1
Philippines	2.5	2.1	-0.4
Cambodia	0.2	0.2	0.0
Myanmar	0.2	0.2	0.0
Laos	0.1	0.1	0.0
Brunei	0.1	0.2	0.2

Source: Trade in Services between ASEAN and EU (European External Action Service (EEAS); Eurostat)

The role of individual European countries is not looked at here in more detail, other than to note that the Netherlands is by far the largest exporter of services to ASEAN.

Looking at the sectors of most significance regarding the export of services from ASEAN, the transport and telecommunications, computer, and information service sectors are of particular importance. Meanwhile, IP charges have decreased in significance (see Figure 24 in the Annex).

Looking at the sectors of most significance regarding the export of services from the EU, IP charges have increased in significance while the transport sector has decreased (see Figure 25 in the Annex).<sup>76</sup>

### 2.2.3 Foreign Direct Investment

With the beginning of the 2020s, Europe became ASEAN's largest provider of FDI, shifting more attention towards finance and insurance.<sup>77</sup> The EU provided one-fifth of FDI coming into ASEAN, most of it to the manufacturing sector. Pushpanathan Sundram, the former Deputy Secretary-General of ASEAN, expects this trend of EU capital inflow to ASEAN economies to keep growing due to an affluent middle class.<sup>78</sup>

The role of Singapore is quite singular here, holding 73 percent of the FDI stocks from European countries in ASEAN. Concerning direct investment from ASEAN into Europe, which has seen a significant rise in recent years, Singapore is even more dominant, with 87 percent of the FDI stocks from ASEAN originating there.<sup>79</sup>

Data from ASEANstat shows that, while EU FDI stocks in ASEAN have not increased in the last three

Figure 4: Foreign direct investment between ASEAN and the EU

	FDI EU – ASEAN		
	stocks held by ASEAN in the EU [billion €]	stocks held by the EU in ASEAN [billion €]	balance [billion €]
ASEAN	172.4	350	177.6
Vietnam	0.2	5.4	5.2
Singapore	150.4	255.6	105.2
Malaysia	14.1	27.8	13.7
Thailand	3.8	20	16.2
Indonesia	0.9	25.2	24.3
Philippines	1.4	13.8	12.4
Cambodia	0.1	0.8	0.7
Myanmar	0	0.6	0.6
Laos	0	0.4	0.4
Brunei	1.5	0.4	-1.1

Source: Foreign direct investment between ASEAN and the EU (Eurostat)

years, ASEAN FDI stocks in Europe have been rising (see Figure 26 in the Annex).<sup>80</sup>

Singapore's special role merits closer investigation. When looking at the origin of FDI stocks in Singapore, there has been a heavy decline since 2018 in those from the Netherlands which was, until then, the country holding by far the most FDI stocks in Singapore. That role has now been taken by Luxembourg, closely followed by Ireland (see Figure 27 in the Annex).<sup>81</sup>

To get an idea of the potential for change induced by liberalizing an FDI policy regime on a very basic level, a look at the FDI Index of European countries compared to that of ASEAN countries may prove useful.<sup>82</sup> It becomes apparent that ASEAN has a higher level of restrictiveness and, therefore, would experience the effects of liberalization more strongly<sup>83</sup> (see Figure 28 in the Annex).<sup>84</sup>

<sup>76</sup> *Datenbank – Eurostat*. <sup>77</sup> *Association of South East Asian Nations (ASEAN) – Trade – European Commission*. <sup>78</sup> Pushpanathan, Sundram: *ASEAN and EU Economic Relations: A Shared Present and Future*, 2020. <sup>79</sup> As data from ASEANstat resulted in lower numbers in relation to FDI statistics than data from Eurostat, incompleteness in reporting was assumed and the Eurostat data was used for overview, *Datenbank – Eurostat*. <sup>80</sup> To look at the development over time, ASEANstat data was more manageable. *Indicators | ASEANStatsDataPortal*, accessed 3rd Mar. 2022, <https://data.aseanstats.org/>. <sup>81</sup> *Indicators | ASEANStatsDataPortal*, <sup>82</sup> The OECD gauges the restrictiveness of a country's rules on foreign direct investment with the FDI Regulatory Restrictiveness Index (FDI Index). This is done in 22 economic sectors across 69 countries. <sup>83</sup> The index takes into account foreign equity limitations, screening or approval mechanisms, restrictions on the employment of foreigners as key personnel and operational restrictions, e.g. restrictions on branching and on capital repatriation or on land ownership. OECD: *FDI Regulatory Restrictiveness Index*, accessed 21st Sep. 2022, <https://www.oecd.org/investment/fdiindex.htm>. <sup>84</sup> OECD: *FDI Regulatory Restrictiveness Index*.

## 2.2.4 Overall Observations on GDP and Other Indicators

To be able to make cross-references between various

parameters on a country-by-country basis, the indicators from above are given here in one table compiled on the basis of various sources.<sup>85 86 87</sup>

**Figure 5: Gross domestic product and other indicators of ASEAN countries**

		ASEAN	Vietnam	Singapore	Malaysia	Thailand	Indonesia	Philippines	Cambodia	Myanmar	Laos	Brunei
Basic ASEAN economic indicators	Population 2021 [Millions]	667	98	5	33	70	272	110	16	54	7	0.4
	GDP [Billions of €]	2841	310	336	315	434	1003	333	22	55	16	17
	GDP / Person [€]	4259	3149	61550	9638	6203	3648	3020	1375	1029	2126	38887
	DP growth per y, last 20 y		12	6.2	6.2	6.5	9.7	5.9	8.5	12.6	11.5	5.2
Trade in Goods EU with ASEAN	imports [billion €]	136	38.5	15.6	29.2	22.1	16.8	8.1	3.5	2.2	0.3	0
	exports [billion €]	80	10.6	27.3	11.8	13.3	8	7.1	1	0.3	0.2	0.1
	balance [billion €]	-57	-27.9	11.7	-17.4	-8.7	-8.8	-1.1	-2.5	-1.9	0	0.1
Importance as trading partner	EU rank as in total trade	3	4	4	4	4	4	4	5	4	4	12
	EU % of total trade	10.3	8.7	8.8	8.1	7.3	6.8	7.9	9	9.4	4.1	2
	Rank in total trade for EU	5	16	20	22	25	31	39	62	75	127	146
	% of total EU trade	5.1	1.1	1	1	0.8	0.6	0.4	0.1	0.1	0	0
Trade in Services EU with ASEAN	imports [billion €]	40.7	1.5	28.7	2.8	3.2	1.4	2.5	0.2	0.2	0.1	0.1
	exports [billion €]	41.9	4.2	21.6	3.9	4.9	4.5	2.1	0.2	0.2	0.1	0.2
	balance [billion €]	1.2	2.7	-7.2	1	1.7	3.1	-0.4	0	0	0	0.2
FDI EU – ASEAN	Stocks held in EU [billion €]	172.4	0.2	150.4	14.1	3.8	0.9	1.4	0.1	0	0	1.5
	Stocks held by EU [billion €]	350	5.4	255.6	27.8	20	25.2	13.8	0.8	0.6	0.4	0.4
	balance [billion €]	177.6	5.2	105.2	13.7	16.2	24.3	12.4	0.7	0.6	0.4	-1.1

Source: Gross domestic product and other indicators of ASEAN countries (European Commission: EU Trade by Country/Region; European Commission: Statistical Data on the EU's Economic Relations with Its Main Trading Partners; Eurostat)

While GDP or its growth is certainly not considered an adequate measure of how the inhabitants of a

region or country are doing economically, it is still helpful to have an overview.<sup>88</sup>

**Figure 6: Development of GDP and GDP per Capita in ASEAN countries**

	Basic ASEAN economic indicators			
	Population 2021 [Millions]	GDP [Billions of €]	GDP / Person [€]	GDP growth per year, last 20 years [%]
ASEAN	667	2841	4259	
Vietnam	98	310	3149	12
Singapore	5	336	61550	6.2
Malaysia	33	315	9638	6.2
Thailand	70	434	6203	6.5
Indonesia	272	1003	3648	9.7
Philippines	110	333	3020	5.9
Cambodia	16	22	1375	8.5
Myanmar	54	55	1029	12.6
Laos	7	16	2126	11.5
Brunei	0.4	17	38887	5.2

Source: Development of GDP and GDP per Capita in ASEAN countries (World Bank: World Development Indicators Databank)

The development of GDP per capita over time in ASEAN countries, with the exception of Brunei Darussalam, is rather consistent with the larger growth rates among the countries that had lower GDP 30 years ago.

While GDP per capita in Singapore is almost double that of the European mean, and that of Brunei Darussalam has developed on a comparable level, GDP per capita in all other ASEAN countries is much lower<sup>89</sup> (see Figure 29 in the Annex).

When looking at GDP per capita based on domestic purchasing power (GDP PPP), which serves better to

<sup>85</sup> European Commission: *EU Trade by Country/Region*, accessed 26th Aug. 2022, [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions_en). <sup>86</sup> European Commission: *Statistical Data on the EU's Economic Relations with Its Main Trading Partners*, accessed 26th Aug. 2022, [https://policy.trade.ec.europa.eu/analysis-and-assessment/statistics\\_en](https://policy.trade.ec.europa.eu/analysis-and-assessment/statistics_en). <sup>87</sup> *Datenbank – Eurostat*. <sup>88</sup> World Bank: *World Development Indicators | DataBank*, accessed 22nd Sep. 2022, <https://databank.worldbank.org/source/world-development-indicators>. <sup>89</sup> World Bank: *World Development Indicators | DataBank*.

understand the average economic situation of an individual in a particular country, the gap becomes smaller but is still very apparent<sup>90</sup> (see Figure 30 in the Annex).

### 2.3 INTER-REGIONAL NEGOTIATIONS BETWEEN THE EU AND ASEAN

In terms of the differences between EU and ASEAN countries, Termsak Chalermpananupap, who served in the ASEAN Secretariat for nearly 20 years, points out that the ASEAN annual operations budget in 2019 was 20 million US dollars, while the EU budget was 185.7 billion. He calculates that, while each person in ASEAN contributes an average of 3 cents to this funding, EU citizens contribute 362 US dollars.<sup>91</sup> This has consequences for the bureaucratic apparatus available for negotiations and adaptation mechanisms.

#### 2.3.1 The Case for an Inter-Regional Agreement

Here we want to take a closer look at the reasons for a region-to-region FTA and why the EU decided to suspend negotiations with ASEAN to pursue bilateral agreements with single member states instead.

A key initiative for a comprehensive EU-ASEAN FTA can be understood from the EU Commission's negotiations mandate. Under the "Global Europe" doctrine, the EU was aiming for new-generation "competitiveness-driven FTAs" which are "aiming at the highest possible degree of trade liberalization, including far-reaching liberalization of services and investment."<sup>92</sup>

Firstly, the mandate stressed the importance of reacting against other agreements concluded by ASEAN. Secondly, the political urgency for an agreement was underlined by the aspirations of business not to be left behind (for example, "European industry has expressed an urgent request in light of the preferential market access being provided to its competitors").<sup>93</sup> It is important to mention that the 2007 mandate already included the possibility of pursuing bilateral negotiations if a region-to-region approach was not successful.<sup>94</sup> It seems that, by that time, ASEAN officials were aware of this two-track EU bargaining chip.<sup>95</sup>

In addition to the negotiation mandate, another helpful understanding of the underlying intentions from the European side can be found in the Commission's Position Paper on the 2008 Trade Sustainability Impact Assessment (SIA) for the inter-regional FTA.<sup>96</sup> The Commission has to obtain these SIAs during any process of negotiation for new potential FTAs. We will come to the problematic issue of SIAs later (in Section 3.1.2). In general economic terms, the impact assessment predicted the biggest improvements for the EU's service sector and an increase in exports of clothing and textile products from ASEAN. Of course, the predictions varied heavily due to the different economic conditions between ASEAN member states.<sup>97</sup> On a country level, the SIA expected the following key changes:

- Indonesia will see gains in electronic equipment,

textiles, and apparel sectors, while motor vehicles and parts, gas production, and business services are expected to decline.

- Malaysia will see increases in the textiles, clothing, and footwear (TCF) sectors; gas, machinery and equipment manufacturing, and minerals production are expected to decline.
- The Philippines stands to gain in a diverse number of sectors including motor vehicles and parts and TCF. A decline in the cereals and grains (mainly rice) sectors, as well as gas, is expected, reflecting a continued shift from primary to manufacturing sectors.
- Relative to existing trade volumes, Singapore stands to gain most in electronics equipment, textiles, and insurance. However, textiles is small to negligible in value added and, overall, Singapore stands to gain most in the services sector, which presents substantial added value. Manufacturing sectors such as machinery and equipment and transport equipment should see a declining trend.
- Thailand, on the other hand, is expected to increase its manufacturing activities in transport and electronic equipment and motor vehicles and parts, confirming its already strong regional position in these sectors; insurance services and wood products sectors are expected to decline in the long run.
- The removal of trade restrictions for the Vietnamese leather/footwear sector will further unleash its competitive potential and lead to output increases of up to 150 percent. Expansion in the wearing apparel sector, as well as trade in services, are expected to increase over time; the late entry into electronic and machinery equipment and motor vehicles sectors by Vietnam means these sectors have not yet been able to build up the competitive strength to withstand competition from established producers in the region such as Thailand and the Philippines, and these sectors are expected to decline in Vietnam as a result of the FTA.
- The rest of ASEAN — including Brunei, Cambodia, Laos, and Myanmar — is expected to see strong increases in the textiles and wearing apparel sectors and a relative decline for machinery equipment and motor vehicles and parts.<sup>98</sup>

During the time of the SIA, in 2009, all ASEAN countries combined were ranked third in terms of the largest

<sup>90</sup> World Bank: *World Development Indicators* | DataBank. <sup>91</sup> Chalermpananupap, Termsak: *A Few Things That ASEAN Has Outdone the EU*, 2020. <sup>92</sup> European Commission (leaked document): *EU-ASEAN FTA – EC Negotiating Mandate (Draft, 2007)*, 2007, accessed 19th Sep. 2022, <https://www.bilaterals.org/?draft-eu-asean-fta-negotiating>. <sup>93</sup> European Commission (leaked document): *EU-ASEAN FTA – EC Negotiating Mandate (Draft, 2007)*, 2007. <sup>94</sup> European Commission (leaked document): *EU-ASEAN FTA – EC Negotiating Mandate (Draft, 2007)*, 2007. <sup>95</sup> Bangkok Post: *Asean Wary of EU Approach to Expanding Free Trade Talks*, 25th Aug. 2008, accessed 20th Sep. 2022, <https://www.bilaterals.org/?asean-wary-of-eu-approach-to>. <sup>96</sup> ECORYS Nederland BV: *Trade Sustainability Impact Assessment for the FTA between the EU and ASEAN*, 2008. <sup>97</sup> ECORYS Nederland BV: *Trade Sustainability Impact Assessment for the FTA between the EU and ASEAN*, 2008. <sup>98</sup> European Commission: *Trade and Sustainability Impact Assessment of the FTA between the EU and ASEAN* (Rotterdam, Jun. 19, 2009), accessed 22nd Nov. 2022, [https://trade.ec.europa.eu/doclib/docs/2010/april/tradoc\\_145989.pdf](https://trade.ec.europa.eu/doclib/docs/2010/april/tradoc_145989.pdf).

trade partners outside Europe. However, they had quite high barriers in place, inhibiting market access for European companies. In addition, the geopolitical risk of “being crowded out by others who have already concluded or are concluding trade agreements with ASEAN” seemed to be a main driver for the EU’s ambitions.<sup>99</sup>

Sundram summarizes the EU interests in an inter-regional FTA as wanting to gain from the increased export of services and in strengthening its position in the region geopolitically. He believes ASEAN will gain from the export of goods, the diversification of the economy, and a counterforce to dependency on China.<sup>100</sup>

The underlying motives from the ASEAN side for an inter-regional FTA can be summarized according to documented media reports on the monitoring platform [bilaterals.org](http://bilaterals.org).<sup>101</sup> In government statements, officials also expressed their concern, hoping to “maintain their benefits as the EU has concluded many free trade pacts with ASEAN’s trading partners” and asked for unity among member states.<sup>102</sup> The expressed aspirations were towards FDI and export markets.<sup>103</sup>

Another important source for the perception of stakeholder opinions on the ASEAN side is a study which contains mainly governmental and business perspectives supplemented by some academic views. A common ground between ASEAN states seemed to be the favoured trade liberalization in agriculture. Some risks were perceived for SMEs and for “adjustment costs”, such as crowding out effects and social costs triggered by structural change. Potential gains were seen in economic growth and foreign technology access, as well as foreign investments.<sup>104</sup> Of course, the perspectives and preferences varied greatly among ASEAN countries due to their varied economies.

When the pace of the negotiations slowed in 2009, ASEAN leaders still appealed to forge an FTA as a group at first. However, at the same time, the EU was already making offers to the most promising ASEAN member states for bilateral FTAs.<sup>105</sup> As the EU shifted to the bilateral track, voices from Indonesia, the Philippines, Malaysia and Thailand urged their governments to catch up with the proceeding talks of their neighbours in Singapore and Vietnam.<sup>106</sup> Over the last ten years, the ASEAN side was still keen to resume the negotiations with the EU, probably driven by Thailand.<sup>107</sup> However, this went no further than statements of intent on an inter-regional level.

### 2.3.2 The Shift towards Bilateral Agreements

In view of the higher costs and greater time needed to negotiate bilateral FTAs, it is necessary to consider the reasons for the 2009 suspension. In short, they look diverse. Differences in the level of economic development might have played the major role, as well as the EU’s inability to understand ASEAN’s internal relations. Meissner shows that the EU mistook the ASEAN group as “united bloc” and feared the danger of ending with

the “lowest common denominator” instead of getting an ambitious, comprehensive, and holistic FTA.<sup>108</sup> In fields like services, investment, and non-tariff barriers such as technological standardization, the EU potentially felt stuck with ASEAN’s heterogeneity. Even so, the EU is keen to describe the suspension of negotiations as mutual.<sup>109</sup>

The former Deputy Secretary-General of ASEAN, Pushpanathan Sundram, mentions that it was the EU’s position on human rights in Myanmar that prevented progress during the negotiations.<sup>110</sup> In contrast, Joseph Purugganan points out that it was the EU’s desire to secure high-level agreements in the region that changed the strategy towards bilateral negotiations. Further, he argues that this had happened before in the negotiations with Japan.<sup>111</sup> It was not possible within the scope of this research, to detect or determine documents about the discussions within the seventh Joint Committee in March 2009 when the negotiations were buried.

In 2013, the Commission saw the necessity for a clarification on its negotiation mandate, which had already been modified in 2011. The extension of the mandate sought to authorize the Commission to negotiate on investment protection on behalf of EU member states. By that time, the EU was negotiating with Malaysia, Thailand, and Vietnam and was already at the finish line with the Singapore FTA.<sup>112</sup> Unfortunately, for the EU, this did not prevent the European Court of Justice’s legal opinion regarding the Commission’s insufficient mandate to negotiate a mixed agreement, including both trade and investment.<sup>113</sup> For this reason, FTAs now had to be more carefully designed, in some cases

<sup>99</sup> *Commission Services’ Position Paper on the Trade Sustainability Impact Assessment of the Free Trade Agreement between the EU and Asean* (n.d.): 12. <sup>100</sup> Pushpanathan, Sundram: *ASEAN and EU Economic Relations: A Shared Present and Future*, 2020. <sup>101</sup> [bilaterals.org/Negotiations-EU-ASEAN](http://bilaterals.org/Negotiations-EU-ASEAN), 2012, accessed 8th Mar. 2022, <https://www.bilaterals.org/?-eu-asean->. <sup>102</sup> The Nation (Bangkok): *Thailand Prepares for Asean-EU Talks on Free-Trade Deal*, 9th Aug. 2007, accessed 20th Sep. 2022, <https://www.bilaterals.org/?thailand-prepares-for-asean-eu>. <sup>103</sup> Bangkok Post: *Commerce Ministry Backs Asean-EU Trade Talks*, 30th Oct. 2007, accessed 20th Sep. 2022, <https://www.bilaterals.org/?commerce-ministry-backs-asean-eu>. <sup>104</sup> Andreosso-O’Callaghan, Bernadette: *How Is the EU-ASEAN FTA Viewed by ASEAN Stakeholders?* *Asia Europe Journal* 7, no. 1 (Feb. 2009): 63–78. <sup>105</sup> All Headlines News: *ASEAN to Forge Free Trade Deal with EU as a Group*, 1st Mar. 2009, accessed 20th Sep. 2022, <https://www.bilaterals.org/?asean-to-forge-free-trade-deal>. <sup>106</sup> Bernama: *Malaysia: Government Urged to Start FTA Talks with EU*, 6th May 2010, accessed 20th Sep. 2022, <https://www.bilaterals.org/?malaysia-government-urged-to-start>; THE NATION: *Thai Union Urges Govt to Pursue FTA with EU*, 25th Aug. 2009, accessed 20th Sep. 2022, <https://www.bilaterals.org/?thai-union-urges-govt-to-pursue>; Business World: *Trade Chief Says RP Needs to Catch up in Talks with Europe*, 17th May 2010, accessed 20th Sep. 2022, <https://www.bilaterals.org/?trade-chief-says-rp-needs-to-catch>; Xinhua: *Indonesian Gov’t Urged to Follow up FTA with EU*, 9th Dec. 2009, accessed 20th Sep. 2022, <https://www.bilaterals.org/?indonesian-gov-t-urged-to-follow>. <sup>107</sup> *Asean-EU Free Trade Deal Negotiations Set to Resume*, accessed 10th Mar. 2022, <https://www.bilaterals.org/?asean-eu-free-trade-deal>. <sup>108</sup> Meissner, Katharina Luise: *A Case of Failed Interregionalism? Analyzing the EU-ASEAN Free Trade Agreement Negotiations*, *Asia Europe Journal* 14, no. 3 (1st Sep. 2016): 319–336. <sup>109</sup> *Commission Services’ Position Paper on the Trade Sustainability Impact Assessment of the Free Trade Agreement between the EU and Asean*, . <sup>110</sup> Pushpanathan, Sundram: *ASEAN and EU Economic Relations: A Shared Present and Future*, 2020. <sup>111</sup> Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives* interview by Schnarrenberger and Schneider, Zoom, 20th May 2022, Cloud. <sup>112</sup> The Council of the European Union: *Council Extends Mandate for Free Trade Talks with ASEAN*, 18th Oct. 2013, [https://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/139054.pdf](https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/139054.pdf). <sup>113</sup> EuGH: *GUTACHTEN 2/15 DES GERICHTSHOFES/2/15*, 2017, accessed 20th Sep. 2022, <https://eur-lex.europa.eu/juris/document/document.jsf?text=&docid=190727&doclang=DE>.

requiring the approval and ratification of individual member states.<sup>114</sup>

Another push for a joint region-to-region approach was held in 2017. During this period, one could have assumed that the economic disparities might have decreased: The ASEAN integration process had proceeded with the AEC and the countries were more unified. However, the attempt failed to pick up momentum and faded quietly.<sup>115</sup>

## 2.4 CURRENT BILATERAL AGREEMENTS AND ONGOING NEGOTIATIONS

With a shift from inter-regional to bilateral negotiations came a shift in the balance of power in these negotiations. For the assertion of common interests of ASEAN countries, individualization in the negotiation process will affect the balance of power negatively. However, for more country-specific interests, the fact that in an inter-regional negotiation process these interests have to be asserted within the regional political process makes the evaluation more complex.

Looking more closely at individual ASEAN member states, the complexity and different interests appear as crucial points in the relationship with the EU. A major issue is the plan of the EU to ban palm oil due to the EU's plans to fight deforestation.<sup>116</sup> This affects Indonesia and Malaysia in particular, but also other ASEAN countries.<sup>117</sup> Authoritarian politics, as well as human rights violations in the region, also remain an obstacle for negotiations. With the end of the presidency of Philippine's president Duterte in June 2022, a big elephant has moved out of the room in this regard. However, it has only been replaced with a somewhat smaller elephant in form of the son of former dictator Ferdinand Marcos. In addition, the current human rights situations in Myanmar and Cambodia further complicate deeper negotiations with these countries. With these problems remaining unresolved, it is unlikely that the EU and ASEAN will get a bloc-to-bloc FTA anytime soon.<sup>118</sup>

Instead, the EU seems to be pursuing bilateral agreements with regard to the most relevant ASEAN economies as a viable strategy to both bring forward desired trade liberalization as well as to prepare for a potential inter-regional agreement and increase pressure on the remaining countries. The vast differences in economic significance for the EU means that a handful of bilateral agreements will take care of a majority of present-day economic interests. The share of Singapore and Vietnam in total ASEAN trade with the EU is 43 percent. The share in trade of services 68 percent and the share of total FDI stocks is 79 percent. If Malaysia, Thailand, and Indonesia were added, the respective shares would be 89 percent (goods), 93 percent (services), and 96 percent (FDI).<sup>119</sup> Next, we will zoom into country-specific details of trade relations.

### 2.4.1 The EU-Singapore FTA and EU-Vietnam FTA Singapore

The EU-Singapore FTA was considered the first step-

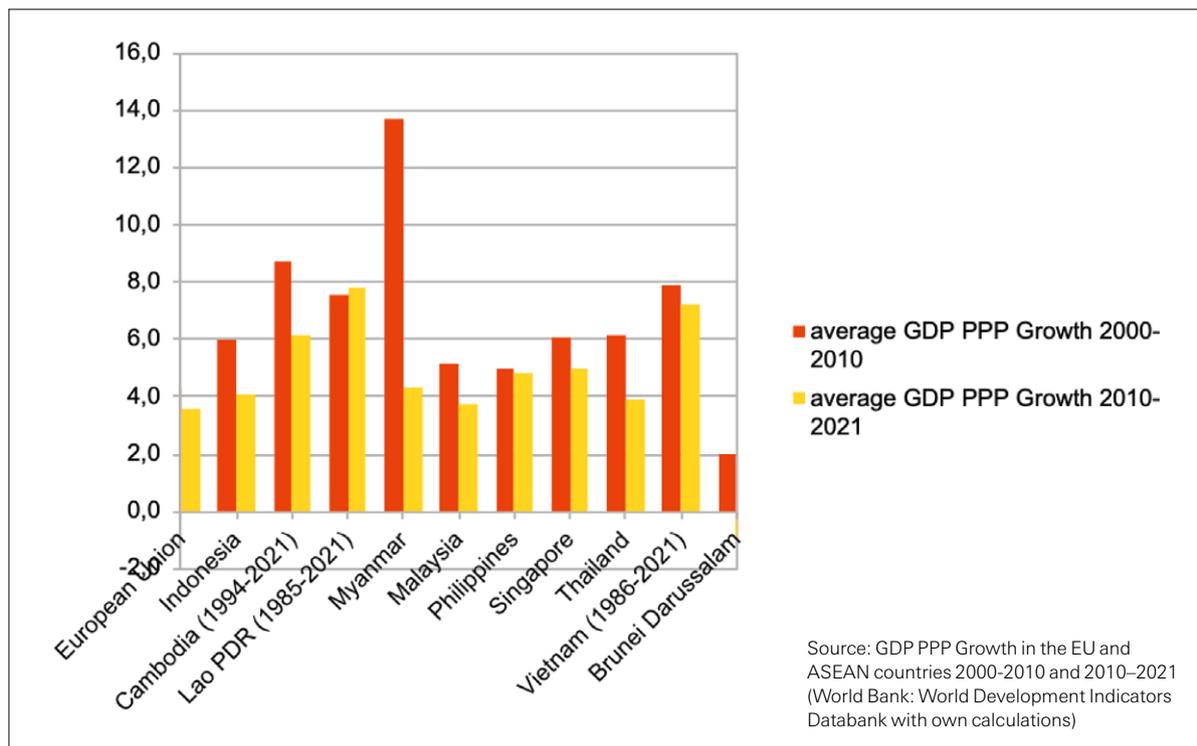
ping-stone of the EU in ASEAN after the suspension of inter-regional trade negotiations. Since the city-state of Singapore was already a very developed economy and a trading hub for the region, even before the EU-Singapore FTA, almost all goods were already exchanged free of customs. The agreement stipulated a removal of the remaining tariffs over five years. However, the major topic of the agreement was in the service sector, especially knowledge-based services and on issues of IP as well as rules of origin.<sup>120</sup> Singapore spends 20 billion euro per year on goods and services, for which EU suppliers are now granted access.<sup>121</sup> One example is a clause about the liberalization of services in the education sector.<sup>122</sup>

Another interesting clause, which is determining the role of the agreement, concerns "country of origin" provisions. Under the concept of "ASEAN cumulation", certain Singapore-based manufacturers have special advantages for products pre-sourced from ASEAN member countries.<sup>123</sup> Even further special conditions apply for those supply-chains connected to ASEAN member countries which have a bilateral FTA with the EU.<sup>124</sup>

Therefore, most of all, the EU-Singapore FTA can be considered as a "pilot case" for the EU's global trade policy. It strengthened Singapore's role as a hub for trade and business services in Southeast Asia.<sup>125</sup> For the first time, the EU did not feature an implementation of the problematic ISDS investment protection mechanism but shifted towards an Investment Court System (ICS) with permanent tribunals and public trials. During the negotiations of the FTA with Singapore, human

<sup>114</sup> Fritz, Thomas: *Umweltschutz in Den Nachhaltigkeitskapiteln Der EU-Handelsabkommen* (Berlin: PowerShift – Verein für eine ökologisch-solidarische Energie- & Weltwirtschaft e. V., May 2019), accessed 22nd Nov. 2022, <https://power-shift.de/wp-content/uploads/2019/08/Umweltschutz-in-den-Nachhaltigkeitskapiteln-der-EU-Handelsabkommen.pdf>. <sup>115</sup> ASEAN Member States (AMS) and the European Union (EU) Trade and Commissioner: *THE SEVENTEENTH AEM-EU TRADE COMMISSIONER CONSULTATIONS 14 September 2021 JOINT MEDIA STATEMENT*, 14th Sep. 2021, [https://trade.ec.europa.eu/doclib/docs/2021/september/tradoc\\_159795.pdf](https://trade.ec.europa.eu/doclib/docs/2021/september/tradoc_159795.pdf); Pushpanathan, Sundram: *ASEAN and EU Economic Relations: A Shared Present and Future*, 2020. <sup>116</sup> European Council: *Council Agrees on New Rules to Drive down Deforestation and Forest Degradation Globally*, Jun. 28 2022, accessed 3rd Nov. 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/06/28/council-agrees-on-new-rules-to-drive-down-deforestation-and-forest-degradation/>. <sup>117</sup> Neo, Pearly: *Palm Oil Attacks? Why EU's Latest Sustainability Plans Risk Alienating Indonesia amid Free Trade Talks*, *Foodnavigator-Asia.Com*, 2022, accessed 15th Mar. 2022, <https://www.foodnavigator-asia.com/Article/2022/01/10/Palm-oil-attacks-Why-EU-s-latest-sustainability-plans-risk-alienating-Indonesia-amid-free-trade-talks>. <sup>118</sup> Husai Chantarawirod: *Free Trade: Why EU and ASEAN Won't Seem to Get a Free Trade Agreement Anytime Soon*, *Friedrich Naumann Foundation*, 7th Jan. 2021, accessed 2nd Mar. 2022, <https://www.freiheit.org/southeast-and-east-asia/why-eu-and-asean-wont-seem-to-get-free-trade-agreement-anytime-soon>. <sup>119</sup> From own calculations based on Eurostat data *Datenbank – Eurostat*. <sup>120</sup> Malmström, Cecilia and S Iswaran: *EU-Singapore Trade and Investment Agreements*, EUROPEAN COMMISSION (n.d.): 15. <sup>121</sup> European Commission: *Factsheets about the EU-Singapore Agreements Trade – European Commission*, 2020, accessed 22nd Mar. 2022, <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1825>. <sup>122</sup> Schneider, Bernd: *TTIP, TiSA, CETA – Falsche Antworten Auf Reale Probleme in Handel(n) von Links Alternativen Zur Handelspolitik Der Europäischen Union*, 2017. <sup>123</sup> European Commission: *European Union – Singapore Trade and Investment Agreements* (LU: Publications Office, 2019), accessed 24th Nov. 2022, <https://data.europa.eu/doi/10.2781/18788>. <sup>124</sup> European Commission: *European Union – Singapore Trade and Investment Agreements. PROTOCOL 1 CONCERNING THE DEFINITION OF THE CONCEPT OF "ORIGINATING PRODUCTS" AND METHODS OF ADMINISTRATIVE CO-OPERATION*, n.d., accessed 24th Nov. 2022, [https://trade.ec.europa.eu/doclib/docs/2013/september/tradoc\\_151773.pdf](https://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151773.pdf). <sup>125</sup> Alvsstam, Claes G., Erja Kettunen, and Patrik Ström: *The Service Sector in the Free-Trade Agreement between the EU and Singapore: Closing the Gap between Policy and Business Realities*, *Asia Europe Journal* 15, no. 1 (Mar. 2017): 75–105.

Figure 7: GDP PPP Growth in the EU and ASEAN countries 2000–2010 and 2010–2021



rights concerns were not given much attention.<sup>126</sup> In contrast to the other parts of the agreement, the chapter on Trade and Sustainable Development was excluded from the dispute settlement mechanism, “or any other sanction mechanisms, and so cannot be enforced.”<sup>127</sup> We will discuss the issue of investment protection in one of the following chapters.

The sustainable development mentioned in the agreement should be taken with great caution, as many of the reasons raised in this report, such as the historical violations of such sustainability clauses, a lack of enforcement and investment protection through the Investor Court System (ICS), work in the other direction.

### Vietnam

The EU-Vietnam FTA entered into force in August 2022 with the EU Commission claiming it was the “most comprehensive trade agreement the EU has concluded with a developing country.”<sup>128</sup> As opposed to Singapore, for Vietnam the elimination of existing tariffs is much more relevant. A fact sheet by the EU Commission states, for example: “EU agri-food producers are set to benefit from Vietnam’s growing market thanks to the progressive elimination of customs duties. The agreement will eliminate 99 percent of all tariffs on both sides.”<sup>129</sup> Vietnam exports much more than it imports from the EU. Because of its preferential market access due to the GSP programme, it became a highly “competitive production base with low labour costs” for EU corporations.<sup>130</sup>

The following current duty rates in Vietnam will be reduced to zero once the agreement is fully in force:

- Machinery and appliances: Up to 35 percent
- Pharmaceuticals: Up to 8 percent
- Cars: Up to 78 percent
- Dairy: Up to 20 percent
- Wine: 50 percent
- Chocolates: 30 percent

The highest GDP growth rate impacts for the Vietnamese economy are expected in the service sector, as well as concerning producers of footwear, textiles, apparel, and agricultural export commodities.<sup>131</sup> EU companies can also expect to get access to public procurement processes like infrastructure projects in a period of rapid industrialization. In addition, the Vietnamese service market offers unprecedented access which no other trading partner has enjoyed before in postal and courier services, environmental services, banking and insurance, as well as in maritime transport services.<sup>132</sup> Just like the EU-Singapore agreement,

<sup>126</sup> Schneider, Bernd: *Expert interview with Bernd Schneider on EU ASEAN free trade relations and alternatives* interview by Schnarrenberger and Schneider, Zoom, 10th May 2022, Cloud. <sup>127</sup> Directorate-General for External Policies of the Union (European Parliament) et al.: *Free Trade Agreement between the EU and the Republic of Singapore: Analysis* (LU: Publications Office of the European Union, 2018), accessed 22nd Mar. 2022, <https://data.europa.eu/doi/10.2861/092222>. <sup>128</sup> European Commission: *EU-Vietnam Trade Agreement Enters into Force* Text, European Commission – European Commission, Jul. 2020, accessed 23rd Nov. 2022, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1412](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1412). <sup>129</sup> European Commission: *EU-Vietnam Trade and Investment Agreement: FactsheetsTrade – European Commission*, Aug. 2 2021, accessed 22nd Mar. 2022, <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1919>. <sup>130</sup> European Parliamentary Research Service: *EU-Vietnam Free Trade Agreement – Briefing: International Agreements in Progressed*. European Parliament (n.d.): 8. <sup>131</sup> Tröster, Bernhard et al.: *Combining Trade and Sustainability? The Free Trade Agreement between the EU and Vietnam* (n.d.): 5. <sup>132</sup> European Commission: *EU-Vietnam Trade and Investment Agreement: Factsheets*, 2021.

the EVFTA contained the new ICS mechanism, which was considered a fundamental shift in Brussels's trade policy. It also includes the possibility of passing laws that may result in added costs for private investors.<sup>133</sup> A major obstacle for the European side in the negotiation was the human rights situation in Vietnam. Many civil society stakeholders on both sides, as well as Members of the European Parliament, pointed at existing human rights violations and the exploitation of workers and warned that an FTA could further worsen the situation.<sup>134</sup> Although the agreement contains a clause that should allow for abrogation of the FTA in case of serious human rights violations, the effective use of this clause is doubtful.<sup>135</sup> Now, after two years, the actual effects of the EVFTA have to be examined in further detail. However, the EU has successfully established a narrative of an FTA living the spirit of ethical trade.<sup>136</sup>

In the state-of-play review of the EVFTA, prepared for the agreement's first anniversary, the EU Commission celebrates: "In recent years, trade had already increased significantly from 12.7 billion euro in 2010 to 43.2 billion in 2021 in anticipation of a trade deal". The growth of GDP PPP per capita in Vietnam in 2010–2021 certainly does not show the merits of this as it falls behind the growth rate of 2000–2010.<sup>137</sup>

#### 2.4.2 Ongoing Negotiations on the EU-Indonesia FTA

The ongoing negotiations for a Comprehensive Economic Partnership Agreement (CEPA) between the EU and Indonesia are stalled by several contentious issues: Whereas the Indonesian government is still waiting to accept EU proposals with regards to an investment court system (ICS) and biofuel sustainability standards, there is a debate in Indonesian civil society featuring and fearing the risks and promises of the European normative approach.<sup>138</sup> With regard to the EU's proposed ICS mechanism, Indonesia will be more careful as the country has developed a new form of investment treaty designed to prevent Indonesia from being recklessly sued in international arbitration institutions.<sup>139</sup> Indonesia is facing fewer domestic pressures in these negotiations because big branches of the national economy are not dependent on international trade but on its large domestic market. For the EU, most of Indonesia's potential lies in the growing sales market.<sup>140</sup>

In 2021, a fight with the EU about Indonesia's nickel export ban made its way to the WTO.<sup>141</sup> Nickel is essential for the production of stainless steel, the processing of metals, and for battery chemicals. Indonesia, one of the world's biggest exporters of nickel, tried to develop a holistic approach to the nickel supply chain by using raw materials for domestic processing and exporting processed goods rather than raw materials, so the value-add to nickel products would remain in the country.<sup>142</sup>

Palm oil is also an important issue in the Indonesia negotiations: Palm oil production is considered one of the main drivers of deforestation and forest degrada-

tion in the region. The recently adopted proposal for a regulation on deforestation-free products by the EU Council demands agricultural goods to fulfil sustainability criteria. This includes a prohibition on producing on deforested lands, regardless of whether it was legal. The regulation demands that imports be classified depending on the producer country into "low", "standard", or at "high-risk" of producing commodities not deforestation-free.<sup>143</sup> This upset the Indonesian side in the ongoing FTA negotiations, who feel that their efforts in the fight against deforestation and developing sustainability standards have not been acknowledged. Countries like the UK just demand that their imports meet "legality" procedures, not sustainability standards, which makes a big difference.<sup>144</sup> Two other upcoming pieces of EU legislation which are worrying the Indonesian side are the Carbon Border Adjustment Mechanism (CBAM) and the due-diligence regulation.<sup>145</sup>

Indonesia passed a so-called "Omnibus Law" on job creation in November 2020 removing requirements and restrictions on foreign investment. This law has had severe effects in many ways, for example, by deregulating the labour market.<sup>146</sup> Our interviewee, Rachmi Hertanti, pointed out that it is vital to understand the implications of this law for free trade negotiations.<sup>147</sup> The law led to major demonstrations in Indonesia as people were concerned that it would severely erode workers' rights.<sup>148</sup>

<sup>133</sup> Bonse, Eric: *Abkommen zwischen EU und Vietnam: Brüssel schwenkt bei Freihandel um*, *Die Tageszeitung: taz*, 2nd Dec. 2015, sec. Öko, accessed 9th May 2022, <https://taz.de/15252972/>. <sup>134</sup> Human Rights Watch: *Joint NGO Letter on EU-Vietnam Free Trade Agreement*, *Human Rights Watch*, 4th Nov. 2019, accessed 23rd Nov. 2022, <https://www.hrw.org/news/2019/11/04/joint-ngo-letter-eu-vietnam-free-trade-agreement>. <sup>135</sup> The Left in the European Parliament: *The EU-Vietnam Free Trade Agreement – an explainer* *GUE/NGL*, 11th Feb. 2020, accessed 22nd Mar. 2022, <https://left.eu/issues/explainers/the-eu-vietnam-free-trade-agreement-an-explainer/>; Duong, Tran Thi Thuy: *WTO + and WTO-X Provisions in the European Union-Vietnam Free Trade Agreement: A "Fruit Salad Tree" Is yet to Grow*, *Asia Europe Journal* 20, no. 2 (Jun. 2022): 69–80. <sup>136</sup> Nessel, Camille et al.: *The EU Narrative around Trade with Vietnam* *The Loop*, 13th Jan. 2022, accessed 8th Mar. 2022, <https://theloop.ecpr.eu/the-enarrative-around-trade-with-vietnam/>. <sup>137</sup> Own calculations based on the World Bank: *World Development Indicators | DataBank*, . <sup>138</sup> Sicurelli, Daniela: *External Conditions for EU Normative Power through Trade. The Case of CEPA Negotiations with Indonesia*, *Asia Europe Journal* 18, no. 1 (Mar. 2020): 57–73. <sup>139</sup> Hertanti, Rachmi: *Expert interview with Rachmi Hertanti about EU-ASEAN free trade relations and alternatives* interview by Schnarrenberger and Schneider, Zoom, 25th May 2022, Cloud. <sup>140</sup> Bundschuh, Anne and Fabian Flues: *Expert interview with Anne Bundschuh and Fabian Flues about EU ASEAN free trade relations and alternatives* interview by Schnarrenberger, Zoom, 5th May 2022. <sup>141</sup> *DS592: Indonesia – Measures Relating to Raw Materials*, 29th Apr. 2021, accessed 23rd Nov. 2022, [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds592\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds592_e.htm). <sup>142</sup> Flues, Fabian: *Raw Materials and the Indonesia-EU CEPA* (Webinar by Indonesia for Global Justice presented at the 8:55 / 2:19:06 Webinar Series Part 3 IEU CEPA, online, 16th Dec. 2021), [https://www.youtube.com/watch?v=g2fd54g-P\\_4](https://www.youtube.com/watch?v=g2fd54g-P_4); Reuters: *Indonesia President Says Likely to Lose WTO Nickel Dispute against EU*, *Reuters*, 9th Sep. 2022, sec. Commodities News, accessed 23rd Nov. 2022, <https://www.reuters.com/article/indonesia-eu-nickel-idUSKBN2QA04C>. <sup>143</sup> European Council: *Council Agrees on New Rules to Drive down Deforestation and Forest Degradation Globally*, 2022. <sup>144</sup> Pearly Neo: *Palm Oil Attacks? Why EU's Latest Sustainability Plans Risk Alienating Indonesia amid Free Trade Talks*, accessed 10th Mar. 2022, <https://www.bilaterals.org/?palm-oil-attacks-why-eu-s-latest>. <sup>145</sup> Hertanti, Rachmi: *Expert interview with Rachmi Hertanti about EU-ASEAN free trade relations and alternatives*, 2022. <sup>146</sup> UNCTAD: *Indonesia – "Omnibus Law" on Job Creation Has Been Enacted*, Nov. 2 2020, accessed 16th Jun. 2022, <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3567/indonesia-omnibus-law-on-job-creation-has-been-enacted>. <sup>147</sup> Hertanti, Rachmi: *Expert interview with Rachmi Hertanti about EU-ASEAN free trade relations and alternatives*, 2022. <sup>148</sup> Cornelissen, Suzan: *Expert interview with Suzan Cornelissen about EU-ASEAN free trade relations and alternatives* interview by Schnarrenberger and Schneider, Zoom, 1st Jul. 2022.

Both palm oil and the Omnibus Law were discussed in the Civil Society Dialogue of the EU held in February 2020.<sup>149</sup> The Directorate-General for Trade described the ongoing situation and negotiations with ASEAN in total and the concrete process with Indonesia. Unions and other civil society groups raised concerns in the discussion with DG-Trade. Interestingly, DG Trade responded by defending the Omnibus Law as an adequate means to “make it easier to attract foreign investors, to ease red tape, and create jobs”.<sup>150</sup> The NGO Both ENDS asked about the topic of palm oil and transparency of the negotiations. Here, the Commission also indicated that palm oil has not come up in the negotiations.

The DG Trade responses also included some interesting points on the state of negotiations between the EU and Indonesia during the last round:<sup>151</sup> Concerning IPR, Indonesia and the EU agreed to first see how the debate on the Trade-Related Aspects of Intellectual Property Right (TRIPS) waiver unfolds at the international level before returning to these discussions in the bilateral talks.

Some analysts argue that long-standing concerns about broad anti-colonialist notions in Indonesian society are influencing the negotiation process. “Indonesia’s foreign policy cannot be understood without attempting to see through Indonesia’s colonization experience.”<sup>152</sup> Historical anti-colonialist sentiments towards the Netherlands as the former occupying power have now shifted to a negative opinion of the EU. Therefore, the EU’s normative trade agenda is still considered as “colonialism in a modern dress”.<sup>153</sup>

#### 2.4.3 Relaunch of Negotiations on the EU-Thailand FTA

The process of negotiations for an FTA between the EU and Thailand has been picked up several times, albeit unsuccessfully. In the series of coup d’états by the Thai military, the EU urged the Thai side to get back to democratic elections and raised concerns about human rights.<sup>154</sup> Although the political elites have not changed much since the 2014 military coup, formal elections were held and the European Council gave a “go” on a further development of the political and economic relationship.<sup>155</sup> What has actually changed today, compared to 2007 when the inter-regional negotiations first started, is the Thai constitution. Our interviewees stressed that the 2017 military government’s constitution lacks a number of procedural rights for civil society to monitor the negotiation process. In terms of transparency, there is no public hearing process in parliament anymore. The government has full control over the negotiation framework, without democratic participation or checks and balances.<sup>156</sup>

In March 2023, the EU and Thailand announced the relaunch of the negotiations for an FTA. The publication of the EU proposals is planned for July 2023 when the first round of negotiations are planned in Thailand. The EU commission has issued a statement that the

proposal will be in line with the TSD review communication of June 2022.<sup>157</sup>

#### 2.4.4 Paused Negotiations with Malaysia and the Philippines

Negotiations on an EU-Philippines FTA (EUPH-FTA) are currently on hold. Since 2015, only two negotiation rounds have been held, where the two previously conducted FTAs with Vietnam and Singapore were used as templates. Negotiations went on until 2017, when the human rights situation under President Duterte’s war on drugs became unbearable.<sup>158</sup> An updated version of the EU’s SIA for a potential EUPH-FTA was submitted 2019.<sup>159</sup>

Josep Purugganan, one of our interviewees in the Philippines, mentions the influence of civil society on the EUPH-FTA negotiations. Human rights groups had highlighted the failure of the EU’s GSP+ programme to address the deteriorating human rights situation in the Philippines under Duterte. This led to additional attention on the topic of FTA negotiations: “Trade justice groups in the Philippines have been consistently campaigning against the EU-PH FTA since 2007, when it was launched as EU-ASEAN FTA. We’ve been engaging both the Philippine government as well as the EU through the embassy in Manila and in Brussels. I think the fact that the negotiations have not proceeded as planned reflects that, to some extent, our campaigning has had some level of influence.”<sup>160</sup>

Also, due to constant lobbying, the European Parliament urged the EU Commission to revoke the Philippines’ preferential trade terms with the EU. The EU Commission, on the other hand, as the executive power, refused this motion.<sup>161</sup> The impact of this

<sup>149</sup> The EU’s Civil Society Dialogue was held on the topic of EU-ASEAN Trade-Agreement in general, but it took place with a particular focus on the negotiations with Indonesia. European Commission: *Update on the Trade Relations with ASEAN, with Particular Focus on the Trade Negotiations with Indonesia*, 14th Feb. 2022, accessed 15th Mar. 2022, <https://trade.ec.europa.eu/doclib/html/160055.htm>. <sup>150</sup> European Commission: *Update on the Trade Relations with ASEAN, with Particular Focus on the Trade Negotiations with Indonesia*, 2022. <sup>151</sup> European Commission: *Update on the Trade Relations with ASEAN, with Particular Focus on the Trade Negotiations with Indonesia*, 2022. <sup>152</sup> Nessel, Camille: *Colonialism in Its Modern Dress: Post-Colonial Narratives in EU-Indonesia Relations*, *Asia Europe Journal* 19, no. 1 (Mar. 2021): 59–74. <sup>153</sup> Nessel, Camille: *Colonialism in Its Modern Dress*, 2021. <sup>154</sup> European Parliamentary Research Service: *Trade Negotiations between the EU and ASEAN Member States | Think Tank | European Parliament*, Nov. 2020, accessed 2nd Mar. 2022, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659337/EPRS\\_BRI\(2020\)659337\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659337/EPRS_BRI(2020)659337_EN.pdf). <sup>155</sup> Hutt, David: *EU and Thailand Cap Turbulent Decade by Boosting Ties, Dv.Com*, 9th May 2022, accessed 24th Nov. 2022, <https://www.dw.com/en/eu-and-thailand-cap-turbulent-decade-with-a-partnership-agreement/a-63019958>. <sup>156</sup> Kijitwanchakul, Kannikar and Lianchamrun Witoon: *Careco Experteninterview mit Kannikar Kijitwanchakul und Liamchamrun Witoon zu EU ASEAN Freihandelsbeziehungen und Alternativen* interview by Schnarrenberger and Schneider, Zoom, 22nd Jul. 2022, Cloud. <sup>157</sup> *EU and Thailand Relaunch Trade Negotiations Text, European Commission – European Commission*, Mar. 15 2023, accessed 1st May 2023, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_1628](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1628). <sup>158</sup> Parry, Members’ Research Service, Matthew: *A Stronger Europe in the World | EU-PHILIPPINES FREE TRADE AGREEMENT (FTA)* ed. European Parliament (2022): 3. <sup>159</sup> DEVELOPMENT Solutions: *Sustainability Impact Assessment (SIA) in Support of Free Trade Agreement (FTA) Negotiations between the European Union and the Philippines Draft Final Report*, May 23, 2019, accessed 24th Nov. 2022, [https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc\\_157898.pdf](https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc_157898.pdf). <sup>160</sup> Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives*, 2022. <sup>161</sup> Hutt, David: *Marcos Moves to Soothe Duterte’s Stormy EU Relations*, *Asia Times*, Jul. 18 2022, accessed 23rd Sep. 2022, <https://asiatimes.com/2022/07/marcos-moves-to-soothe-dutertes-stormy-eu-relations/>.

decision are the object of further consideration on the EU's credibility on sustainable trade issues. Under the newly elected Marcos administration, there might be a change in the relationship with the EU soon, as analysts suspect: "The Philippines under Marcos could quickly return to being one of the easiest Southeast Asian countries for the EU to conduct business (...). The EU is likely to be careful yet principled in reaching out to the Philippines (...). Careful, since Manila is the EU-ASEAN chair until 2024. Principled, due to its need to toughen up against Chinese and Russian 'attacks' on the international rules-based order."<sup>162</sup> Besides, looking at the staff of the new administration, our interviewee Carlo Navera stresses a high consistency of neoliberalism.<sup>163</sup>

### Malaysia

The Malaysian economy is already considered to be very open to investors and highly export-oriented. In 2019, the European Commission submitted an updated SIA on a potential EU-Malaysian FTA (MEUFTA).<sup>164</sup> Official negotiations had been suspended from the Malaysian side due to sensitive issues such as government procurement, IP rights, geographical indicators, and halal issues.<sup>165</sup> Just like Indonesia, in Malaysia, palm oil is a major issue in the negotiations. Being the world's second-biggest producer of palm oil, Malaysia complained about the EU's renewable energy regulation on biofuels.<sup>166</sup> In general, the Malaysian leadership seems to be closely monitoring the EU's negotiations with its "big neighbour" Indonesia. Meanwhile, Malaysia is in the comfortable position of being able to wait for results. Indonesia can obtain an FTA with increasing self-confidence and Malaysia just needs to wait and adopt the results.<sup>167</sup> After consulting with their business groups in a "stock-taking exercise", the Malaysian government decided to reinstate negotiations with the EU.<sup>168</sup> However, the palm oil issue remains very sensitive, while some voices argue that the dispute has been overestimated in terms of its significance for the Malaysian economy.<sup>169</sup>

## 2.5 CURRENT AND FUTURE PROSPECTS FOR EU-ASEAN TRADE RELATIONS

Analysts stress the fear of being out-competed by other major powers in the region as the EU's major economic reason to push into the ASEAN market.<sup>170</sup> This seems to be valid for the EU's inter-regional as well as its bilateral approach. As we have seen, both organizations continue to pursue a twin-track strategy. Indeed, it is becoming more of a mixture between an inter-regional and a bilateral approach in trade negotiations. An example can be seen in recent sectoral cooperation, like the one ASEAN and the EU concluded in the Comprehensive Air Transport Agreement (CATA). With CATA, both blocs decided on common liberalization of aviation traffic and reciprocal market access for airlines.<sup>171</sup>

In a current announcement, the EU Commission is providing a summary of its intentions in ASEAN. This can be interpreted as an outlook towards a potential inter-regional FTA: "Ensuring better access for EU exporters to the dynamic ASEAN market is a priority for the EU. (...) These bilateral trade and investment agreements were conceived as building blocks towards a future region-to-region agreement"<sup>172</sup>

Sundram does not expect that the current approach on bilateral trade agreements with single ASEAN member states is helping the development of an inter-regional FTA in the long run.<sup>173</sup>

Nevertheless, Sundram sees the desire for free trade between ASEAN and the EU as a way to prosperity. He views ASEAN and the EU as "torch-bearers for globalization" at a time when "the backlash against globalization is clearly having a strong impact", and he does not expect this to change soon.<sup>174</sup> He predicts the "huge expected gains from a region-to region FTA" to overcome the challenges, and writes: "There should be no doubt that the future of the two regions lies in a successful culmination of a free trade agreement as that is in the best interest of both."<sup>175</sup>

FTAs seem to be an ultimate promise and, at the same time, a reason for fear. The feeling of not wanting to be left behind exists on both sides of the negotiation. This narrative is both economic and political and has its expression in development policy and security promises as well as in inter-regional FTA negotiations. To be more precise, the EU's greatest concern is to lag behind its international competitors. This aspect is critical because the EU is also trying to push two very different approaches during negotiations: On the one hand, the sustainable development approach; and, on the other hand, the conflicting trade-facilitation approach. The EU is trying to bring together these two concepts whilst only vaguely acknowledging that they might contradict one another.

<sup>162</sup> Hutt, David: *Marcos Moves to Soothe Duterte's Stormy EU Relations*, 2022. <sup>163</sup> Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives* interview by Schnarrenberger and Schneider, Zoom, 26th Sep. 2022, Cloud. <sup>164</sup> DEVELOPMENT Solutions: *Sustainability Impact Assessment (SIA) in Support of Free Trade Agreement (FTA) Negotiations between the European Union and Malaysia Draft Final Report*, May 23, 2019, accessed 24th Nov. 2022, [https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc\\_157897.pdf](https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc_157897.pdf). <sup>165</sup> The Sun Daily: *Govt Proposes to Continue with MEUFTA Negotiation — MITI*, accessed 10th Mar. 2022, <https://www.bilaterals.org/?govt-proposes-to-continue-with>. <sup>166</sup> *Dispute Settlement — DS600: European Union and Certain Member States — Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels*, n.d., accessed 24th Nov. 2022, [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds600\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds600_e.htm). <sup>167</sup> Yin, Shao Loong: *Expert interview with Yin Shao Long on EU ASEAN free trade relations and alternatives* interview by Schnarrenberger and Schneider, Zoom, 5th Jul. 2022, Cloud. <sup>168</sup> The Sun Daily: *Govt Proposes to Continue with MEUFTA Negotiation — MITI*. <sup>169</sup> Hutt, David: *Malaysia Eyes Fresh Free Trade Talks with EU* *Dw.Com*, Oct. 5 2021, accessed 24th Nov. 2022, <https://www.dw.com/en/malaysia-eyes-fresh-free-trade-talks-with-eu/a-57484294>. <sup>170</sup> Meissner, Katharina Luise: *A Case of Failed Interregionalism?*, 2016. <sup>171</sup> Alan Khee-Jin Tan, Termsak: *The ASEAN-EU Comprehensive Air Transport Agreement (CATA) Potential and Reality in ASEAN-EU Partnership — The Untold Story*. Tommy T. B. Koh and Lay Hwee Yeo (Singapore: World Scientific, 2020). <sup>172</sup> European Commission: *Association of South East Asian Nations (ASEAN) — Trade*, accessed 2nd Mar. 2022, <https://ec.europa.eu/trade/policy/countries-and-regions/regions/asean/>. <sup>173</sup> Pushpanathan, Sundram: *ASEAN and EU Economic Relations: A Shared Present and Future*, 2020. <sup>174</sup> Pushpanathan, Sundram: *ASEAN and EU Economic Relations: A Shared Present and Future*, 2020. <sup>175</sup> Pushpanathan, Sundram: *ASEAN and EU Economic Relations: A Shared Present and Future*, 2020.

Joseph Purugganan summed up his own impression of the twin negotiations between the EU and ASEAN: “The EU is very two-faced. On one hand, the EU has been a strong partner in terms of human rights. But then you have the commercial interest of the EU,

driven mainly by DG Trade, that looks to push the business agenda. And, as we are talking with DG Trade as negotiation partners, it is mainly trade that pushes aside all other issues.”<sup>176</sup>

<sup>176</sup> Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives*, 2022.

### 3 EQUALITY, PROSPERITY, AND DEMOCRACY: WHAT COULD POSSIBLY GO WRONG WITH AN ASEAN-EU FTA?

Although it is evident that neoliberalism has not delivered on its various promises, the EU continues to push the agenda with slight adaptations. Negotiating FTAs has been a central instrument in this strategy.

This section introduces some points of criticism towards FTAs to show how problematic a political agenda is that continues to push neoliberal ideology by strategically using FTAs, as the EU does.

To provide a basis for evaluating the effects of existing and potential FTAs with ASEAN states and with ASEAN as a region, those effects are introduced in a general way. The section then looks at what these aspects mean specifically for ASEAN countries and their FTAs with the EU, be it on a potential inter-regional or on a bilateral basis.

#### 3.1 THE FREE TRADE MYTH – BUT ONLY WHERE IT SERVES OUR OWN INTERESTS

##### 3.1.1 The Dubious Tale of FTAs' Positive Role

While industrial nations put pressure on less developed countries to sign FTAs and promote free trade as the tool for growth and development, their own economic development and well-being has been shown to depend on making extensive use of protectionist measures. Ha-Joon Chang describes this as “kicking away the ladder” on which they reached wealth. He illustrates this using the prominent examples of the US and Great Britain.<sup>177</sup> Therefore, before we do a reality check on the positive economic effects of free trade agreements, we can conclude that industrialized countries appear to have failed the historical reality check of acting on the economic principles they propagate.

The positive economic effects announced to make FTAs palatable to the public are often quite far from observable reality. An analysis of the effects of the EU – Mexico FTA, for example, concludes that it did not help either economy.<sup>178</sup>

Although direct foreign investment does correlate with a rise in the number of such treaties, the historical narrative of investment treaties attracting actual investment does not seem to hold up. Various studies, including the influential one by economist Emma Aisbett, have suggested that the effect of investment protection treaties on actual investment flows is negligible.<sup>179</sup> <sup>180</sup> A recent comparative analysis taking into account over 2,000 estimates from 74 studies concludes that the actual effects are almost non-existent.<sup>181</sup>

##### 3.1.2 Assessing Sustainability Impacts – A Little...

A recent study carried out by the Veblen Institute for Economics, including an up-to-date list of completed and ongoing sustainability assessments, points out many flaws in the EU's environmental impact assessments.<sup>182</sup> <sup>183</sup> The grounding models of impact

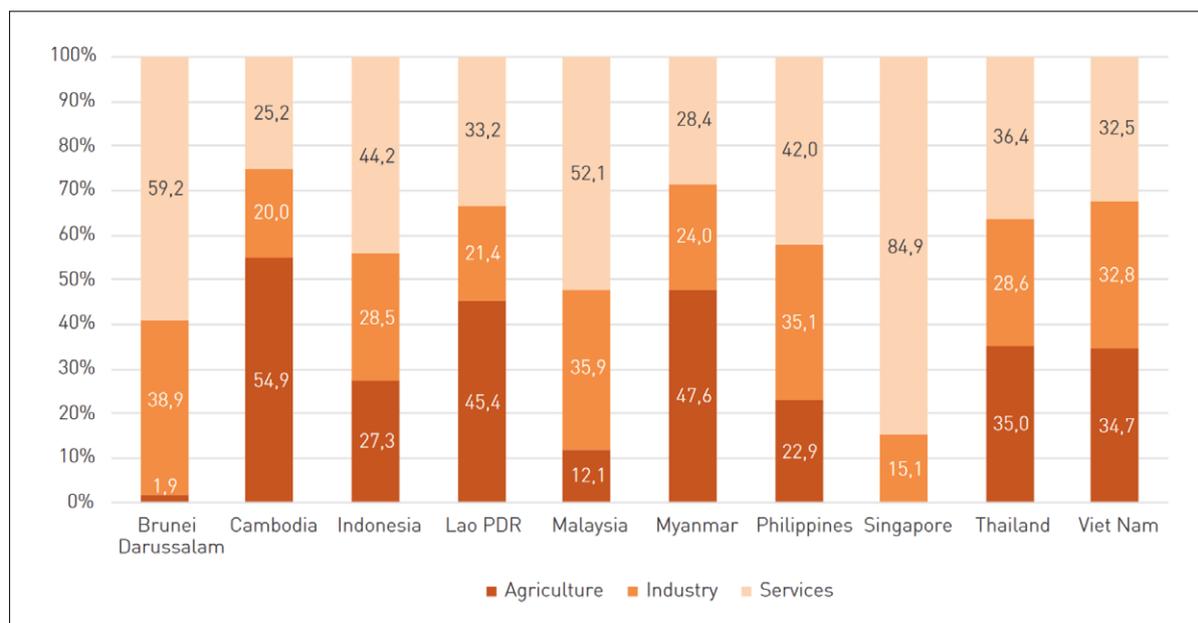
assessments reflect certain theoretical assumptions in economic theory. As such, every model implies presupposition and considers particular factors and effects. It is, therefore, important to mention that the majority of the EU's impact assessments are based on neoclassical economic theory as represented in the Computable General Equilibrium Model (CGEM).<sup>184</sup> The model is grounded on hypotheses about the behaviour of markets, prices, and actors such as consumers, producers, or workers.<sup>185</sup> For this reason, the model does not consider specific risks of trade liberalization and reveals systematic blind spots. These are addressed by alternative concepts, the most prominent of which being the Global Policy Model (GPM) developed by UNCTAD.<sup>186</sup> Christoph Scherrer indicated that the EU Commission always uses the same analytic model and that the UNCTAD model takes into account other factors such as unemployment, health, and education. As such, it is better suited to recognize that a trade agreement can lead to upheaval in society.<sup>187</sup> He also criticized the fact that SIAs are carried out very late.

The assessments and predictions about the economic impacts of FTAs do have tremendous policy power. However, critical economists argue that their non-economic effects – such as impacts on geopolitical and democratic legal orders – can be more important.<sup>188</sup>

In 2017, Elisabeth Bonanomi compared the EU's SIA methodology to de Schutter's human rights impact assessment methodology. Her study concluded that the SIA methodology falls quite short when compared to others. It also looks at the attempts to capture human

<sup>177</sup> Chang, Ha-Joon: *Kicking Away the Ladder* (Anthem Press, 2002). <sup>178</sup> Müller, Bettina: *Reiseführer: EU-Mexiko – Alle Macht den...? Investoren!*, *PowerShift*, Feb. 2021, accessed 5th Apr. 2022, <https://power-shift.de/reisefuehrer-eu-mexiko/>. <sup>179</sup> Aisbett, Emma: *Bilateral Investment Treaties and Foreign Direct Investment: Correlation versus Causation* (University of California, Berkeley, 2007), <https://escholarship.org/uc/item/72m4m1r0>. <sup>180</sup> Yackee, Jason W.: *Do Bits Really Work? Revisiting the Empirical Link between Investment Treaties and Foreign Direct Investment*, SSRN Scholarly Paper (Rochester, NY, 1st Oct. 2007), accessed 15th Jul. 2022, <https://papers.ssrn.com/abstract=1015083>. <sup>181</sup> Brada, Josef C. and et. al.: *Does Investor Protection Increase Foreign Direct Investment? A Meta-Analysis* (Center for Economic Institutions, Sep. 2020), <https://cei.ier.hit-u.ac.jp/Japanese/WP2020-4.pdf>. <sup>182</sup> Greenpeace: *Overselling EU Trade Deals: New Study Unravels Failures of Sustainability Impact Assessments*, May 11 2022, accessed 18th Jul. 2022, <https://www.bilaterals.org/?overselling-eu-trade-deals-new>. <sup>183</sup> Veblen Institute for Economic Reforms: *The European Commission's Trade Sustainability Impact Assessments: A Critical Review*, May 2022, accessed 12th May 2022, [https://www.greenpeace.de/publikationen/S03831\\_EU-Commissions-Trade-SIA\\_0.pdf](https://www.greenpeace.de/publikationen/S03831_EU-Commissions-Trade-SIA_0.pdf). <sup>184</sup> Veblen Institute for Economic Reforms: *The European Commission's Trade Sustainability Impact Assessments: A Critical Review*, 2022. <sup>185</sup> see also Petri, Peter A. and Michael G. Plummer: *The Economic Effects of the Trans-Pacific Partnership: New Estimates*, *SSRN Electronic Journal* (2016), accessed 17th Aug. 2022, <https://www.ssrn.com/abstract=2723413>. <sup>186</sup> Veblen Institute for Economic Reforms: *The European Commission's Trade Sustainability Impact Assessments: A Critical Review*, 2022. <sup>187</sup> Scherrer, Christoph: *Expert interview with Christoph Scherrer on EU ASEAN free trade relations and alternatives* interview by Schnarrenberger and Schneider, Zoom, 5th Jul. 2022. <sup>188</sup> Capaldo, Jeronim and Alex Izurieta: *Trading down: Unemployment, Inequality and Other Risks of the Trans-Pacific Partnership Agreement*, *Global Development and Environment Institute Working Paper*, no. 16–01 (Jan. 2016), accessed 17th Aug. 2022, [https://sites.tufts.edu/gdae/files/2019/10/16-01\\_Trading-Down.pdf](https://sites.tufts.edu/gdae/files/2019/10/16-01_Trading-Down.pdf).

Figure 8: 2019 Employment in % by economic sector by ASEAN member states (Aseanstats database)



Source: 2019 Employment in % by economic sector by ASEAN member states (Aseanstats database)

rights impacts in the coming generation of trade agreements and observes that “these attempts do not yet follow a proper methodology that would enable integrating human rights concerns comprehensively”.<sup>189</sup>

Meanwhile, a letter from 192 economists criticized the calculating model of the EU’s SIA for omitting negative aspects, such as:<sup>190</sup>

- the environmental costs of transport across the globe
- the effects of deforestation
- the effects on small-scale farmers

With this in mind, the SIAs carried out with regards to EU-ASEAN FTAs certainly merit deeper consideration than we can provide here. However, we can look at a few aspects.

One would be a critical consideration of the level of attention paid to human rights aspects. A recent study by the Veblen Institute found that the EU-Vietnam SIA for the EVFTA was missing a human rights impact assessment.<sup>191</sup>

The ombudsman decided that this was a case of maladministration and, interestingly, specified the following in the decision: “Since the 2009 sustainability impact assessment concerning ASEAN covers only certain aspects of the impact on social rights, it is not a proper substitute for a human rights impact assessment.”<sup>192</sup>

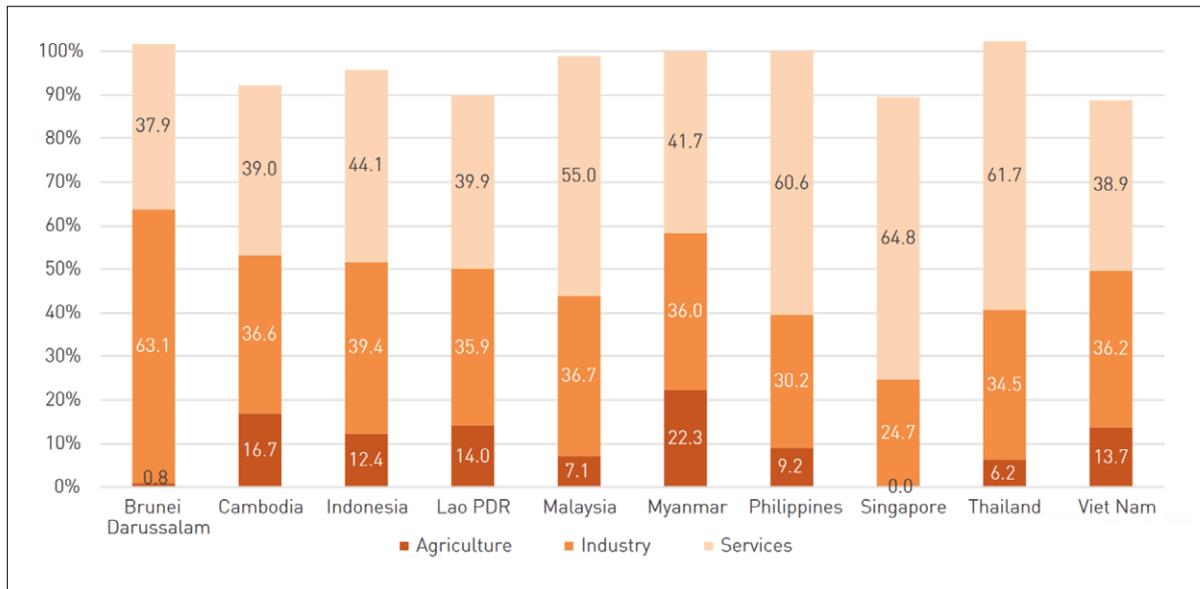
Another aspect could be the lack of adequate consideration of what specific economic indicators mean for a large number of people and their livelihoods. The overall impact assessment of economic indicators is positive for all countries in the EU-ASEAN SIA. However, looking at the country and sector-specific impact analyses, we come to some interesting conclusions.

The modelled outcomes for the impact on the cereal and grains sector results in a loss of jobs in all ASEAN countries. Thailand is the only exception, with the effect slightly higher for unskilled than skilled workers: “In most ASEAN countries a negative employment effect can be expected — both for unskilled and skilled labour.”

The output reduction is less obvious but considered to have substantial effects: “Given the high share of agricultural employment in the majority of ASEAN countries, the impact of the FTA as shown by the model results may be quite significant. Lower prices and lower output will translate into lower real income of the producers even if the export values may increase marginally. This is the case for Indonesia, Malaysia, [the] Philippines and particularly Vietnam.”<sup>193</sup> And: “The FTA is likely to have a negative impact on poverty (more poverty) in the short run, because of its negative impact on [the] real incomes of people employed in the agricultural sector as discussed above. This would mean that especially the rural areas would face increasing levels of poverty in ASEAN countries, as people are pushed out of the sector and may not be able to find a new job right away.”<sup>194</sup>

<sup>189</sup> Būrgi Bonanomi, Elisabeth: *Measuring Human Rights Impacts of Trade Agreements – Ideas for Improving the Methodology: Comparing the European Union’s Sustainability Impact Assessment Practice and Methodology with Human Rights Impact Assessment Methodology*, *Journal of human rights practice* 9, no. 3 (2017): 481–503. <sup>190</sup> Seattle to Brussels Network: *Open Letter Regarding the Economic Impacts of the EU-Mercosur Agreement*, Seattle to Brussels Network, 8th Nov. 2020, accessed 5th Apr. 2022, <https://s2bnetwork.org/open-letter-sial/>. <sup>191</sup> Veblen Institute for Economic Reforms: *The European Commission’s Trade Sustainability Impact Assessments: A Critical Review*, 2022. <sup>192</sup> European Ombudsman: *Decision in Case 1409/2014/IMHZ on the European Commission’s Failure to Carry out a Prior Human Rights Impact Assessment of the EU-Vietnam Free Trade Agreement* (European Ombudsman 2016). <sup>193</sup> European Commission: *Trade and Sustainability Impact Assessment of the FTA between the EU and ASEAN*, 2009. <sup>194</sup> European Commission: *Trade and Sustainability Impact Assessment of the FTA between the EU and ASEAN*, 2009.

Figure 9: 2019 Shares of economic sector to total GDP (%) by ASEAN member state (Aseanstats database)



Source: 2019 Shares of economic sector to total GDP (%) by ASEAN member state (Aseanstats database)

Looking at Laos, Myanmar, and Cambodia — the countries with the highest share of employment in the agricultural sector — the predictions of the EU-ASEAN SIA on the labour force are summarized in the section “Rest of ASEAN”. It estimates that between 3.5 percent and 6.5 percent of the workforce will lose their jobs.<sup>195</sup>

For Cambodia, with a labour force of roughly eight million people, this would translate into 220,000 agricultural workers becoming unemployed. From a neoliberal perspective, this negative outcome may be justified by the fact that workers in the agricultural sector are “unproductive”, only contributing 16.6 percent of GDP. Moreover, a Euro-centric perspective may not give this fact its deserved significance due to the fact that Cambodia only contributes roughly 3 percent of total trade with ASEAN.

Finally, Joseph Purugganan points out another aspect very rarely mentioned when promises of neoliberalism are reiterated and ignored when assessing their impacts: That the tariffs imposed on trade could actually be used for something else, such as covering the veiled costs of increased trade and industrial activities or strengthening regional economies within ASEAN.<sup>196</sup>

### 3.2 THE ENVIRONMENTAL PERSPECTIVE

#### 3.2.1 Prolonging Unsustainability and Enhancing Extractivism

FTAs increase trade in sectors where the national economy is already competitive while weakening those that are less competitive internationally instead of fostering diversification.<sup>197</sup> Another critical point is the incentivization of export-oriented goods, leading to enhanced production that does not align with local environmental requirements but with demand on international markets. Among others, this results in an

increased tendency towards mono-cultures destined for export and the acceptance of harmful mining projects or unsustainable fishing practices.

The top priority of EU policy towards FTAs has always been trade liberalization. However, these efforts might effectively contradict the contributions to sustainability goals. A report from NGOs Germanwatch and the Working Group of Peasant Agriculture concluded that, instead of contributing to the UN’s Sustainable Development Goals (SDGs), the Mercosur treaty would do the opposite.<sup>198 199</sup>

A clear example is the increase in soy exports from Latin America. This has already led to an increase of clearances in the dry forest regions of Brazil, Argentina, and Paraguay.<sup>200</sup> Another blatant example of

<sup>195</sup> European Commission: *Trade and Sustainability Impact Assessment of the FTA between the EU and ASEAN*, 2009. <sup>196</sup> Purugganan, Joseph: *[ANALYSIS] Debunking Government Claims on RCEP/PPLE*, 3rd Nov. 2021, accessed 13th May 2022, <https://www.rappler.com/voices/thought-leaders/analysis-debunking-government-claims-on-rcep/>. <sup>197</sup> Ghiotto, Luciana and Javier Echaide: *Analysis of the Agreement between the European Union and the Mercosur*, 16th Jan. 2020, <https://power-shift.de/wp-content/uploads/2020/10/Final-REPORT-EU-Mercosur-26.10.2020.pdf>. <sup>198</sup> The 17 UN sustainability development goals were adopted by the UN member states in 2015 as an urgent call for action. Progress reports are provided by the UN every year on the state regarding the goals (for the full goals, please see source): Goal 1: No Poverty; Goal 2: Zero Hunger; Goal 3: Good Health and Well-being; Goal 4: Quality Education; Goal 5: Gender Equality; Goal 6: Clean Water and Sanitation; Goal 7: Affordable and Clean Energy; Goal 8: Decent Work and Economic Growth; Goal 9: Industry, Innovation, and Infrastructure; Goal 10: Reduced Inequality; Goal 11: Sustainable Cities and Communities; Goal 12: Responsible Consumption and Production; Goal 13: Climate Action; Goal 14: Life Below Water; Goal 15: Life on Land; Goal 16: Peace, Justice, and Strong Institutions, and; Goal 17: Partnerships to Achieve the Goals. United Nations: *THE 17 GOALS | Sustainable Development*, accessed 31st Oct. 2022, <https://sdgs.un.org/goals>. <sup>199</sup> Teller, Friederike, Katharina Brandt (Germanwatch e.V.), and Berit Thomsen (AbL e.V.): *Auswirkungen des EU-Mercosur-Abkommens auf den Agrarhandel und die Ziele für nachhaltige Entwicklung*, Dec. 17 2020, accessed 22nd Sep. 2022, <https://www.germanwatch.org/de/19698>. <sup>200</sup> Deutsche Umwelthilfe e.V. and Profundo: *Brandbeschleuniger Soja – Handlungsoptionen Gegen Entwaldung Durch Futtermittelimporte Nach Deutschland*, Sep. 2020, [https://www.duh.de/fileadmin/user\\_upload/download/Projektinformation/Naturschutz/Soja/Studie\\_Deutsche-Sojalieferkette\\_DUH-Profundo\\_200930.pdf](https://www.duh.de/fileadmin/user_upload/download/Projektinformation/Naturschutz/Soja/Studie_Deutsche-Sojalieferkette_DUH-Profundo_200930.pdf).

increased trade with harmful goods that we analyse in more detail later is the increased appliance of toxic pesticides banned in the EU but exported in large amounts to other countries.<sup>201</sup> The implications of a potential EU-ASEAN FTA in this regard are highlighted in Section 3.2.1.

According to Rachmi Hertanti, the importance that the EU places on facilitating easier raw material extraction in Indonesia has become quite clear in the negotiation process.<sup>202</sup> A report by Philipppinenbüro and Powershift criticizes the German industry that imports nickel in large quantities for construction and automotive steel for not caring about human rights violations along their supply chain. The Philippines is the largest exporter of nickel worldwide and companies using it the most in Germany are Thyssen Krupp and ArcelorMittal.<sup>203</sup> As Bernd Schneider notes, this problem is increasing: “Our nickel demand increases due to the Green New Deal. We are experiencing a nickel rush with major investments and mining increases. We are turning a blind eye to this development. In this area, there are strong efforts in Europe to ensure that access to raw materials is valued more highly than environmental concerns.”<sup>204</sup>

Another way in which FTAs prolong unsustainability is by putting up barriers against technology development and transfer with specific (IPR) provisions, for example, where important to combat climate change.<sup>205</sup> As Carlos Navera explains, this is reinforced by investment protection mechanisms: “In the face of looming climate disaster, ISDS provisions are in the way of the government’s abilities to do climate action. They threaten to have a chilling effect on policies.”<sup>206</sup> At the same time, potential enhanced trade and production is found to increase CO2 emission predictions.<sup>207</sup>

In this context, it is also worth mentioning that opening up new markets for the most industrialized and competitive EU commodities is in contrast to the perspective of “degrowth” which aims to pave the way towards a socio-ecological transformation.

### Case 1: New Markets for Harmful Products: Exports of Pesticides from the EU to ASEAN

Human poisoning by pesticides poses a severe health problem. In 1990, the WHO estimated about one million cases of unintentional, acute pesticide poisoning (UAPP) per year with around 20,000 deaths by pesticide poisoning.<sup>208</sup> A more recent study comes to far higher numbers of pesticide poisoning with the greatest number of reported cases coming from Asian countries.<sup>209</sup>

Pesticides are also connected to a severe threat of biodiversity, which is why the EU commission says that it’s Biodiversity Strategy, a key element of its Green new Deal, implements “Strong rules to reduce the use of chemical pesticides and ensure more sustainable food systems by 2030”.<sup>210</sup>

While the EU promised in 2020 to bring legislation on the way that would ensure that chemicals banned

in the EU are not exported, it has failed to deliver in that respect as of yet.<sup>211</sup> And in the absence of a timeline for a potential phase out, campaigners also fear that it might only shift towards practice of companies originating from EU to produce and sell outside the EU.

In the mean time, while there is an increasing number of substances banned in EU countries, the free trade agenda ensures that new markets can be found.

Here, EU companies can continue selling and using existing production capacities for substances that can no longer be sold in the EU for the harm they have been proven to cause. This will surely play a role in the fact that the vast majority of mortalities related to pesticide poisoning happen in the Global South.

A study on pesticide use in Laos highlights that, by driving a trend towards a more industrialized agriculture, a potential EU-ASEAN FTA is likely to intensify the negative effects of pesticides even further. “Pesticide usage in Laos has grown steadily in recent years as many farmers have switched from subsistence farming to commercial production of a range of agricultural commodities for export, including bananas.”<sup>212</sup>

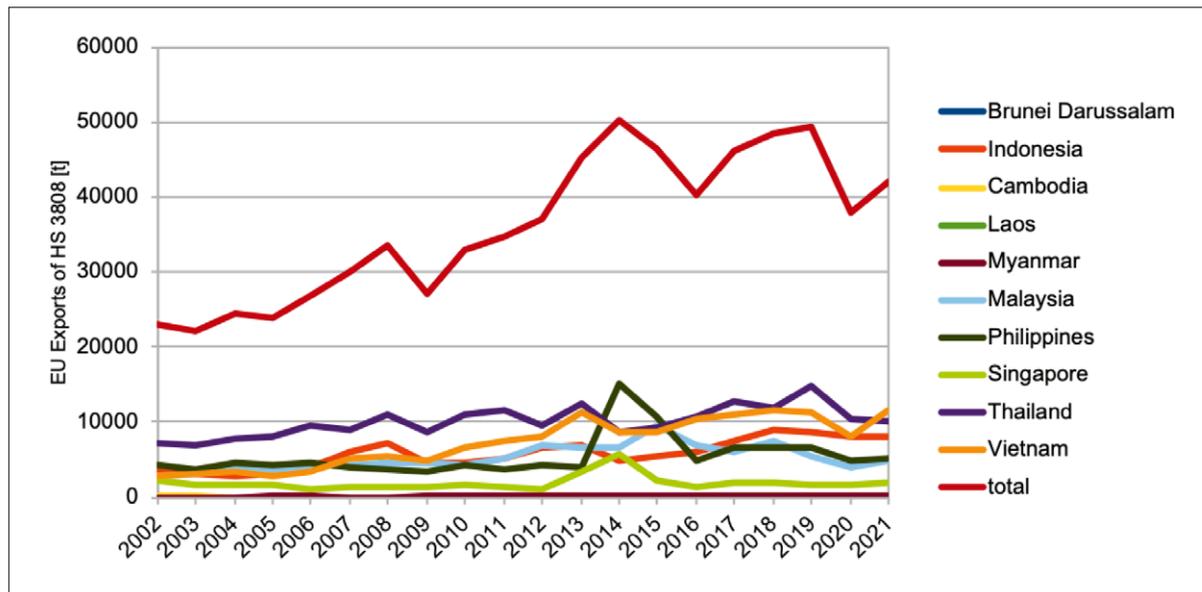
### The Harmful Effects of Pesticides in ASEAN

A report by RLS, Inkota, and Misereor describes the adverse effects of pesticides on workers and other people in contact with them and how pesticide residues make their way back onto the plates in countries that exported them in the first place.<sup>213 214</sup>

Studies show that cases of UAPP reach especially high numbers in various ASEAN countries.<sup>215 216</sup> In a 1990 WHO study, Jeyaratnam reports that, in Indonesia, there are 30,000 cases of pesticide poisoning

<sup>201</sup> Müller, Bettina: *Reiseführer*, 2021. <sup>202</sup> Hertanti, Rachmi: *Expert interview with Rachmi Hertanti about EU- ASEAN free trade relations and alternatives*, 2022. <sup>203</sup> Reckordt, Michael and Melanie Müller: *Ohne Verantwortung Und Transparenz – Menschenrechtliche Risiken Entlang Der Nickellieferkette*, Apr. 2017, [https://www.asienhaus.de/fileadmin/\\_migrated/news\\_uploads/2017\\_philippinenbuero\\_Nickel.pdf](https://www.asienhaus.de/fileadmin/_migrated/news_uploads/2017_philippinenbuero_Nickel.pdf). <sup>204</sup> Schneider, Bernd: *Expert interview with Bernd Schneider on EU ASEAN free trade relations and alternatives*, 2022. <sup>205</sup> Khor, Martin: *Climate Change, Technology and Intellectual Property Rights: Context and Recent Negotiations*, Sep. 2011. <sup>206</sup> Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>207</sup> Tian, Kailan et al.: *Regional Trade Agreement Burdens Global Carbon Emissions Mitigation*, *Nature Communications* 13, no. 1 (20th Jan. 2022): 408. <sup>208</sup> Jeyaratnam, J.: *ACUTE PESTICIDE POISONING: A MAJOR GLOBAL HEALTH PROBLEM* *World health statistics quarterly* (1990), [https://apps.who.int/iris/bitstream/handle/10665/51746/WHO\\_1990\\_43\\_n3\\_p139-144\\_eng.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/51746/WHO_1990_43_n3_p139-144_eng.pdf?sequence=1&isAllowed=y). <sup>209</sup> Boedeker et al: *The Global Distribution of Acute Unintentional Pesticide Poisoning: Estimations Based on a Systematic Review*, *BMC Public Health* (2020), <https://bmcpubhealth.biomedcentral.com/track/pdf/10.1186/s12889-020-09939-0.pdf>. <sup>210</sup> EU Commission: *New Pesticide Rules to Help Achieve Zero Pollution Targets*, accessed 31st Mar. 2023, [https://environment.ec.europa.eu/news/new-pesticide-rules-help-achieve-zero-pollution-targets-2022-08-10\\_en](https://environment.ec.europa.eu/news/new-pesticide-rules-help-achieve-zero-pollution-targets-2022-08-10_en). <sup>211</sup> Dowler, Crispin: *Europe Shipping Banned Pesticide Linked to Child Brain Damage to Global South, Unearthed*, Mar. 28 2023, accessed 1st May 2023, <https://unearthed.greenpeace.org/2023/03/28/eu-banned-pesticide-global-south/>. <sup>212</sup> Wentworth, Andrew and et al.: *Environmental Risks from Pesticide Use: The Case of Commercial Banana Farming in Northern Lao PDR (IWM Research Report – 177)* *LaoFAB Repository*, 2021, accessed 25th Nov. 2022, <https://laofab.org/document/view/4917>. <sup>213</sup> Luig, Benjamin and et al: *Gefährliche Pestizide von BASF und Bayer – Rosa-Luxemburg-Stiftung*, Mar. 2020, accessed 20th Apr. 2022, [https://www.rosalux.de/fileadmin/\\_uploads/pdfs/Studien/Studie\\_Gefaehrliche\\_Pestizide\\_20200420.pdf](https://www.rosalux.de/fileadmin/_uploads/pdfs/Studien/Studie_Gefaehrliche_Pestizide_20200420.pdf). <sup>214</sup> Foodwatch: *Stop the Poison Boomerang!*, Mar. 21 2020, accessed 20th Apr. 2022, [https://www.foodwatch.org/fileadmin/-INT/transparency\\_and\\_food\\_safety/documents/Foodwatch\\_background\\_paper-22-April\\_2020-Stop\\_the\\_poison\\_boomerang.pdf](https://www.foodwatch.org/fileadmin/-INT/transparency_and_food_safety/documents/Foodwatch_background_paper-22-April_2020-Stop_the_poison_boomerang.pdf). <sup>215</sup> Jeyaratnam, J.: *ACUTE PESTICIDE POISONING: A MAJOR GLOBAL HEALTH PROBLEM*, 1990. <sup>216</sup> Boedeker et al: *The Global Distribution of Acute Unintentional Pesticide Poisoning: Estimations Based on a Systematic Review*, 2020.

Figure 10: EU Export development of HS code 3808 to ASEAN



Source: EU Export development of HS code 3808 to ASEAN (Eurostat)

annually (2,400 requiring hospitalization), while official records do not report a problem. He also refers to data from Thailand where poisoning cases per year vary from 2,094 to 4,046 and cites data from a study on self-reported symptoms in which 6.7 percent of agricultural workers in Malaysia were poisoned each year.<sup>217</sup>

Boedeker et al. come to higher UAPP percentage estimations based on more recent and collated data with more coverage. They estimate the percentage among farmers as follows: Cambodia: 62 percent, Indonesia: 54 percent, Philippines: 58 percent, Thailand: 36 percent, and Vietnam: 57 percent.<sup>218</sup>

Liamchanrun Witoon spoke about the negative effects of pesticides in Thailand and the success of bans of paraquat and chlorpyrifos in 2020 and the efforts to ban Carbendazim and Atrazin. These are both illegal in the EU but still present in the portfolios of Bayer and Syngenta.<sup>219</sup> Josua Mata spoke to us about the effects of pesticide spraying in the Philippines in the area of Davao City: “[...] the worst part is the aerial spraying of pesticides[...]. The plane is actually spraying an entire field with pesticide, which means they do that even if there are workers working in the plantation. These workers are showered in pesticides. And because of the wind, the pesticides reach the homes and river areas. It is horrendous.”<sup>220</sup>

### The Increased Trade of Pesticides from the EU to ASEAN and the Effects of FTAs

A Greenpeace report from 2020 discusses how the Mercosur treaty will eliminate tariffs on pesticide imports to Mercosur countries and how this will greatly affect the already substantial amounts of pesticides exported, including large quantities of those that are illegal in the EU.<sup>221</sup>

Looking at the relation between local sales and export

of pesticides in Germany, as an example, it becomes clear that managing and increasing export volumes is a key aim of German companies. While, in 2020, 27,841 tons of active substances of pesticides (excluding inert gases) were sold to the German market, 42,000 tons were exported.<sup>222</sup>

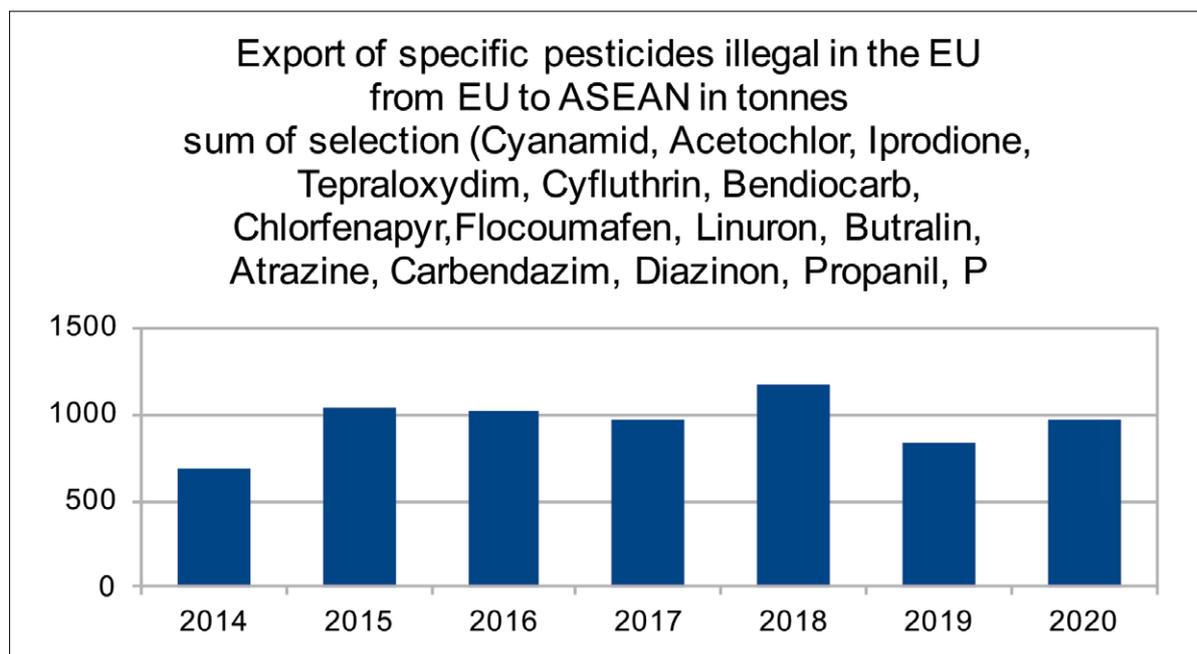
In the FTA with Vietnam, pesticides are categorized under category A, for which the agreement states that customs: “shall be eliminated entirely and such goods shall be free of any customs duty from the date of entry into force of this Agreement”.<sup>223</sup>

However, assessing the potential change in volume through tariff and other changes was beyond the scope of this report.<sup>224</sup>

Looking at pesticide exports from the EU to ASEAN, in general, the trend has been rising over the last two

<sup>217</sup> Jeyaratnam, J.: *ACUTE PESTICIDE POISONING: A MAJOR GLOBAL HEALTH PROBLEM*, 1990. <sup>218</sup> Boedeker et al: *The Global Distribution of Acute Unintentional Pesticide Poisoning: Estimations Based on a Systematic Review*, 2020. <sup>219</sup> Kijtiwatchakul, Kannikar and Liamchanrun Witoon: *Careco Experteninterview mit Kannikar Kijtiwatchakul und Liamchanrun Witoon zu EU ASEAN Freihandelsbeziehungen und Alternativen*, 2022. <sup>220</sup> Mata, Josua: *Expert interview with Josua Mata about EU ASEAB free trade relations and alternatives* interview by Schnarrenberger and Schneider, Zoom, 22nd Jul. 2022. <sup>221</sup> Knirsch, Jürgen: *Greenpeace Studie – EU-Mercosur: Zweierlei Maß bei Ackergiften*, May 2020, accessed 20th Apr. 2022, <https://greenwire.greenpeace.de/system/files/2020-05/20200521-Greenpeace-Flyer-EU-Mercosur-Kurzanalyse.pdf>. <sup>222</sup> Bundesamt für Verbraucherschutz und Lebensmittelsicherheit: *BVL – Berichte über Inlandsabsatz und Export von Pflanzenschutzmitteln*, undated, accessed 11th Jul. 2022, [https://www.bvl.bund.de/DE/Arbeitsbereiche/04\\_Pflanzenschutzmittel/01\\_Aufgaben/02\\_ZulassungPSM/03\\_PSMInlandsabsatzAusfuhr/psm\\_PSMInlandsabsatzAusfuhr\\_node.html](https://www.bvl.bund.de/DE/Arbeitsbereiche/04_Pflanzenschutzmittel/01_Aufgaben/02_ZulassungPSM/03_PSMInlandsabsatzAusfuhr/psm_PSMInlandsabsatzAusfuhr_node.html). <sup>223</sup> European Commission: *EU-Vietnam Agreement – ANNEX 2-A REDUCTION OR ELIMINATION OF CUSTOMS DUTIES*, 12th Jun. 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:186:FULL&from=EN&page=166>. <sup>224</sup> To assess volume change induced by existing and potential FTAs, it is not considered suitable to look at the SIAs as the categories for which the tariff changes and expected trade volume changes are listed. These are too broad, including the HS category of 3808 which entails pesticides in the very broad category “Chemical, rubber & plastic products”. Thus, to generate an overview over the expected impact based on increased trade due to tariff reductions, the FTAs and historical tariff information would have to be looked at in great detail (for example using the WTO tariff analysis tool)WTO: *Welcome to TAO – Tariff Analysis Online Facility Provided by WTO*, accessed 12th Sep. 2022, <https://tao.wto.org/welcome.aspx?ReturnUrl=%2freport%2fExportMarketV2.aspx>.

Figure 11: EU Export of pesticides illegal in the EU to ASEAN



Source: EU Export of pesticides illegal in the EU to ASEAN (Lefèvre, Rémi: ECHA, PIC Operations Team – Reply to Your ATD Request to Access to the Collated Export Volumes per Year for 19 Substances)

decades. Products exported under HS code 3808 (“insecticides, rodenticides, fungicides, herbicides, anti-sprouting products, plant growth regulators, disinfectants and the like, put up in forms or packings for retail sale or as preparations or articles”) have roughly doubled from slightly above 20,000 tons per year 20 years ago to more than 40,000 tons per year in recent years.<sup>225</sup>

It might be argued that, if the harmful substances were not imported from EU companies, they would be replaced by equally harmful substances from elsewhere. However, the reality is that only a handful of companies dominate the world market — most of them based in the EU. A report by the Heinrich Böll Foundation and others states that, in 2018, just four companies generated an estimated 70 percent of revenues from the worldwide sales of pesticides. These companies were the Syngenta Group (Switzerland/China), Bayer (Germany), Corteva (US), and BASF (Germany). Their market share has grown from 29 percent in 1994 to 53 percent in 2009 and to 70 percent in 2018. The same four companies have a market share of 57 percent in the seed sector, compared to 21 percent in 1994.<sup>226</sup>

### New Markets for Banned Products

An analysis done by Public Eye shows that significant amounts of pesticides banned in the EU were exported to ASEAN countries in 2018. A PAN report maps pesticides without EU approval being exported from the EU. Among others, the report names Cyanamid being exported from Germany to Indonesia and Thailand and Cyfluthrin being exported from Germany, France, and Spain to Indonesia, Malaysia, the Philippines, Thailand and Vietnam.<sup>227</sup>

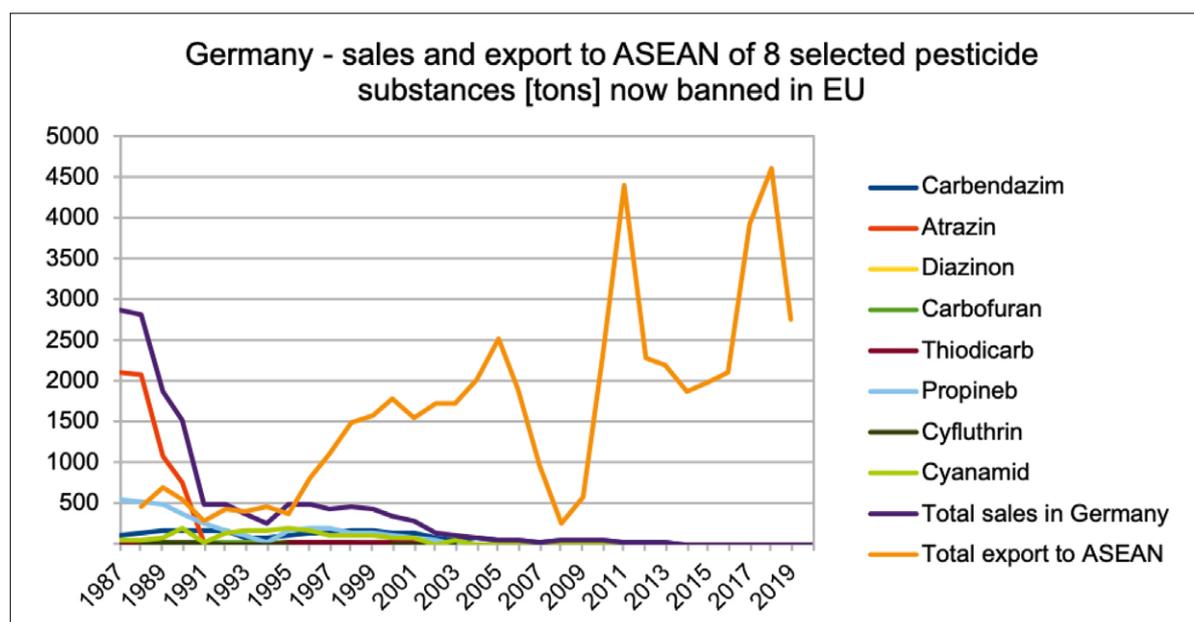
An investigation by Unearthed and Public Eye gathered more details on the data and published reports as well as the data gathered. An analysis of this data shows that large amounts of banned pesticides were approved for export from the EU to ASEAN countries in 2018, with Malaysia and Vietnam receiving the largest amounts (although, it has to be noted, the actual amounts exported may be different).<sup>228</sup>

Analysing this data specifically for the trade between the EU and ASEAN countries could be done more in depth using the PIC data from ECHA.<sup>229</sup>

A request from the ECHA was done to receive more conclusive data.<sup>230</sup> As ECHA data was only available from 2014 on it does not show the increase in exports from before.<sup>231</sup>

<sup>225</sup> Datenbank – Eurostat. <sup>226</sup> Chemnitz, Christine and et al.: *Pestizidatlas 2022: Gifte in der Landwirtschaft*, Heinrich-Böll-Stiftung, Jan. 2022, accessed 12th Jul. 2022, <https://www.boell.de/de/pestizidatlas>. <sup>227</sup> The report uses data from the ECHA annual reporting on PIC chemicals (chemicals that fall under the Prior Informed Consent Regulation that governs the trade of certain hazardous chemicals that are banned or severely restricted in the EU). PAN: *Toxic Exports – The Export of Highly Hazardous Pesticides from Germany into the World*, 30th Sep. 2019, [https://pan-germany.org/download/toxic-exports-the-export-of-highly-hazardous-pesticides-from-germany-into-the-world-executive-summary/?wpdmdl=1717&refresh=62b06269398a41655726697&ind=1573642957804&filename=PAN%20Germany\\_Toxic%20Exports%20Executive%20Summary\\_EN\\_%202019\\_neu.pdf](https://pan-germany.org/download/toxic-exports-the-export-of-highly-hazardous-pesticides-from-germany-into-the-world-executive-summary/?wpdmdl=1717&refresh=62b06269398a41655726697&ind=1573642957804&filename=PAN%20Germany_Toxic%20Exports%20Executive%20Summary_EN_%202019_neu.pdf). <sup>228</sup> Dowler, Crispin: *Thousands of Tonnes of Banned Pesticides Shipped to Poorer Countries from British and European Factories*, Unearthed, Sep. 9 2020, accessed 5th Jul. 2022, <https://unearthed.greenpeace.org/2020/09/10/banned-pesticides-eu-export-poor-countries/>. <sup>229</sup> European Chemicals Agency: *Annual Reporting on PIC Exports and Imports*, accessed 20th Jun. 2022, <https://echa.europa.eu/regulations/prior-informed-consent/annual-reporting-on-pic-exports-and-imports>. <sup>230</sup> However, the data is only published agglomerated, grouping exporting and importing countries and arriving at an exported sum making it impossible to see quantitative developments between EU and ASEAN countries. To comply with the timeline of the study the request was limited in so far that data was requested collated for a) a selection of pesticides, b) receiving countries into ASEAN, c) exporting countries into EU. <sup>231</sup> Lefèvre, Rémi: *ECHA, PIC Operations Team – Reply to Your ATD Request to Access to the Collated Export Volumes per Year for 19 Substances (Ref. ATD/031/2022)*, 22nd Sep. 2022.

Figure 12: Sales of eight selected pesticides and export of products with connected HS codes



Source: Sales of 8 selected pesticides and export of products with connected HS codes (Eurostat)

To look back further than ECHA data allows, CN codes can be looked up in the European Customs Inventory of Chemical Substances (ECICS) to interpret Eurostat export data.<sup>232</sup> An exemplary look at the sales in Germany and the exports from Germany to ASEAN countries of the relevant CN codes containing eight pesticide substances now banned in the EU backs the hypothesis that the search for new markets is enabled by the progression of the free trade agenda.<sup>233</sup> The numbers are higher than they would be if it was just the particular pesticides, as the HS numbers may contain more than just the specific ingredient, but the trend is still considered to give an indication of the export of relevant pesticides from the EU to ASEAN.

A study analysing pesticide residues on banana plantations found, among others, two substances developed and later banned in the EU: ioprodione and paraquat.<sup>234</sup>

Another study looking into the negative effects of pesticides on biodiversity in 2018 in Vietnam evaluated the use of pesticides by collecting empty pesticide packaging at 19 rice paddies. Comparing the encountered pesticides with those which are illegal in the EU but exported to ASEAN, five different varieties of such EU-banned pesticides were found: Acetochlor (7 sites), Ethoxysulfuron (5 sites), Atrazine (3 sites), Carbendazim (2 sites), and Diazinon (1 site).<sup>235</sup>

It can hardly be said that the EU is not aware of the inherent dangers that increased profits from exporting pesticides bring. Still, it would be cynical to assume that representatives were fond of reading the 2009 SIA for an EU-ASEAN FTA, which concludes that: "A potential source of health impact could be the use of more farm chemicals to counter the negative impacts of decreasing output and lower prices. [Note: decreased output and negative impact on labour in the

agricultural sector in ASEAN is predicted in the same SIA.] If not properly used, such chemicals can have negative health impacts on the farmers using them and possibly also to the quality of the products."<sup>236</sup>

### 3.3 THE SOCIAL DIMENSION

#### 3.3.1 "I'm on Endo" – Labour Standards and the Race to the Bottom

The growth of international trade has been driving a "race to the bottom", leading to the lowering of social standards, especially in labour-intensive sectors. FTAs have significantly contributed to this effect as tools to enhance the growth of international trade.

More specifically, various provisions contained within FTAs have been detrimental to labour standards as well as human rights, and are risking important social achievements. This section looks at some of the critical aspects.

FTAs are considered to affect workers' rights in a number of ways. Our Indonesian interviewees consistently described the Omnibus Law as a package of laws going against labour rights and an attempt to create a climate to attract foreign investors. This could be seen in the context of existing Indonesian FTAs as well as in the context of negotiations with the EU.<sup>237</sup>

<sup>232</sup> European Commission: *ECICS Consultation*, accessed 11th Jul. 2022, [https://ec.europa.eu/taxation\\_customs/dds2/ecics/chemicalsubstance\\_consultation.jsp?Lang=de](https://ec.europa.eu/taxation_customs/dds2/ecics/chemicalsubstance_consultation.jsp?Lang=de). <sup>233</sup> *Datenbank – Eurostat*. <sup>234</sup> Wentworth, Andrew and et.al.: *Environmental Risks from Pesticide Use*, 2021. <sup>235</sup> Sattler, Cornelia: *Arthropod Communities in Rice Agroecosystems in Northern Vietnam – Quantifying the Impact of Pesticides and Land Cover Heterogeneity*, 25th Apr. 2018, [https://opendata.uni-halle.de/bitstream/1981185920/8975/1/Dissertation\\_Sattler.pdf](https://opendata.uni-halle.de/bitstream/1981185920/8975/1/Dissertation_Sattler.pdf). <sup>236</sup> European Commission: *Trade and Sustainability Impact Assessment of the FTA between the EU and ASEAN*, 2009. <sup>237</sup> Hertanti, Rachmi: *Expert interview with Rachmi Hertanti about EU-ASEAN free trade relations and alternatives*, 2022; Kartini, Samon: *Expert Interview with Samon Kartini (GRAIN Indonesia) about EU ASEAN Free Trade Relations and Alternatives* interview by Schnarrenberger and Schneider, Zoom, 13th Oct. 2022; Cornelissen, Suzan: *Expert interview with Suzan Cornelissen zu EU ASEAN about EU-ASEAN free trade relations and alternatives*, 2022.

Other examples of the impact of existing or rising FTAs were mentioned by union leader Josua Mata, who described the vast decline of regular employment, rise of short-term contracts, and lack of protection against dismissal. According to Mata, “This was implemented by the state, hand-in-hand with the imposition of other neoliberal policies. It was designed specifically to undermine the labour movement which, obviously, is one potential source of resistance against their neoliberal policies.” This contractualization has become so prevalent in the Philippines, there is even a term coined by young people. Saying, “How are you? — I’m on endo” has become a widespread shortcut to mention that you are end-of-contract.<sup>238</sup> Additionally, this non-regular work prevents workers from accessing rights such as collective bargaining and strikes.

### Case 2: Labour Rights with a Focus on Vietnam

In this section, the relationship between emerging FTAs and workers’ rights will be examined in more detail using the EVFTA as an example. When the FTA was concluded, voices from the left warned it would “make way for big European businesses to exploit weak labour.”<sup>239</sup> In particular, the Vietnamese garment and textile industries are expected to profit from the EVFTA, as the SIA shows. This sector, in particular, is characterized by a race to the bottom in working conditions and wages as, “In global value chains, pressure from buyers to deliver cheap, fast and flexibly puts intense downward pressure on labour costs.”<sup>240</sup> It is mostly women who are subject to the precarious conditions in the garment sector.

The impact of the EVFTA on labour conditions has certain limitations, as the legal scholar Duong Tran Thi Thuy notes: It only regulates labour relations connected to trade and investment under the scope of the FTA. Violations of labour law can only be prosecuted in lengthy proceedings and under difficult evidentiary requirements<sup>241</sup> This seems to be an intention of the FTA to maintain a balance between trade interests and labour rights.

The EU Commission responded to this criticism by pointing out that the final agreement includes a number of commitments from the Vietnamese side to comply with international labour standards, such as the eight fundamental ILO Conventions: “Vietnam has already made progress on these commitments by ratifying in June 2019 ILO Convention 98 on collective bargaining and in June 2020 ILO Convention 105 on forced labour. It also adopted a revised Labour Code in November 2019 and confirmed that it would ratify the one remaining fundamental ILO Convention on freedom of association by 2023.”<sup>242</sup>

Our interviewee, Bernd Schneider, recognized policy changes in Vietnam during the negotiation process. However, he deems it too early to say how these changes will play out in practice.<sup>243</sup> Yet, our Vietnamese interviewees also stressed the positive efforts of the

Vietnamese government in adopting additional ILO conventions.<sup>244</sup> Under the 2019 revision of the Labour Code, due to the CPTTP and EVFTA, workers are, for the first time, allowed to join representative organizations independent of the Vietnam General Confederation of Labour (VGCL). Until now, the VGCL has been the sole national trade union in Vietnam operating with close ties to the Communist Party.<sup>245</sup> However, it is not certain that workers will actually profit from the new laws. Therefore, it is necessary to monitor the implementation closely in the future.

Another aspect is concerning the direct link, which has been drawn by the Vietnamese government and the EU, between the FTA and the changes in the Vietnamese Labour Code.<sup>246</sup> There are reasonable doubts about this narrative. Researcher and workers’ rights consultant Joe Buckley sees labour reform rather as an attempt to appease domestic worker struggles. He states a significant number of self-organized wildcat strikes and labour militancy over the past 15 years as an important additional driver for the new Labour Code.<sup>247</sup> These strikes not only challenged VGCL’s position but also represented a vulnerability for the investment climate to attract FDI. When the idea of the FTA was also to put an end to strikes, this is very much where the 2019 Labour Code was successful. The concession on freedom of association allowed workers to gather in enterprise-level worker organizations (WOs). But Buckley does not expect WOs to play a relevant role on behalf of worker association. As of now, this provision has not come into effect.<sup>248</sup>

To sum up, the relationship between EU FTAs and the threat to workers’ rights is an ongoing issue for ASEAN member states. Liberalization initiatives try to attract investment with “hire-and-fire” standards; Vietnam tries the same via “harmonious labour relations”. Both come together with increasing downward pressure from buyers through further integration into global value chains.

<sup>238</sup> Mata, Josua: *Expert interview with Josua Mata about EU ASEAN free trade relations and alternatives*, 2022. <sup>239</sup> The Left in the European Parliament: *The EU-Vietnam Free Trade Agreement – an Explainer*, 2020. <sup>240</sup> ActionAid: *ActionAid Submission: Trade, Sustainable Development and Human Rights in EU-Vietnam Relations*, Jul. 2015, accessed 25th Nov. 2022, [https://trade.ec.europa.eu/doclib/docs/2015/july/tradoc\\_153625.pdf](https://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153625.pdf). <sup>241</sup> Duong, Thi Thuy and Tung Nguyen: *Labour Relations in Vietnam*, Rosa-Luxemburg-Stiftung, 8th May 2020, accessed 19th May 2022, <https://www.rosalux.de/en/news/id/42772>. <sup>242</sup> European Commission: *EU-Vietnam Trade Agreement Enters into Force*, 2020. <sup>243</sup> Schneider, Bernd: *Expert interview with Bernd Schneider on EU ASEAN free trade relations and alternatives*, 2022. <sup>244</sup> Ngoc Binh, Vu: *Expert interview with Vu Ngoc Binh about EU ASEAN free trade relations and alternatives* interview by Schnarrenberger and Schneider, Zoom, 9th Jun. 2022. <sup>245</sup> Hieu, Dong Xuan, Pham Tuan Phuc, and Erwin Schweishelm: *Trade Unions in Transformation – Enhancing and Mobilizing Structural and Organisational Power to Better Protect the Rights and Interests of Workers in Vietnam*. Friedrich Ebert Stiftung (Aug. 2017): 16. <sup>246</sup> International Labour Organization: *ILO Congratulates Viet Nam, EU on Signing Free Trade Deal*, News, 30th Jun. 2019, accessed 25th Nov. 2022, [http://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS\\_711973/lang-en/index.htm](http://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_711973/lang-en/index.htm). <sup>247</sup> Buckley, Joe: *Vietnam’s Labour Reforms: Drivers and Implications*. YUSOF ISHAK INSTITUTE RESEARCHERS AT ISEAS – YUSOF ISHAK INSTITUTE ANALYSE CURRENT EVENTS 4, no. 2022 (2022): 9. <sup>248</sup> Buckley, Joe: *Expert interview with Joe Buckley about EU-ASEAN free trade relations and alternatives* interview by Schnarrenberger and Schneider, Zoom, 12th Jul. 2022.

### 3.3.2 Human Rights Violations and Toothless TSD Chapters

An in-depth study regarding the Mercosur FTA gives an overview of other important studies. It concludes that the trade expansion induced by FTAs can be accompanied by human rights violations, such as the displacement of agricultural smallholders or indigenous communities.<sup>249</sup> The “verdict” of a so-called Permanent Peoples’ Tribunal compared 46 different lawsuits that “constitute a highly representative sample of the conduct of European TNCs and of their rights-violating practices”. The verdict “identified their systemic character”<sup>250</sup> and highlights the importance of investment promotion agreements and FTAs as an instrument to achieve the corporate interests connected to these violations.<sup>251</sup>

#### Human Rights Clauses Have Shown Little Effect

Including Sustainability Chapters to address human rights and environmental issues has been promoted as an adequate answer to these issues. So far, however, the included provisions remain rather toothless.<sup>252</sup>

A briefing by the European Parliamentary Research Service (EPRS) quite clearly states that, with respect to the human rights clause within EU FTAs, the EU has chosen a very cautious approach, not applying pressure but rather “constructive engagement” when human rights standards are not met. The briefing also states: “The clause does not serve as a stringent benchmark for selecting potential EU trade partners. Practice shows that not all EU partners are found to be compliant with human rights and democratic norms when negotiating trade agreements with the EU.”<sup>253</sup> This report gives a good overview of the differences between the clauses in the various existing FTAs.

A comprehensive overview of the EU’s human rights clauses lists a number of general shortcomings from a civil-society perspective.<sup>254</sup> A briefing by the NGO Powershift gives a concrete example of this. It names the large toll of deaths due to Mexico’s war on drugs having no effect on an existing agreement, despite the existence of an according clause as an example of the lack of effect of human rights clauses.<sup>255</sup>

A report from 2018 by the NGOs Foodwatch and Powershift discusses the EU’s FTAs negotiated with Mercosur, Mexico, Japan, Vietnam and Indonesia and their effects and criticizes the lack of effect of sustainability provisions.<sup>256</sup> ASEAN civil society stakeholders voice similar concerns regarding sustainability chapters. Joseph Purugganan, Regional Director of the NGO Focus on the Global South, regards them as an “attempt to soften an agreement that is primarily a commercial agreement”.<sup>257</sup>

A more recent article gives an update of new developments in terms of including labour and environmental standards in FTAs.<sup>258</sup> In June 2022, the EU Commission communicated a plan to strengthen the implementation and enforcement of Trade and Sustainable Development (TSD) chapters of the EU’s

trade agreements.<sup>259</sup> When unveiling the Commission’s new approach, the EU Commission’s Executive Vice-President Valdis Dombrovskis told reporters that “The biggest focus is on implementation and enforcement.”<sup>260</sup> This is meant to be achieved by on the one hand extending the FTA’s general state-to-state dispute settlement (SSDS) compliance stage to the TSD Chapter but also by proposing the possibility of trade sanctions as a last resort for violations of the ILO fundamental principles and the Paris Agreement.<sup>261</sup> The environmental NGO Fern criticized that the proposal fails to include the most relevant environmental agreements, thus doing very little to prevent deforestation and other key issues,<sup>262</sup> while green member of the European Parliament Saskia Bricmont expressed her regret that human rights are not addressed explicitly.<sup>263</sup>

#### An EU History of Neglecting Human Rights Issues

An example of the EU’s unwillingness to take the implementation of human rights clauses seriously, and a reason for not believing that the EU is making this a priority, is given by Josua Mata with the lack of reactivity in dealing with implementing GSP+ policies. After initially supporting GSP+, representatives of the labour union SENTRO were greatly disappointed to witness the lack of EU monitoring missions to react adequately to reports of continuous human rights infringements in various business sectors (examples include the tuna

<sup>249</sup> Fritz, Thomas: *Das EU-Mercosur-Abkommen: Steckbrief Zum Ratifizierungsverfahren Und Zu Zentralen Kritikpunkten*, Jul. 2021, accessed 10th May 2022, <https://thomas-fritz.org/startseite/das-eu-mercousur-abkommen-steckbrief-zum-ratifizierungsverfahren-und-zu-zentralen-kritikpunkten>. <sup>250</sup> Brennan, Brid and Gonzalo Berrón: *Touching a Nerve*, Longreads, 2022, accessed 13th Sep. 2022, <https://longreads.tni.org/stateofpower/touching-a-nerve>. <sup>251</sup> Transnational Institute (TNI), ed.: *Permanent People’s Tribunal. The European Union and Transnational Corporations in Latin America: Policies, Instruments and Actors Complicit in Violations of the Peoples’ Rights*, 2010, accessed 13th Sep. 2022, <https://enlizandoalternativas.org/IMG/pdf/TPP-verdict.pdf>. <sup>252</sup> van’t Wout, Demy: *The Enforceability of the Trade and Sustainable Development Chapters of the European Union’s Free Trade Agreements Asia Europe Journal* (16th Jun. 2021), accessed 8th Mar. 2022, <https://link.springer.com/10.1007/s10308-021-00627-1>. <sup>253</sup> Zamfir, Ionel: *Human Rights in EU Trade Agreements – The Human Rights Clause and Its Application* (European Parliamentary Research Service, Jul. 2019), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS\\_BRI\(2019\)637975\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637975/EPRS_BRI(2019)637975_EN.pdf). <sup>254</sup> Bartels, Lorand: *A Model Human Rights Clause for the EU’s International Trade Agreements*, Study I Deutsches Institut für Menschenrechte (Berlin: Dt. Inst. für Menschenrechte [u.a.], 2014). <sup>255</sup> Müller, Bettina: *Reiseführer*, 2021. <sup>256</sup> Hartmann, Alessa and Fritz Thomas: *Handel Um Jeden Preis?*, Feb. 2018, [https://www.foodwatch.org/uploads/media/2018-02\\_foodwatch-powershift-Report\\_Handel-um-jeden-Preis\\_de\\_01.pdf](https://www.foodwatch.org/uploads/media/2018-02_foodwatch-powershift-Report_Handel-um-jeden-Preis_de_01.pdf). <sup>257</sup> Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives*, 2022. <sup>258</sup> Bronckers, Marco and Giovanni Gruni: *Retooling the Sustainability Standards in EU Free Trade Agreements Journal of International Economic Law* 24, no. 1 (1st Mar. 2021): 25–51. <sup>259</sup> European Commission: *Commission Unveils New TSD Approach to Trade Agreements Text European Commission – European Commission*, Jun. 2022, accessed 22nd Sep. 2022, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_3921](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3921). <sup>260</sup> Allenbach-Ammann, János: *EU to Strengthen Sustainability Enforcement in Trade Deals*, *www.Euractiv.Com*, Jun. 23 2022, accessed 1st May 2023, <https://www.euractiv.com/section/economy-jobs/news/eu-to-strengthen-sustainability-enforcement-in-trade-deals/>. <sup>261</sup> Institute for European Environmental Policy: *Reflections on the New Approach to the TSD Chapters for Greener Trade – IEEP AISBL*, 9th Feb. 2023, accessed 1st May 2023, <https://ieep.eu/publications/reflections-on-the-new-approach-to-the-tds-chapters-for-greener-trade/>. <sup>262</sup> FERN: *Commission’s Trade Sanctions Proposal Falls Short, Fern*, Jun. 22 2022, accessed 1st May 2023, <https://www.fern.org/publications-insight/commissions-trade-sanctions-proposal-falls-short-25221>. <sup>263</sup> Saskia Bricmont (@saskiabricmont): *The #TSDReview Made Public by @EU\_Commission Is a Step in the Right Direction. It Contains Interesting Ideas to Improve the Sustainability Impact Assessments and Make Them a Cornerstone of the Future Free Trade Agreements. #FreeTradeAgreements* Tweet/Twitter, 22nd Jun. 2022, accessed 1st May 2023, <https://twitter.com/saskiabricmont/status/1539637521797509120>.

industry and the Swiss-based construction company Holcim). He reports the same lack of reactivity when confronting the EU GSP+ mission with the horrible effects of President Duterte's war on drugs and comes to the conclusion: "It's all about trade."<sup>264</sup>

Joseph Purugganan thinks that, if maintaining its image as a human rights supporter was anywhere near as important for the EU as thinking of economic aspects, the GSP+ status of the Philippines would have been revoked, at least temporarily, when the human rights situation deteriorated with Duterte's rise to power. And that, if commercial interest remains the EU's main motivation, it will not go far in other aspects.<sup>265</sup>

Indeed, in 2018, the EU concluded a review of the Philippines' GSP+ status and affirmed that it would retain its status even while the list of concerning issues was staggering. These include "the possible reintroduction of the death penalty for drug offences" and a "draft bill reducing the age of criminal responsibility from 15 to 12" as well as "the reports of thousands of extra-judicial killings of people allegedly involved in [the] drugs trade and use and the lack of proper investigation; as well as sustained attacks on human rights defenders, political opponents, members of the clergy, journalists, trade unionists, environmental defenders, and indigenous people since the last GSP report".<sup>266</sup> Mr. Purugganan also pointed out that the EU has a track record of exerting its power to put up road blocks to legally binding agreements on human rights: "The UN Human Rights Council voted in 2014 to initiate a process to elaborate a legally binding instrument on TNCs and human rights. Key members of the EU (France, Germany, and Italy) voted against the Resolution (Resolution 26/9). Since the vote, and in succeeding sessions of the open-ended intergovernmental working group, the EU has taken a clear stand in opposing the treaty."<sup>267</sup>

Looking at the EVFTA, the willingness of the EU to take its own commitments to human rights seriously when it comes to trade agreements has to be questioned. As mentioned earlier, the European Ombudsman deemed the lack of a human rights impact assessment of the EVFTA to be a case of maladministration.<sup>268</sup>

On 21 January 2021, the European Parliament adopted a resolution addressing several human-rights related issues and focusing on the long prison sentences handed out to several journalists. Phạm Chi Dũng who, at 15 years, received the longest sentence, sent a video message to MEPs urging them to postpone ratification of the EVFTA until progress had been made on human rights in Vietnam.<sup>269 270</sup>

Another reason union leader Josua Mata mentioned with regard to the TSD chapter having any positive effect is that it has to be viewed in the context of the generally negative effect that the neoliberal agenda and the unequal status when negotiating treaties will have for people in developing countries. He describes the human rights provisions as tools that have managed to get labour unions on board to discuss the

FTA when they should have focused on opposing them for their general direction.<sup>271</sup>

On the other hand, TSD chapters do have positive effects. Bernd Schneider pointed out that they have been serving as a reference for local political actors and civil society but stressed that they lack the enforcement abilities of other parts of the agreements: "The sustainability chapter must be provided with sanction options on an equal footing with other agreement components."<sup>272</sup>

### Hunger for Palm Oil

There has been a long record of workers' rights issues, human rights abuses, and unlawful clearing of forests in connection with palm oil plantations in Indonesia. Indonesian activists have criticized EU trade policies as a driver of human rights infringements in the palm oil industry for a long time.<sup>273 274</sup> Until recently, Malaysia and Indonesia supplied 85 percent of the world's palm oil — a market worth 65 trillion USD per year. Malaysia has had a better image for a long time, but recent reports indicate that the situation there is not much better.<sup>275</sup>

Yeo Lay Hwee, Director of the European Union Centre in Singapore, would like to see the multilateral negotiations move forward without paying much attention to these kind of issues. She states that "[the] issue over palm oil should be resolved between those ASEAN member states and [the] EU separately. It has long been [the] ASEAN way not to allow bilateral issues (even those between ASEAN) to impact broader regional interests."<sup>276</sup>

<sup>264</sup> Mata, Josua: *Expert interview with Josua Mata about EU ASEAN free trade relations and alternatives*, 2022. <sup>265</sup> Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives*, 2022. <sup>266</sup> European Commission: *The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') Assessment of the Philippines Covering the Period 2018 – 2019*, 10th Feb. 2020, [https://ec.europa.eu/transparency/documents-register/api/files/SWD\(2020\)24\\_0/de0000000001594?rendition=false](https://ec.europa.eu/transparency/documents-register/api/files/SWD(2020)24_0/de0000000001594?rendition=false). <sup>267</sup> Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives*, 2022. <sup>268</sup> European Ombudsman: *Decision in Case 1409/2014/MHZ on the European Commission's Failure to Carry out a Prior Human Rights Impact Assessment of the EU-Vietnam Free Trade Agreement*, 2016. <sup>269</sup> VIND, Raffaele FITTO, Adam BIELAN, Anna FOTYGA, Ryszard CZARNECKI, Valdemar TOMAŠEVSKI, Jadwiga WIŚNIEWSKA, Karol KARSKI, Geert BOURGEOIS, Assita KANKO, Elżbieta KRUK, Elżbieta RAFALSKA, and many others: *JOINT MOTION FOR A RESOLUTION on the Human Rights Situation in Vietnam, in Particular the Case of Human Rights Journalists Pham Chi Dung, Nguyen Tuong Thuy and Le Huu Minh Tuan | RC-B9-0077/2021 | European Parliament*, accessed 21st Nov. 2022, [https://www.europarl.europa.eu/doceo/document/RC-9-2021-0077\\_EN.html](https://www.europarl.europa.eu/doceo/document/RC-9-2021-0077_EN.html). <sup>270</sup> Vietnam Committee on Human Rights: *European Parliament Condemns Conviction of Journalists and Escalating Crackdown on Dissent in Vietnam – Nhân Quyền*, 22nd Jan. 2022, accessed 21st Nov. 2022, <https://nhanquyen.co/european-parliament-condemns-conviction-of-journalists-and-escalating-crackdown-on-dissent-in-vietnam/>. <sup>271</sup> Kijtiwatchakul, Kannikar and Liamchanrun Witoon: *Careco Experteninterview mit Kannikar Kijtiwatchakul und Liamchanrun Witoon zu EU ASEAN Freihandelsbeziehungen und Alternativen*, 2022. <sup>272</sup> Schneider, Bernd: *Expert interview with Bernd Schneider on EU ASEAN free trade relations and alternatives*, 2022. <sup>273</sup> Greenpeace: *Raubbau für Palmöl*, Jan. 18 2022, accessed 20th Apr. 2022, <https://www.greenpeace.de/biodiversitaet/waelder/waelder-erde/raubbau-palmoel>. <sup>274</sup> Transnational Institute (TNI): *Activists from across Asia Explain How the EU's Free Trade Agenda Affects Them* *Transnational Institute*, Oct. 12 2010, accessed 13th Sep. 2022, <https://www.tni.org/en/article/activists-from-across-asia-explain-how-the-eus-free-trade-agenda-affects-them-1-indonesia>. <sup>275</sup> Berger, Thomas: *Schwarze Liste für Palmölkonzerne*, Apr. 19 2022, accessed 20th Apr. 2022, <https://www.nd-aktuell.de/artikel/1163102.schuldnechtschaft-schwarze-liste-fuer-palmoelkonzerne.html>. <sup>276</sup> Hwee, Yeo Lay: *ASEAN and EU: From Donor-Recipient Relations to Partnership with a Strategic Purpose*, in *ASEAN-EU Partnership – The Untold Story*. Tommy T. B. Koh and Lay Hwee Yeo (Singapore: World Scientific, 2020).

The position of Samon Kartini and other civil society representatives is very different. She connects the negative effects of a focus on palm oil directly with FTAs: “Grabbing the land of indigenous territory [and] destroying [the] environment. The expansion of palm oil in Indonesia from the 1990 was rapid. This is very much affected by trade agreements. So they are seen as a threat to communities and [the] environment rather than [an] economic benefit.”<sup>277</sup>

### 3.3.3 The Unbalanced Encounter and the Gains of a Few

While the negative effects on countries not partaking in an FTA are often not even considered (while, for example, a study by the Bertelsmann Foundation concludes that TTIP would have had severe negative effects on African countries by deviating trade from them<sup>278</sup>), some effects of FTAs are based on and intensify the lack of equality and economic justice.

#### The Increase of Existing Inequalities

Josua Mata points out an intrinsic unfairness in the structure of FTAs that cannot be solved by including enforcement mechanisms in TSD chapters: “You may have labour rights, which are unenforceable in the first place, but, in the meantime, the content of the FTA remains to be so problematic for the developing South, so it would still continue to kick away the same ladders the same policies used by the Global North to propel themselves to a developed state [...] Even if there is an enforcement mechanism in the FTAs, that would not cure the fact that FTAs would still be about providing more corporate rights rather than ensuring peoples’ rights.”<sup>279</sup>

An example of how more corporate rights are ensured is surely the inclusion of far-reaching IP rights by referring to UPOV or including TRIPS plus provisions. These reinforce existing inequalities favouring the knowledge-intensive goods produced by multinational companies and going against the interests of small scale-farmers or other more localized structures of production.

On a more general level, research suggests that, with the implementation of FTAs, the change in the trade structure increases existing inequalities and the unfair distribution of wealth, even when it may have positive effects on a macroeconomic level. A study modelling the effects of FTAs concluded: “While the effects of FTAs on human development are rather negative for more unequal countries, their positive effects on economic activity remain mostly undifferentiated from the ones seen in more equal nations. In other words, while the increase in economic activity is statistically similar across country groups, the negative impact on human development is stronger for more unequal countries.”<sup>280</sup>

Another study researched how different FTAs have different effects on income equality: “A noteworthy finding is that FTAs for the goods trade and FTAs for

the service trade have opposite effects on income inequality. The higher FTA notifications related to goods trade reduces income inequality, while the higher FTA notifications related to services trade increases it. [...] Since the impact of FTAs for the service trade on income inequality is positive and that of FTAs for the goods trade is negative, and the impact of the former is greater in absolute value than that of the latter, the rising share of trade in the service sector will lead to a larger income gap between skilled and unskilled workers in a country.”<sup>281</sup>

As discussed in Section 3.3.1 FTAs tend to increase existing inequalities in countries where inequality is rather high. A look at available GINI index data clearly shows that the inequality in ASEAN countries is substantially higher than in EU countries.<sup>282</sup>

This indicates that a higher number of FTAs between EU and ASEAN countries, or especially a region-to-region FTA is likely to increase inequalities within ASEAN countries.

In addition, inequalities are increased especially when major changes in trade in services are induced by FTAs.<sup>283</sup> The SIA on the EU-ASEAN FTA estimates the effects in service trade as proportionately higher than the effects in goods trade.

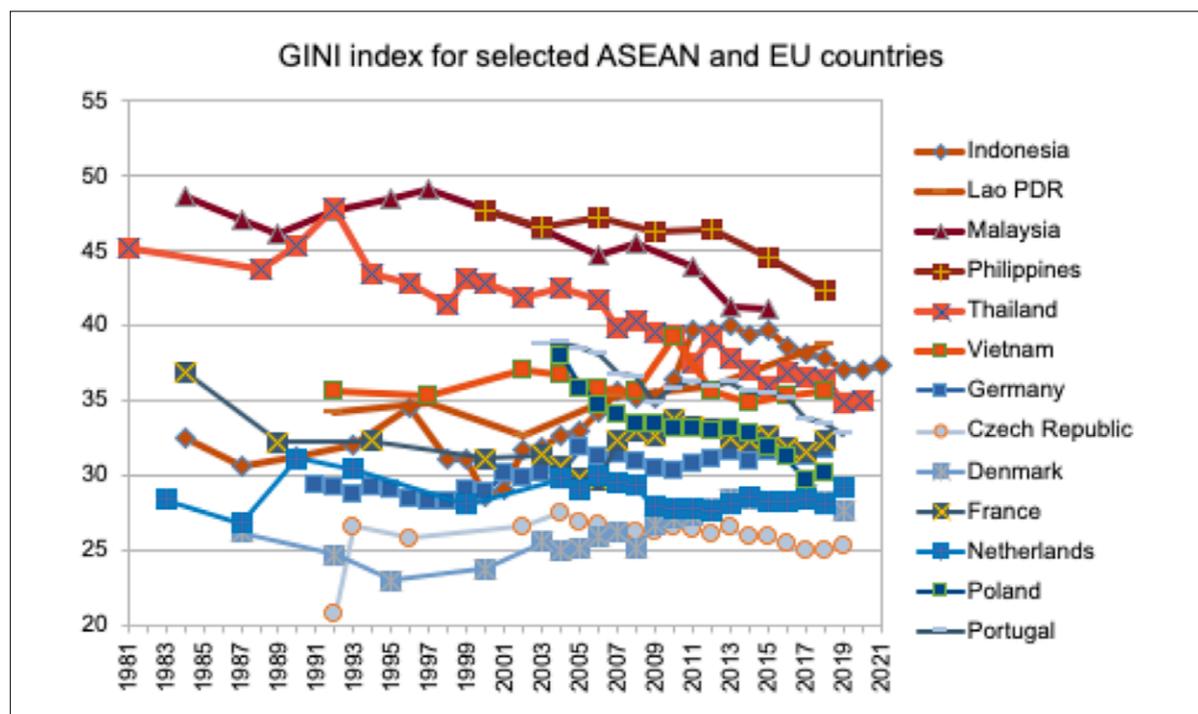
A statement by Carlo Navera gets to the heart of the problem: “There was GDP growth but that was only for the already rich ones.”<sup>284</sup>

#### Digital Trade and Inequality

Presuming that data is indeed the most important resource nowadays, aspects of the digitalization of production lines, value chains, data transfer, data sovereignty, and e-commerce play an increasing role in international trade relations.<sup>285</sup> Of course, the volume of trade of digital goods software, pictures, videos, or books has skyrocketed. As the technology has developed new types of products and communication shifted to the digital sphere, services like tickets, bookings, navigation, and maps have become almost entirely digitalized. The terms digital trade, e-commerce, and digital economy have become more important in the negotiation of trade agreements, but they are also not clearly demarcated. The suggested distinction by the OECD was to define digital trade containing digitally ordered, enabled, and delivered

<sup>277</sup> Kartini, Samon: *Expert Interview with Samon Kartini (GRAIN Indonesia) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>278</sup> Keller, Ska: *Europas Handelspolitik – Weiter in Die Sackgasse Oder Aufbruch in Eine Faire Globalisierung? in Handel(n), von Links Alternativen Zur Handelspolitik Der Europäischen Union*, 2017. <sup>279</sup> Mata, Josua: *Expert interview with Josua Mata about EU ASEAB free trade relations and alternatives*, 2022. <sup>280</sup> Cruzatti, John: *Free Trade Agreements and Development: A Global Analysis with Local Data*, May 2021, [https://archiv.ub.uni-heidelberg.de/volltextserver/30039/1/Cruzatti\\_2021\\_dp702.pdf](https://archiv.ub.uni-heidelberg.de/volltextserver/30039/1/Cruzatti_2021_dp702.pdf). <sup>281</sup> Jae-Hwa, Lee and Jongsung Kim: *Do Free Trade Agreements Affect Income Inequality? An Empirical Investigation* *Journal of International Trade & Commerce* (29th Mar. 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2942580](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2942580). <sup>282</sup> World Bank, Poverty and Inequality Platform: *Gini Index Data*, 20th Jul. 2022, <https://data.worldbank.org/indicator/SI.POV.GINI>. <sup>283</sup> Jae-Hwa, Lee and Jongsung Kim: *Do Free Trade Agreements Affect Income Inequality? An Empirical Investigation*, 2018. <sup>284</sup> Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>285</sup> Scasserra, Sofia: *Expert Interview with Sofia Scasserra on Digital Free Trade*, 2022.

Figure 13: GINI index for ASEAN and EU countries



Source: GINI index for ASEAN and EU countries (World Bank, Poverty and Inequality Platform: Gini Index Data)

products which could be goods as well as services but also information or “data” itself.<sup>286</sup> The relationships between trade partners such as consumers, businesses, and governments could shuffle, change, or reorganize in new ways, for example, when governments sell public data, or individuals become intermediated trade partners. The existing inequalities between the Global North and the Global South are reflected in e-commerce and digital trade almost entirely.<sup>287</sup> This is further reinforced by trade agreements at the WTO level, like the Information Technology Agreement (ITA) or TRIPS. When there is no further deepening of trade relations at the international level, many states try to push the interests of their big tech companies through bilateral trade agreements.<sup>288</sup> A few examples of digital trade specially apply to the ASEAN-EU relationship in particular: Through the digitalized value chain, big companies claim to have more transparency in the production process and this helps to identify misconduct, the violation of labour rights, and other human rights standards. In reality, it also helps the big market players to keep down prices and intensify competition among suppliers.<sup>289</sup> Another aspect of digitalization is the rise of “crowd working”. According to the Online Labour Index, the Philippines, Singapore, Indonesia, and Vietnam are among the top-20 countries worldwide in “click-working”. Most well-known is the example of Philippine content-moderators for social media giants, cleaning up violating content on platforms like Facebook.<sup>290</sup>

Sofia Scasserra from the Transnational Institute believes that the digitech sphere can be considered

extractivist and that the EU will play a role in that: “All criteria are met for [an] extractivistic approach (1 — taking a lot of resources, 2 — taking it elsewhere so local use is not possible, 3 — no awareness of consequences) [...] All large digitech companies/platforms will have business in Europe and provide services to companies all over the world.”<sup>291</sup>

### Shutting Down Local Economies

Export restrictions, such as export duties, quantitative restrictions, export prohibitions, and licensing requirements, can be a useful tool to move economies from a resource-based exportation model to a focus on manufacturing. Tariff restrictions limit this policy option, with provisions in FTAs driving this development beyond existing WTO-based agreements.<sup>292</sup>

The destruction of developing local markets through dumping prices stemming from overproduction in export-oriented countries in the Global North is another serious issue: “The export of the surplus has had and unfortunately still has a devastating effect on local agriculture, which cannot compete with the dumping

<sup>286</sup> OECD: *Measuring Digital Trade: Towards a Conceptual Framework*, 2017, [https://unctad.org/system/files/non-official-document/dtl\\_eWeek2017c04-oecd\\_en.pdf](https://unctad.org/system/files/non-official-document/dtl_eWeek2017c04-oecd_en.pdf). <sup>287</sup> Scasserra, Sofia: *Expert Interview with Sofia Scasserra on Digital Free Trade*, 2022. <sup>288</sup> Fritz, Thomas and Sven Hilbig: *Global Justice 4.0 – The Impacts of Digitalisation on the Global South*, Brot für die Welt (Berlin, 2019), accessed 20th Apr. 2022, [https://www.anders-handeln.at/wp-content/uploads/downloads/2020/02/global\\_justice\\_4.0.pdf](https://www.anders-handeln.at/wp-content/uploads/downloads/2020/02/global_justice_4.0.pdf). <sup>289</sup> Fritz, Thomas and Sven Hilbig: *Global Justice 4.0 – The Impacts of Digitalisation on the Global South*, 2019. <sup>290</sup> Kässi, Otto and Vili Lehdonvirta: *The Online Labour Index*, accessed 20th Apr. 2022, <https://ilabour.oii.ox.ac.uk/online-labour-index/>. <sup>291</sup> Scasserra, Sofia: *Expert Interview with Sofia Scasserra on Digital Free Trade*, 2022. <sup>292</sup> Keller, Ska: *Europas Handelspolitik – Weiter in Die Sackgasse Oder Aufbruch in Eine Faire Globalisierung?*, 2017.

prices.”<sup>293</sup> This is amplified by a massive subsidization of products in Northern economies that is denied to Southern economies both through limits to their spending abilities but also through the unfair WTO tariff system. Rogelio Alquiciras from Via Campesina describes how, by undercutting prices in a way with which Mexican farmers cannot compete, “The neoliberal model in Mexico is destroying the sovereignty, freedom, and autonomy of the country, creating a permanent crisis”.<sup>294</sup>

Joseph Purugganan spoke about the example of opening the Philippine rice market. In the end, the farmers were affected negatively without the price for rice dropping significantly for consumers.<sup>295</sup> He believes that a neoliberal framework in the area of agriculture is detrimental and will effectively push a sector that cannot compete to extinction.<sup>296</sup>

Liamchanrun Witoon recounts the experiences with cheap seasonal vegetables flooding the country from China after an FTA was concluded with Thailand: “After one year, 40 percent–50 percent of garlic farmers lost their jobs. The farmers were not able to compete with the cheap products from China.”<sup>297</sup>

### 3.4 THE DEMOCRATIC DIMENSION

#### 3.4.1 Impeding Democratic Regulation: “Locking In” Policies

This section takes a closer look at various aspects of EU FTAs that have problematic implications for democratic participation. However, a common issue for various interviewees was that of the increasing complexity and interconnectedness of the growing number of trade agreements that creates huge barriers for understanding and influence from a civil-society perspective. The entanglement in a network of trade agreements makes it increasingly difficult for partaking countries to move away from the liberalized policy regime, where deemed necessary.

Samon Kartini specifies: “For civil society, in these days, I would say there is a difference from 10–15 years back, when the movement against trade liberalization was stronger. One of the reasons is, now we are dealing with so many different FTAs that cover much more than just the export and import of goods, it is confusing and difficult to challenge. Back then, you had one common target.”<sup>298</sup>

Josua Mata from the Philippine labour union Sentro described this as being “locked in” by the agreements.<sup>299</sup>

He states: “We oppose it, because it is one thing for the Philippine government to come up with policies that would open up the economy further or to privatize, liberalize and deregulate sections of the economy. It is one thing to do it through legislation and executive policies. But it is another thing to lock in these policies as part of FTAs, because then it means it would be much more difficult for us now to pull it back.”<sup>300</sup>

Christoph Scherrer connects an imbalance in negotiating power to reduced possibilities of change: “The

negotiating power in the negotiations is stronger with the former colonial powers. Such trade agreements in their general thrust tend to oppose the possibility of structural changes in other countries.”<sup>301</sup>

Another aspect to be considered is the internal imbalance of power within a country and the lack of democratic participation and representation resulting from the toxic mix thereof with an incredibly complex and rigid level of international trade agreements. Referring to this, and to the transparency problems discussed below, Josua Mata stated: “It’s absolutely problematic to call for a democratic provision inside an undemocratic treaty such as a FTA.”<sup>302</sup>

We have taken a look at the way in which the advancement of the neoliberal agenda manifesting itself through the various aspects of FTAs produces a variety of negative effects. We have also looked at alternative concepts that could contribute to the mosaic of a system of international cooperation and trade to realize that this is not a contradiction but a contribution to justice, equality, and sustainability.

Researching these two issues and learning from experts within ASEAN, a secondary layer of concern emerged. We became aware of the inherent danger in the progression of the neoliberal agenda to shrink the space for change, make the improbable impossible.

The premise for food sovereignty is diverse and sustainable local agriculture. The premise towards a world where well-being, not economic growth, is at the centre of things is viewing existing efforts towards a more just health care system as important stepping-stones in that direction.

Not balancing power distribution between stakeholders in developed countries that have historically been able to accumulate knowledge-intensive technologies and stakeholders in less developed countries whose well-being may depend on that knowledge ignores these premises.

The basis for more sustainability in trade through degrowth is turning away from an economic ideology based on a simplistic definition of growth.

Giving companies the ability to diminish the potential for progressive policy-making in order to make more profit hampers the potential to reach the goals of equality and sustainability.

<sup>293</sup> Keller, Ska: *Europas Handelspolitik – Weiter in Die Sackgasse Oder Aufbruch in Eine Faire Globalisierung?*, 2017. <sup>294</sup> Gilbert, Claire: *If Farming Is Hard, Free Trade Makes It Harder* Grassroots International, Dec. 2 2013, accessed 24th Nov. 2022, <https://grassrootsonline.org/in-the-news/newsarticlesif-farming-hard-free-trade-makes-it-harder/>. <sup>295</sup> Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives*, 2022. <sup>296</sup> Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives*, 2022. <sup>297</sup> Kijtiwatchakul, Kannikar and Liamchanrun Witoon: *Careco Experteninterview mit Kannikar Kijtiwatchakul und Liamchanrun Witoon zu EU ASEAN Freihandelsbeziehungen und Alternativen*, 2022. <sup>298</sup> Kartini, Samon: *Expert Interview with Samon Kartini (GRAIN Indonesia) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>299</sup> Mata, Josua: *Expert interview with Josua Mata about EU ASEAB free trade relations and alternatives*, 2022. <sup>300</sup> Mata, Josua: *Expert interview with Josua Mata about EU ASEAB free trade relations and alternatives*, 2022. <sup>301</sup> Scherrer, Christoph: *Expert interview with Christoph Scherrer on EU ASEAN free trade relations and alternatives*, 2022. <sup>302</sup> Kijtiwatchakul, Kannikar and Liamchanrun Witoon: *Careco Experteninterview mit Kannikar Kijtiwatchakul und Liamchanrun Witoon zu EU ASEAN Freihandelsbeziehungen und Alternativen*, 2022.

Therefore, in continuing to implement an agenda based on the free trade ideology in trade agreements with ASEAN countries or the ASEAN region, the EU not only fails to adequately address the well-established negative effects of FTAs, but also actively engages in worsening the already bad starting point that alternative visions presented in section 4.1 have to deal with.

### 3.4.2 Untransparent and Inaccessible: The Negotiation Process towards FTAs

There has been much criticism with regard to a lack of transparency and involvement of civil society in the negotiations towards FTAs.<sup>303</sup> The FTAs of the EU include a public negotiation mandate, but the entire negotiation process happens mostly behind closed doors. An increase in transparency has only been reached through continuous pressure from civil society. Transparency and democratic involvement are often even more problematic in the countries the EU negotiates with.

In the interviews with civil society representatives, the lack of transparency became obvious.

Josua Mata talked about the state of knowledge of unions about a potential EU – Philippines FTA: “We have no clear idea about what exactly the government plans to do, because Marcos kept his plans secret.”<sup>304</sup>

Suzan Cornelissen voices a similar concern regarding transparency in Indonesia “We don’t have the knowledge (about what an EU-Indonesian FTA would mean for labour rights) and the unions don’t have it, either. There is no society dialogue meetings as in the EU – in Indonesia, they are not being informed.”<sup>305</sup>

Kartini Samons’s view on transparency can serve as a summary from an ASEAN civil-society perspective: “Even though every country is talking about transparency these days – FTAs are built on secrecy. Trade chapters and the parts being negotiated are never released in public until it’s been signed.[...] The question is, why it is debated secretly and why it is not part of [a] public consultation, asking why nobody can see what’s discussed, are raised by civil society. That stays true even with the EU FTA.”<sup>306</sup>

In this study, we want to focus on an aspect that is supposed to connect the un-transparent and out of touch sphere of FTA negotiations with civil society and deliver on the promise of democratic participation – the Domestic Advisory Groups (DAG). DAGs were established as a step towards a more transparent and inclusive negotiation process for monitoring sustainable development in EU trade agreements since 2011. If and how they actually fulfil this role is a matter of much debate. To be able to play this role, the agreements specify that “The group or groups shall comprise of economic, social, and environmental stakeholders, including, among others, employers’ and workers’ organizations, business groups, and environmental organizations”.<sup>307</sup>

The Dutch trade union CNV International coordinated the publication of a non-paper by the EU DAGs

on the development of EU Trade DAG.<sup>308</sup> It discusses several critical points:

- Representation: Examples are given of how DAGs are put in place by authorities and are not based on a balanced representation of different stakeholders. Peru is mentioned as an example where ambiguous provisions have enabled the Peruvian government to offer merely tokenistic participation, managed by state representatives. Another example is the inclusion of the American Chamber in the Georgian DAG, despite repeated criticism from European DAG members.
- Transparency: Insufficient information sharing is hampering DAG’s work, especially for non-EU DAGs, who are not supported or provided with information such as meeting reports by a secretariat.
- Resources: Financial constraints are viewed as a critical issue hindering civil society participation in DAGs and, therefore, being a tool for a more inclusive process. It is recommended to provide long-term funding mechanisms for more inclusive DAGs.

Looking at the situation in ASEAN countries, we found indications that transparency and civil society participation are still very problematic issues and will continue to be just that in case of an inter-regional FTA.

An example to illustrate that, despite the proclaimed aspirations of the EU to engage civil society in the negotiation and monitoring process in a meaningful way, in the case of Vietnam, the results are merely a fig leaf.

The Vietnamese DAG was established by the Vietnamese Ministry of Industry and Trade on 17 August 2021, over two years after the signing of the EVFTA. It has three members:

- (1) The Vietnam Chamber of Commerce and Industry (representative of employers)
- (2) The Vietnam Institute of Workers and Trade Unions (under the VGCL)
- (3) The Center for Sustainable Rural Development (SRD)<sup>309</sup>

With the SRD being the only one of these that can be considered independent, the DAG clearly fails to be a “balanced representation” comprised of “independent representative organizations”. This gives rise to serious

<sup>303</sup> Gött, Henner: “Legitimation Durch Den, Den Es Angeht?": Die Einbindung Der Zivilgesellschaft in Die Transatlantische Regulierungszusammenarbeit Aus Demokratischer Perspektive in *Freihandel vs. Demokratie*. Buszewski, Martini, and Rathke (Nomos, 2016), Seite 199-218, accessed 21st Oct. 2022, <http://www.nomos-elibrary.de/index.php?doi=10.5771/9783845266046>. <sup>304</sup> Mata, Josua: *Expert interview with Josua Mata about EU ASEAB free trade relations and alternatives*, 2022. <sup>305</sup> Cornelissen, Suzan: *Expert interview with Suzan Cornelissen zu EU ASEAN about EU-ASEAN free trade relations and alternatives*, 2022. <sup>306</sup> Kartini, Samon: *Expert Interview with Samon Kartini (GRAIN Indonesia) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>307</sup> Gött, Henner: “Legitimation Durch Den, Den Es Angeht?": Die Einbindung Der Zivilgesellschaft, in *Die Transatlantische Regulierungszusammenarbeit Aus Demokratischer Perspektive*, 2016. <sup>308</sup> CNV Internationaal: *Strengthening and Improving the Functioning of EU Trade Domestic Advisory Groups: Because Everyone Has the Right to Good Work*, Oct. 2021, accessed 6th Jul. 2022, <https://www.cnvinternationaal.nl/en/publications>. <sup>309</sup> Vietnamese Center for WTO and International Trade and Vietnam Chamber of Commerce and Industry: *TTWTO VCCI – (FTA) Decision No. 1972/QĐ-BCT on the Establishment of Vietnam Domestic Advisory Group (DAG)*, Aug. 2021, accessed 21st Nov. 2022, <https://lwtoecenter.vn/chuyen-de/18061-decision-no-1972qđ-bct-on-the-establishment-of-vietnam-domestic-advisory-group-dag->

concern for an adequate representation process in potential EU-ASEAN negotiations.

In November 2022, VNGO-EVFTA a group of seven Vietnamese NGOs, was established to raise awareness about the EVFTA and the inadequacies of the Vietnamese DAG. All seven NGOs applied but received no answer. Instead, journalist Mai Phan Lợi, Chair of the Centre for Media in Educating the Community (MEC) Scientific Board, and lawyer Đặng Đình Bách, Director of the Law and Policy for Sustainable Development (LPSD), both of whom were members of the network's Steering Committee, were imprisoned in July 2021.<sup>310</sup> The EU DAG issued statements of concern regarding these arrests and has voiced serious concern over the late cancellation of the first scheduled meeting of the EU and Vietnamese DAGs.<sup>311</sup> Since then, the EU and the Vietnam DAGs have had two meetings, the last having been the first to be held in person on 18 October 2022.

The course of negotiations that have already taken place in other ASEAN countries that have not yet led to the ratification of an agreement give reason to believe that leaving aims regarding transparency and participation side-lined can rather be expected to be the principle than the exception on the way towards an inter-regional FTA. Kannikar Kijtiwatchakul talked about the lack transparency and of a system implementing democratic participation and even parliamentary influence on negotiations for the case of Thailand.<sup>312</sup> When asked to characterize civil society's involvement in the negotiations for an EU-Philippine FTA, starting in 2015, the response of Carlo Navera was simple: "Governments get to pick the civil society organizations."<sup>313</sup>

Suzan Cornelissen sees similar problems in Indonesia and does not think that the EU addresses these problems adequately: "I think the civil society participation process is a real problem. You could also say it is [a] problem of the Indonesian government, but then again, when you negotiate trade agreements, you have to make sure that, on that end, there are enough possibilities to be involved."<sup>314</sup>

### 3.4.3 Investment Protection Impeding Democratic Regulation

Investment protection treaties are agreements executed between parties with the purpose of promoting and protecting investments in the territory of one of the contracting parties. Bilateral Investment Treaties (BITs) have undergone a big surge over the last decade, increasing from under 500 in 1990 to over 2,900 in 2020.<sup>315</sup>

These treaties include provisions concerning mechanisms for settling disputes between states or foreign investors and states. The mechanism most commonly used in international investment protection treaties is the Investor-State Dispute Settlement System (ISDS). It is a legal instrument granting foreign investors the right to sue a nation in an arbitration process outside

of the domestic court system. This right is granted in investment agreements between the investor's home nation and the host nation in which investments have been made or planned.

In recent years, these treaties have led to some states facing large numbers of claims from foreign companies resulting in high costs and a variety of claims having a severe effect on the states' policy space and right to regulate.

Respondent states have to deal with average case costs of around 4.7 million USD, not including potential damage claims.<sup>316</sup> And, even if the state successfully defends against a claim, it will have to pay an average of 37 percent of the cost of the case.

While claimants are usually companies from developed countries, respondents are usually developing countries. Indeed, an UNCTAD report from 2020 states: "As in previous years, the majority of new cases (about 75 per cent) were brought against developing countries and transition economies. [...] In the past 10 years, investors from the United States, the Netherlands, and the United Kingdom have filed the largest number of claims."

A report by the Transnational Institute summarizes the use of these mechanisms by extractive companies and their effect on policymaking: "Extractive companies have been one of the sectors most given to launching arbitration lawsuits, and 52 current cases worldwide are related to mining. Based on the 44 cases for which data is available, mining companies have sued governments for a total of 53 billion US dollars. Denying or revoking mining permits because of environmental concerns or violation of the human and social rights of indigenous communities has already led to at least ten investment treaty cases. The governments of Bolivia, Indonesia, Mongolia, Peru, and South Africa have all faced costly lawsuits after taking measures to tackle fraud within the mining industry, make mining companies comply with an agreed pollution clean-up, and remedy past discrimination. Indonesia and South Africa eventually lowered environmental standards in order to pre-empt such lawsuits."<sup>317</sup>

<sup>310</sup> Kirton-Darling, Judith: *Vietnam: EVFTA Domestic Advisory Group Writes to EU Commission over Arrest of CS Members*, Business & Human Rights Resource Centre, Jul. 14 2022, accessed 21st Nov. 2022, <https://www.business-humanrights.org/en/latest-news/vietnam-evfta-domestic-advisory-group-writes-to-eu-commission-over-arrest-of-cs-members/>. <sup>311</sup> European Economic and Social Committee: *Statement from the European Union Domestic Advisory Group of the EU-Vietnam Free Trade Agreement*, Jun. 1 2021, accessed 21st Nov. 2022, <https://www.eesc.europa.eu/en/news-media/news/statement-european-union-domestic-advisory-group-eu-vietnam-free-trade-agreement>. <sup>312</sup> Kijtiwatchakul, Kannikar and Lianchamrun Witoon: *Careco Experteninterview mit Kannikar Kijtiwatchakul und Liamchanrun Witoon zu EU ASEAN Freihandelsbeziehungen und Alternativen*, 2022. <sup>313</sup> Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>314</sup> Cornelissen, Suzan: *Expert interview with Suzan Cornelissen zu EU ASEAN about EU-ASEAN free trade relations and alternatives*, 2022. <sup>315</sup> ICSID: *Database of Bilateral Investment Treaties*, accessed 15th Jul. 2022, <https://icsid.worldbank.org/resources/databases/bilateral-investment-treaties>. <sup>316</sup> Ruff, Deborah: *Financing a Claim or Defence*, Jan. 14, 2022, accessed 8th Sep. 2022, <https://globalarbitrationreview.com/guide/the-guide-investment-treaty-protection-and-enforcement/first-edition/article/financing-claim-or-defence>. <sup>317</sup> Olivet, Cecilia et al.: *Signing Away Sovereignty – How Investment Agreements Threaten Regulation of the Mining Industry in the Philippines* (Amsterdam, Manila, May 2016), accessed 13th May 2022, [https://www.tni.org/files/publication-downloads/signing\\_away\\_sovereignty.pdf](https://www.tni.org/files/publication-downloads/signing_away_sovereignty.pdf).

This is another key problem of investment protection treaties — the so-called “chill-effect”. It describes how putting in place specific policies will be hindered or altered by the threat of potentially being sued by companies based on an existing investment protection treaty. Legal scholars describe the “regulatory chill” of investment protection mechanisms on national law making as an intended effect of international law.<sup>318</sup> An OECD report cites anecdotal evidence of several countries being deterred from implementing tobacco control measures after Australia and Uruguay delayed the passing of policies due to ongoing cases brought against them by the tobacco industry.<sup>319</sup>

### ISDS to ICS

As a result of sustained criticism of ISDS, the EU has been developing a new approach to investment protection proposed during the TTIP negotiations, the Investment Court System (ICS).

However, various studies point out that the newly introduced ICS does very little to change the aspects formerly criticized. A study by Cecilia Olivet et. al. analysed controversial past ISDS cases and concludes that, “every one of these controversial disputes could still be launched and likely prosper under ICS”. The report also addresses the following shortcomings:

- Use of loosely defined concepts providing open doors for corporations to sue states in arbitration tribunals.
- Poorly defined limitations, such as the assertion of a government’s right to regulate.
- The explicit introduction of the term “legitimate expectations” as a basis for a corporation to sue, thus creating greater potential for disputes.
- Continuity in the right to be compensated for loss of (future) profits,
- Continuity in the dependency on for-profit lawyers instead of public, independent judges.<sup>320</sup>

The German Association of Judges criticizes the approach of a juridical system designed especially for investors and concludes: “the creation of special courts for individual groups of law seekers is the wrong way to go”.<sup>321</sup>

Another report by the Transnational Institute summarizes: “It would empower thousands of companies to circumvent national legal systems and sue governments in parallel tribunals if laws and regulations undercut their ability to make money. It would pave the way for billions in taxpayer money being paid out to big business. It could curtail desirable policy-making to protect people and the planet. And it threatens to lock EU member states forever into the injustices of the ISDS regime. In a nutshell, the proposed ‘new’ ICS is ISDS back from the dead. It’s the zombie ISDS.”<sup>322</sup> The European Left concludes that the system still allows companies to sue against any regulatory standards.<sup>323</sup>

Civil society stakeholders in ASEAN are clearly aware of this problem, as the statement of Joseph Purugganan shows: “When I was in Brussels for

the first round, the ICS system was being sold to the Philippines. [The] TTIP campaign was able to raise the ISDS issue and make it a toxic element with which the EU Commission had to deal. The new approach does not fundamentally change the system that is favouring corporations.”<sup>324</sup>

### The Effects of ISDS in ASEAN

Among the top-20 home states of ISDS claimants are 10 EU member states. This implies that a BIT or an FTA containing investment protection provisions is especially likely to lead to the above effects if it is signed with one of these states.

ASEAN countries have signed a total of 355 bilateral investment protection agreements with other countries, 107 of those being with EU countries.<sup>325</sup>

There is great potential for adverse effects on ASEAN and EU states. This is also the perception of many civil society stakeholders in various ASEAN countries. We found several indications that extending the network of existing BITs or FTAs that include investment protection sections will impact ASEAN countries, for example, by constraining the ability of a state to regulate or close harmful business operations.

A report by Olivet et. al. argues that these signed treaties will impede the countries’ ability to regulate or close polluting mines and that this “legal straitjacket” will become even tighter with the signing of a EU-Philippines FTA. The report also notes that the mining sector in the Philippines is considered quite large and influential, albeit only contributing less than 1 percent to the country’s GDP.<sup>326</sup>

Rachmi Hertanti from the Transnational Institute pointed out the large impact that investment protection mechanisms have had in Indonesia. From her perspective, the Investment Chapter under the EU FTA, particularly with Indonesia, will open these mechanisms to more lawsuits in all sectors. In the past, the majority of claims came from mining companies.<sup>327</sup>

The case of Indonesia shows how massive the negative effects of potential legal threats can be.

**318** Wuschka, Sebastian: *Investitionsschiedsverfahren: Individualrechtsschutz Oder “Anti-Demokratische Herrschaft Der Konzerne”?*, in *Freihandel vs. Demokratie*ed. Buszewski, Martini, and Rathke (Nomos, 2016), Seite 15-35, accessed 21st Oct. 2022, <http://www.nomos-elibrary.de/index.php?doi=10.5771/9783845266046>. **319** Pohl, Joachim: *Societal Benefits and Costs of International Investment Agreements: A Critical Review of Aspects and Available Empirical Evidence* (Paris: OECD, Jan. 19, 2018), accessed 25th May 2022, [https://www.oecd-ilibrary.org/finance-and-investment/societal-benefits-and-costs-of-international-investment-agreements\\_e5f85c3d-en](https://www.oecd-ilibrary.org/finance-and-investment/societal-benefits-and-costs-of-international-investment-agreements_e5f85c3d-en). **320** Cingotti, Natacha et al.: *Investment Court System Put to the Test – New EU Proposal Will Perpetuate Investors’ Attacks on Health and Environment* (Corporate Europe Observatory, Apr. 2016), [https://www.trni.org/files/publication-downloads/investment\\_court\\_system\\_put\\_to\\_the\\_test.pdf](https://www.trni.org/files/publication-downloads/investment_court_system_put_to_the_test.pdf). **321** Deutscher Richterbund: # 4/16 – *Stellungnahme zur Errichtung eines Investitionsgerichts für TTIP*, Feb. 1 2016, accessed 6th Sep. 2022, <https://www.dr.de/positionen/stellungnahmen/stellungnahme/news/416>. **322** Eberhardt, Pia: *The Zombi ISDS*, Mar. 2016, accessed 18th May 2022, [https://www.trni.org/files/publication-downloads/the\\_zombie\\_isds.pdf](https://www.trni.org/files/publication-downloads/the_zombie_isds.pdf). **323** The Left in the European Parliament: *The EU-Vietnam Free Trade Agreement – an explainer*, 2020. **324** Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives*, 2022. **325** ICSID: *Database of Bilateral Investment Treaties*, ICSID: *Other Investment Treaties*, accessed 15th Jul. 2022, <https://icsid.worldbank.org/resources/databases/other-investment-treaties>. **326** Olivet, Cecilia et al.: *Signing Away Sovereignty – How Investment Agreements Threaten Regulation of the Mining Industry in the Philippines*, 2016. **327** Hertanti, Rachmi: *Expert interview with Rachmi Hertanti about EU- ASEAN free trade relations and alternatives*, 2022.

Indonesia for Global Justice published a compilation of ISDS cases against Indonesia in 2019 in which both the financial losses as well as the threat to state sovereignty are discussed.<sup>328</sup>

Kannikar Kijtiwatchakul expects negative effects like the discussed chill effect for Thailand from a potential inclusion of the ICS in an FTA with Europe: “[...] even if [the] EU said it changed the ISDS System to an ICS. But it’s not much different. It still creates [a] chilling effect on regulators and governments when they want to issue policies regarding environmental and consumer protection that may harm the interest of the investor.”<sup>329</sup>

The UNCTAD provides a database of ISDS cases showing that, in total, ASEAN countries have been or

are involved in 41 ISDS cases.<sup>330</sup> All countries, with the exception of Singapore, have been respondents to all of those cases. This means that, with the exception of Singapore, in all cases, foreign investors have been seeking claims against the corresponding ASEAN states and, in no case, is an investor from ASEAN seeking claims against another state. The vast majority of cases generally follow the same pattern: Companies from the more developed countries sue and profit while less developed countries are being sued and having to pay. Essentially, this means that, while EU companies will be profiting from the investment protection mechanisms, ASEAN countries will have to pay the price.

ASEAN countries facing ISDS lawsuits since 1994:

**Figure 14: Overview of ISDS lawsuits since 1994 with ASEAN countries as respondents**

Country sued	Number of Lawsuits	Home state of investors
Malaysia	3	UK, 2x Belgium
Vietnam	8	Korea, UK, 2x USA, 2x Netherlands, 2x France,
Indonesia	7	2x Singapore, India, Netherlands, 2x UK, Australia, Saudi Arabia
The Philippines	6	2x Switzerland, Netherlands, Belgium, 2x Germany
Singapore	0	
Thailand	2	Australia, Germany
Myanmar	1	Singapore
Laos	4	2x China, 2x Netherlands
Cambodia	1	China

Figure 14: Overview of ISDS lawsuits since 1994 with ASEAN countries as respondents (UNCTAD: Investment Dispute Settlement Navigator Datatbase)

Some of the ISDS cases brought against ASEAN countries serve to demonstrate specific ways in which investment protection can be harmful:

#### **Walter Bau v. Thailand: Investment Protection vs. Equal Access to Infrastructure and Mobility**

In 1989, Thailand gave the concession to build a toll road from Bangkok centre to the airport to Dywidag, at the time a subsidiary of German company Walter Bau and a Thai co-investor. Then, Thailand limited the toll and invested in toll-free alternative routes. On the basis of the 2002 Germany-Thailand BIT, the arbitration court decided Thailand would have to pay 29 million euro to Walter Schneider, who was handling the insolvency of Walter Bau.<sup>331 332</sup>

#### **Newmont Mining vs Indonesia: Investment Protection vs. the Raw Extractivist Economic Model**

Newmont Mining Corporation brought a case against Indonesia before the International Centre for the Settlement of Investment Disputes (ICSID) on the basis of the Indonesia-Netherlands BIT. The mining company argued that Indonesian plans to tax unprocessed mineral exports would violate the BIT. It withdrew the

case after Indonesia granted the company special exemptions from the new mining law.<sup>333</sup> Newmont Mining is located in the US but the majority shareholder of the Indonesian entity Nusa Tenggara (Nusa Tenggara Partnership BV) is based in the Netherlands.

The goal of the new mining law was clearly to work towards a lesser dependency on the export of raw materials and help restructure trade towards a less extractivist model.

<sup>328</sup> Indonesia for Global Justice: *ISDS Lawsuit: WHEN CORPORATION IGNORES STATE SOVEREIGNTY. The Compilation of ISDS Case Stories in Indonesia*, 2019, accessed 16th Dec. 2022, <https://igj.or.id/wp-content/uploads/2019/10/ISDS-Lawsuit-IGJ-Magazine-compressed-1.pdf>. <sup>329</sup> Kijtiwatchakul, Kannikar and Lianchamrun Witton: *Careco Experteninterview mit Kannikar Kijtiwatchakul und Lianchamrun Witton zu EU ASEAN Freihandelsbeziehungen und Alternativen*, 2022. <sup>330</sup> UNCTAD: *Investment Dispute Settlement Navigator*, Database, accessed 18th May 2022, <https://investmentpolicy.unctad.org/investment-dispute-settlement>. <sup>331</sup> Chmielewski, Marc: *Insolvenzverwalter gewinnt mit Allen & Overy gegen Thailand* *juve.de*, Dec. 8 2016, accessed 14th Jul. 2022, <https://www.juve.de/verfahren/walter-bau-insolvenzverwalter-gewinnt-mit-allen-overy-gegen-thailand/>. <sup>332</sup> Cabrera Diaz, Fernando: *German Investor Awarded 29 Million Euros in Claim against Thailand over Highway Concession*, *Investment Treaty News*, 11th May 2010, accessed 14th Jul. 2022, <https://www.iisd.org/itn/en/2010/05/11/german-investor-awarded-29-million-euros-in-claim-against-thailand-over-highway-concession/>. <sup>333</sup> van der Pas, Hilde: *The Case of Newmont Mining vs Indonesia* *Transnational Institute*, Nov. 12 2014, accessed 14th Jul. 2022, <https://www.tni.org/en/briefing/netherlands-indonesia-bit-rolls-back-implementation-new-indonesian-mining-law>.

### **Kingsgate vs. Thailand: Investment Protection vs. Health and the Environment**

When, in 2017, Thailand suspended the operation of a gold mine following years of complaints and lawsuits based on claims of severe health and environmental problems, the Australian company Kingsgate sued Thailand in a multi-million-dollar international arbitration lawsuit.<sup>334</sup> In January 2022, the government gave its permission to reopen the mine, extending the concession to end in 2031.<sup>335</sup>

### **ConocoPhillips and Perenco vs. Vietnam: Investment Protection vs. Legitimate Receivables**

In 2012, ConocoPhillips and Perenco made 896 million US dollars in profit from selling oil fields located in Vietnam for 1.3 billion dollars. In 2017, two UK subsidiaries filed a lawsuit under the UK–Vietnam BIT via ISDS to stop Vietnam from claiming these taxes.<sup>336</sup> Many countries have faced ISDS cases related to taxation when attempting to collect capital gains taxes.<sup>337</sup>

### **Fraport vs. the Philippines: Sued Countries Always Lose, Even If They Win**

Fraport sued the Philippines twice over a concession. The case was dismissed both times, but the Philippines was left with 58 million US dollars to pay to local and foreign lawyers as a result.<sup>338</sup> This is an example of what “winning a case” means for a respondent state under investment protection law. Of course, losing is a lot worse. In the end, the Fraport AG took successful legal actions at the Philippine Supreme Court which ruled in its favour on two separate decisions in 2015 and 2016. Compensation of 530 million dollars was awarded to the German company and its Philippine partner.<sup>339</sup>

### **3.3.4 Intellectual Property Rights Threatening Progress and Transformation**

In negotiations towards multilateral or bilateral trade agreements in recent years, developing countries have been pushed to accept the inclusion of provisions that go beyond what was defined as the base grounds in prior multilateral agreements.

For example, TRIPS sets the standard for IP protection and is binding for all WTO members. TRIPS includes a set of so-called flexibilities which are utilized to calibrate IP laws to reflect national goals and circumstances.<sup>340</sup> Developing countries have been pressured to include IP provisions that go beyond the TRIPS agreement and often limit the inherent flexibilities, known as “TRIPS plus” provisions.

Another method used in bilateral agreements to implement a more industry-friendly policy in the area of agriculture is by pushing countries to agree to the rules of the Union for the Protection of New Plant Varieties (UPOV).

In this report, we take a closer look at the effects on public healthcare from TRIPS plus provisions as well as the effects on farmers’ rights from UPOV inclusion.

Another effect of special importance we want to

briefly address is that IP provisions can impede climate crisis adjustments.

### **Intellectual Property and Climate Change**

A UN report states that “the need for IPR protection as a stimulant for innovation needs to be properly balanced with the growing need for climate-change-related technology transfer to developing countries” and concludes that “despite the development friendly language in the TRIPS Agreement, economic and sustainable development goals of developing countries are currently subsidiary to IPR privileges.”<sup>341</sup>

A more recent report details how situations in which IP protection can hinder trade and investment flows to address acute climate change problems.<sup>342</sup> Another report shows how investor-state disputes can have an adverse effect on the implementation of fast and effective climate protection strategies.<sup>343</sup>

A proposal from Cambodia on behalf of least-developed countries (LDCs) argued: “Despite decisions taken in 2000 and 2003 concerning implementations of Article 66.2 continue to fall short of the letter and spirit of [the] TRIPS Agreement mandate. The LDCs claimed that the notifications of developed countries refer to technical assistance projects and programmes, but neither detail the incentives provided nor specify the purpose of the incentives and how these could encourage the transfer of technology to LDCs.”<sup>344</sup>

Shao Loong argued that the provisions on IP protection are effectively impeding the climate crisis adjustments of countries such as Malaysia. A report by Brenton and Chemutay comes to similar conclusions.<sup>345</sup>

### **Intellectual Property vs. Health Care**

The implementation of IP standards can have considerable negative effects on access to medicine and public

<sup>334</sup> CEO, FOE & TNI: *Kingsgate vs. Thailand: Destructive Mining Trumps Local Health and Environment*, Apr. 2021, accessed 18th Jul. 2022, <https://www.isds.bilaterals.org/?kingsgate-vs-thailand-destructive>. <sup>335</sup> Petchkaew, Kannikar: *Thai Gold Mine Blamed for Sickening Local Villagers Is Set to Reopen*, May 10 2022, accessed 19th Jul. 2022, <https://www.bilaterals.org/?thai-gold-mine-blamed-for>. <sup>336</sup> Turner, George: *Analysis: How Rich Oil Firms Are Using Secretive Court to Fight Capital Gains Tax in Developing World*, Aug. 2018, accessed 18th Jul. 2022, <https://financeuncovered.org/stories/analysis-how-rich-oil-firms-are-using-secretive-court-to-fight-capital-gains-tax-in-developing-world>. <sup>337</sup> CEO, FOE & TNI: *ConocoPhillips & Perenco vs. Vietnam: Making Profits but Refusing to Pay Taxes*, Apr. 2021, accessed 18th Jul. 2022, <https://www.isds.bilaterals.org/?conocophillips-perenco-vs-vietnam>. <sup>338</sup> FOEI, TNI, IGJ, Focus: *Fraport vs. Philippines: Win or lose, citizens foot the bill*, May 2021, accessed 14th Jul. 2022, <http://www.isds.bilaterals.org/?fraport-vs-philippines-win-or-lose>. <sup>339</sup> JUVE: *Fraport beendet mit SZA jahrelangen Streit wegen Enteignung*, *juve.de*, 21st Oct. 2016, accessed 18th May 2022, <https://www.juve.de/markt-und-management/flughafen-manila-fraport-beendet-mit-sza-jahrelangen-streit-wegen-enteignung/>. <sup>340</sup> Trimble, Marketa: *Unjustly Vilified TRIPS-Plus?: Intellectual Property Law in Free Trade Agreements (2022)*, <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=2385&context=facpub>. <sup>341</sup> Littleton, Matthew: *DESA Working Paper No. 71: The TRIPS Agreement and Transfer of Climate-Change-Related Technologies to Developing Countries*, Oct. 2008, <http://re.indiaenvironmentportal.org.in/files/The%20TRIPS%20Agreement.pdf>. <sup>342</sup> Azam, Monirul: *The TRIPS Agreement Revisited – Time to Open-Up Climate Technologies for Least Developed Countries* (Journal of Intellectual Property Rights, 3rd Jan. 2022), <http://nopr.niscpr.res.in/bitstream/123456789/59719/1/JIPR%2027%282%29%20107-129.pdf>. <sup>343</sup> Pardikar, Rishika: *Big Oil Is Suing Countries To Block Climate Action The Lever*, 8th Jun. 2022, accessed 27th Oct. 2022, <https://www.levernnews.com/fossil-fuel-interests-are-suing-countries-for-taking-climate-action-and-winning/>. <sup>344</sup> Azam, Monirul: *The TRIPS Agreement Revisited – Time to Open-Up Climate Technologies for Least Developed Countries*, 2022. <sup>345</sup> Brenton, Paul and Vicky Chemuta: *The Trade and Climate Change Nexus: The Urgency and Opportunities for Developing Countries* (World Bank, 2021), <https://openknowledge.worldbank.org/bitstream/handle/10986/36294/9/781464817700.pdf>.



As many ASEAN countries are not yet members of UPOV, the effects of EU pressure are quite high. As Kannikar Kijtiwatchakul and Liamchanrun Witoon point out, ASEAN opposed UPOV 1991 and Trips plus provisions with one voice during the RCEP negotiations, even with Vietnam and Singapore having already joined. However, they clearly see the EU's lobbying activities for these provisions as a threat and describe how the bilateral FTAs with Singapore and Vietnam are being used by government and investors to create pressure in Thailand to follow suit.<sup>357</sup>

### Case 3: Free Trade vs. Public Health: The EU Trade Agenda Threatens Progressive Thai Policies

Thailand has been praised internationally for a health care system that provides essential services at almost zero-cost for Thai citizens.<sup>358 359</sup> The system of universal health care was introduced in 2002 in Thailand under president Thaksin Shinawatra whose party, Thai-Rak-Thai, rose to power in a wave of anti-neoliberal sentiment following the Asian financial crisis. Within three years, the percentage of people without health care decreased from around 25 percent to 4.5 percent.<sup>360</sup>

Thailand has been dealing with increasing pressure for higher IP rights protection in pharmaceuticals for decades.<sup>361</sup>

Chalerm Sak Kittittrakul, Programme Manager of the AIDS Access Foundation, has extensive knowledge of the effects of various policies in FTAs Thailand has seen in the past and how these and other effects connected to a free trade agenda threatens the Thai health care system.

Kittittrakul described to us what would have to be expected from an EU-Thailand or EU-ASEAN FTA.<sup>362</sup>

The EU implements TRIPS plus provisions in the FTAs with existing ASEAN countries. It is likely to continue doing so in the negotiations for an EU-Thai FTA that were restarted in 2021. The EU trade agenda thus puts progressive policies in Thailand in danger by pushing for a variety of provisions that would make the Thai Universal Health Care system more costly and financially risky for the Thai government.

As there is little transparency about which provisions would be included in a potential EU-Thai FTA, researchers and civil society groups work with other FTAs or knowledge from earlier negotiations to evaluate potential impacts. A study from the International Trade and Health Programme (ITH), a collaboration between the Thai government and the WHO, comes to the following conclusions:

"An assessment of [the] Comprehensive and Progressive Agreement of Trans-Pacific Partnership (CPTPP) in patent linkage, government procurement, and state-owned enterprise chapters using the system dynamic modelling showed that joining [the] CPTPP agreement would cost Thailand approximately 400 billion baht more in drug expenses compared to the non-participating situation. Thailand would have to rely

on drug imports up to 89 percent, compared with 76 percent in the absence of the agreement. The market value of the pharmaceutical industry in the country would lose approximately 100 billion baht, compared to the non-participating situation."<sup>363</sup>

An assessment of the impact of the proposed Trips plus provisions for the Thai-US FTA in 2010 calculated the financial impact of patent term extension, patent linkage, and data exclusivity from 2008 to 2027 and comes to the following conclusion: "The impact on access to medicine, in the year 2027, would be: 1) A 32 percent increase in the medicine price index, 2) spending on medicines would increase to approximately 11.191 million US dollars (USD 1 = THB 33.9 on 2 September 2009), and 3) the domestic industry could lose 3.3 million dollars. These results suggest there would be a severe restriction on the access to medicines under the TRIPS plus proposal. IPR protection of pharmaceuticals per the TRIPS plus proposal should be excluded from FTA negotiations."<sup>364</sup>

The influence that foreign transnational companies have on the Thai medical drug sector is enormous. A study by the Health Systems Research Institute (HSRI) revealed that, during the ten-year period prior to the study, 95 percent of the drug patents granted in Thailand were filed by applicants with US or EU nationality with 277 patents granted to German applicants. Meanwhile, only ten patents were granted to Thai applicants.<sup>365</sup>

While the impact of an EU-Thai FTA would not be the same as a Thai-US FTA or the CPTPP, it would still be considerably comparable.

Looking at the EVFTA makes sense in order to get an idea of which provisions could likely be included in an EU Thailand FTA, especially those which go beyond TRIPS. As the EVFTA does not include a provision on patent linkage, the areas in a potential FTA between the EU and Thailand that are to be considered a risk to the Thai health care system and access to medicine are

<sup>357</sup> Kijtiwatchakul, Kannikar and Liamchanrun Witoon: *Careco Experteninterview mit Kannikar Kijtiwatchakul und Liamchanrun Witoon zu EU ASEAN Freihandelsbeziehungen und Alternativen*, 2022. <sup>358</sup> Jongudomsuk P, et. al.: *World Health Organization, The Kingdom of Thailand Health System Review SEARO* (World Health Organization, South-East Asia Regional Office, 2015), 2015, accessed 17th Nov. 2022, [http://www.searo.who.int/asia\\_pacific\\_observatory/publications/hits/hit\\_thailand/en/](http://www.searo.who.int/asia_pacific_observatory/publications/hits/hit_thailand/en/). <sup>359</sup> Glassmann, Amanda: *Thailand's Universal Coverage Scheme*, May 2016, accessed 17th Nov. 2022, <http://millionssaved.cgdev.org/case-studies/thailands-universal-coverage-scheme>. <sup>360</sup> Hughes, David and Songkramchai Leethongdee: *Universal Coverage in the Land of Smiles: Lessons from Thailand's 30 Baht Health Reforms*, *Health Affairs (Project Hope)* 26, no. 4 (Aug. 2007): 999–1008. <sup>361</sup> Wibulpolprasert, Suwit et al.: *Government Use Licenses in Thailand: The Power of Evidence, Civil Movement and Political Leadership, Globalization and Health* 7, no. 1 (12th Sep. 2011): 32. <sup>362</sup> Kittittrakul, Chalerm Sak: *Expert interview with Chalerm Sak Kittittrakul about EU ASEAN free trade relations and alternatives* interview by Schnarrenberger and Schneider, Zoom, 31st Aug. 2022, Cloud. <sup>363</sup> Sakulbumrungsil, R. et al.: *Health Impact Assessment of Policies Related to Local Pharmaceutical Industry Development towards Technology Readiness and Access to Medicines: HIAPP*, 26th May 2021, <https://iththailand.net/en/resources/research-report-detail/17128>. <sup>364</sup> Kessomboon, Nusaraporn et al.: *Impact on Access to Medicines from TRIPS-Plus: A Case Study of Thai-US FTA, The Southeast Asian Journal of Tropical Medicine and Public Health* 41, no. 3 (May 2010): 667–677. <sup>365</sup> มาลีวงศ์, อุษาวดี et al.: Drug patent scheme classified as evergreening patent in Thailand and its impact Technical Report (สถาบันวิจัยระบบสาธารณสุข, Aug. 2012), accessed 17th Nov. 2022, <https://kb.hsri.or.th/dspace/handle/11228/3750>.

data exclusivity, patent term extension, government procurement, IP enforcement, and ISDS.<sup>366 367</sup>

In the IP provisions of the EVFTA, the following are noteworthy in this context: “Vietnam shall not allow competitors to rely on test data in support of an application for pharmaceutical product approval for at least five years [...] it will also provide an extension of patent protection, up to a limit of two years, to compensate for delays in the marketing approval of pharmaceutical products if the approval process takes more than 24 months.”<sup>368</sup>

In the EVFTA, it is established that the potential of market access that Vietnam can reserve for domestic suppliers diminishes over time: “EU suppliers will have legally secured market access. From that point, the share reserved for domestic suppliers/producers will diminish over 15 years to a final share of 50 percent.”<sup>369</sup>

A study that looked at the impacts of proposed TRIPS plus provisions proposed by the EU during the EU-Mercosur FTA negotiations concluded: “The adoption of the TRIPS-plus measures proposed by the EU, besides the increase in public expenditures on medicines and reduction of domestic sales shown in the study, would also reduce the policy space currently

available to adopt measures to reduce the negative impact of IPR on health policies, such as the TRIPS flexibilities. That could lead to [an] even higher increase in public expenditures and decrease of sales by national producers in the whole pharmaceutical market.”<sup>370</sup>

The report presents the findings of two of the TRIPS plus provisions contained in the EU proposal: Patent term extension and data exclusivity. Both are contained in the EVFTA.

Also, the report mentions the growing evidence that the threat of using ISDS procedures is enough to obligate countries to change their policies in relation to access to medicine and gives the example of Ukraine de-registering a generic Hepatitis C medicine in 2016 after Gilead indicated that it would pursue arbitration.<sup>371</sup>

#### Case 4: Privatization of Seeds Threatening Local Farming Culture

A paper published by APREBES and Both ENDS highlights the efforts of the EU to push the adoption of formalized and strong plant variety protection with their trading partners. The following list contains the findings in national laws and in trade agreements with relevance to ASEAN countries.<sup>372</sup>

Figure 15: Overview of existing UPOV references within existing EU-ASEAN trade agreements

IN FORCE			
<b>Singapore FTA</b>	Ratified, in force 21.11.2019 (not investment Agreement yet)	1991 Act, since 2004	ARTICLE 10.35 International Agreements The Parties <b>affirm their obligations</b> under the International Convention for the Protection of New Varieties of Plants adopted in Paris on 2 December 1961, as last revised in Geneva on 19 March 1991, including their ability to implement the <b>optional exception to the breeder's right</b> , as referred to in paragraph 2 of Article 15 of that Convention.
<b>Vietnam FTA</b>	Ratified, in force 12.06.2020. (Not investment Agreement yet)	1991 Act, since 2006	Article 12.42 Plant Varieties Rights The Parties shall <b>protect plant varieties rights</b> in accordance with the International Convention for the Protection of New Varieties of Plants, adopted in Paris on 2 December 1961, as last revised in Geneva on 19 March 1991, including the exceptions to the breeder's right as referred to in Article 15 of that Convention, and cooperate to promote and enforce these rights.
IN NEGOTIATION			
<b>Indonesia</b>	In negotiation	None	EU Proposal SUB-SECTION 7 Plant Varieties Article X.46 The Parties shall <b>protect plant variety rights</b> , in accordance with the International Convention for the Protection of New Varieties of Plants adopted in Paris on 2 December 1961, as last revised in Geneva on 19 March 1991 ( <b>1991 UPOV ACT</b> ), including the <b>exceptions to the breeder's right</b> as referred to in Article 15(2) of that Convention.
<b>Philippines</b>	In negotiation	None	EU Proposal SUB-SECTION 7 Plant Varieties Article X.46 The Parties shall <b>protect plant variety rights</b> , in accordance with the International Convention for the Protection of New Varieties of Plants adopted in Paris on 2 December 1961, as last revised in Geneva on 19 March 1991 ( <b>1991 UPOV ACT</b> ), including the <b>exceptions to the breeder's right</b> as referred to in Article 15(2) of that Convention.

Source: Overview of existing UPOV references within existing EU-ASEAN trade agreements (Fulya BATUR: Plant Variety Protection & UPOV 1991 in the European Union's Trade Policy: Rationale, Effects & State of Play)

As mentioned above, the inclusion of UPOV provisions in existing FTAs between the EU and ASEAN countries clearly shows a push towards the so-called privatization of seeds.

Samon Kartini has had opportunities to confirm active engagement in the FTA negotiation process: “It has always been one of the main demands of FTAs and [the] EU is always pushing for it. The same goes for [the] US and Japan. The countries where the seed industry is based.[...] It has been very systematic [in] the process of accumulating and monopolizing the control over seeds through FTAs. That is why [a] lot of [the] work we are doing is focusing on this aspect. We launched a global campaign against UPOV because of that. Because of the FTA's push towards UPOV 1991.”<sup>373</sup>

<sup>366</sup> Delegation of the European Union to Vietnam: *GUIDE TO THE EU-VIETNAM TRADE AND INVESTMENT AGREEMENTS*, 2019. <sup>367</sup> Kittittrakul, Chalerm Sak: *Expert interview with Chalerm Sak Kittittrakul about EU ASEAN free trade relations and alternatives*, 2022. <sup>368</sup> Delegation of the European Union to Vietnam: *GUIDE TO THE EU-VIETNAM TRADE AND INVESTMENT AGREEMENTS*, 2019. <sup>369</sup> Delegation of the European Union to Vietnam: *GUIDE TO THE EU-VIETNAM TRADE AND INVESTMENT AGREEMENTS*, 2019. <sup>370</sup> Chaves, Gabriela, Walter Britto Gaspar, and Marcela Vieira: *Mercosur-EU Free Trade Agreement: Impact Analysis of TRIPS-plus Measures Proposed by the EU on Public Purchases and Domestic Production of HIV and Hepatitis C Medicines in Brazil*, Sep. 2017, [https://www.researchgate.net/publication/331585297\\_Mercosur-EU\\_Free\\_Trade\\_Agreement\\_Impact\\_analysis\\_of\\_TRIPS-plus\\_measures\\_proposed\\_by\\_the\\_EU\\_on\\_public\\_purchases\\_and\\_domestic\\_production\\_of\\_HIV\\_and\\_Hepatitis\\_C\\_medicines\\_in\\_Brazil](https://www.researchgate.net/publication/331585297_Mercosur-EU_Free_Trade_Agreement_Impact_analysis_of_TRIPS-plus_measures_proposed_by_the_EU_on_public_purchases_and_domestic_production_of_HIV_and_Hepatitis_C_medicines_in_Brazil). <sup>371</sup> Chaves, Gabriela, Walter Britto Gaspar, and Marcela Vieira: *Mercosur-EU Free Trade Agreement: Impact Analysis of TRIPS-plus Measures Proposed by the EU on Public Purchases and Domestic Production of HIV and Hepatitis C Medicines in Brazil*, 2017. <sup>372</sup> Fulya BATUR: *Plant Variety Protection & UPOV 1991 in the European Union's Trade Policy: Rationale, Effects & State of Play* (APREBES, Nov. 2021), [https://www.aprebes.org/sites/default/files/2021-11/Aprebes\\_UPOV91-EU\\_EN\\_11-21\\_def\\_0.pdf](https://www.aprebes.org/sites/default/files/2021-11/Aprebes_UPOV91-EU_EN_11-21_def_0.pdf). <sup>373</sup> Kartini, Samon: *Expert Interview with Samon Kartini (GRAIN Indonesia) about EU ASEAN Free Trade Relations and Alternatives*, 2022.

The EU complements the push in negotiations with other measures such as the initiation of the IP Key Southeast Asia forum in 2018 by the European Commission's trade division. The forum is a four-year programme spending millions, "aimed at supporting IP rights protection and enforcement across South East Asia". In June 2021, it organized a "Webinar Series on Plant Variety Protection and UPOV 1991" to provide the public and private sectors in the EU and South East Asia with a platform to discuss the benefits for farmers and breeders of plant variety protection.<sup>374</sup>

The concept of the farmer's privilege is an exemption that the UPOV recognizes in order to balance benefits between farmers and breeders which contracting parties may adopt into national law. Vietnam's law contains such an exemption. However, an article from 2021 compares the Vietnamese regulation with European law, discusses the various criteria that have to be met for the exemption to be applicable (such as farm size and seed variety), and comes to the following conclusion: "Vietnam's Law on Intellectual Property contains the farmer's privilege exemption, yet there are many loopholes regarding this provision, and in reality, its application is limited." For example, the analysis shows that the Vietnamese law, the "IP Law", does not explicitly list the exchanging of seeds among farmers, which is considered to be a historically common practice in Vietnam.<sup>375</sup>

A study by the NGO APREBES also emphasizes, among others, the negative impacts on smallholder farmers that the law implementing UPOV in Vietnam has had: "The PVP in Vietnam has irreversible consequences on public research institutions, provides no real evidence of bolstering R&D (Research and Development) for all crops, negatively impacts seed accessibility, and contributes to the further marginalization of smallholder farmers."<sup>376</sup>

In negotiations with Indonesia and in complementary activities, pushes towards seed privatization are observable. This is why Indonesia for Global Justice sent an open letter signed by almost 90 NGOs to the Indonesian Government and the EU Commission to prevent this.<sup>377</sup> The letter also addresses how UPOV91 jeopardizes food sovereignty, a concept we discuss as an important contribution to more just and sustainable international trade (see Section 4.1.5). The protest of farmers against laws and practices that limits their seed sovereignty has a long history. Agriculture is the second-biggest source of livelihood and employment. One-third (33 percent) of Indonesia's labour force are employed in the agricultural sector. Meanwhile, 93 percent of Indonesia's farmers are small family farms (i.e. smallholder farms) with an average of 0.6 hectares.<sup>378</sup> The organization Grain reports that, between 2003 and 2010, 14 farmers were sued by multinational seed companies in Indonesia for alleged infringement of their IP over seeds.<sup>379</sup>

The EU pushing the standards of the privatization of seeds is not surprising. The European seed sector is the largest exporter in the global seed market.<sup>380</sup>

Regarding the potential effects, as mentioned above, among ASEAN countries, only Singapore and Vietnam are members of UPOV.<sup>381</sup> Therefore, an inter-regional FTA between the EU and ASEAN following the existing policy strategies as the completed bilateral FTAs or FTAs in negotiation would mean that eight ASEAN countries would greatly restrict their farmer's rights to save, produce, and exchange seeds.

Liamchanrun Witoon reports that there is quite some resistance to Thailand's participation in UPOV: "There is consensus in Thailand to join together on this. In [a] parliamentary report to study and evaluate the draft of the CPTPP text, it says, it's clear that the country should have to say no. Only a very small group, the trade association, is supporting it. If you look at the association, the main members are like Monsanto or Syngenta."<sup>382</sup>

A report on an amendment to the 1999 Plant Varieties Protection proposed during RCEP negotiations criticizes how the subjection of farmers in Thailand to UPOV91 would, in practice, mean that Thai farmers preserving, sharing, and diversifying seeds could be criminalized. Indeed, farmers could be fined up to 400,000 baht and/or jailed for up to two years. The report also states that, in Indonesia, although the country is not yet a part of UPOV, the government is already introducing laws in line with it. Farmers have faced jail time of up to ten months and fines of up to 1 million Indonesian rupiahs (2,300 THB) for exchanging and preserving seeds.<sup>383</sup>

It is unclear to what extent these trends can be attributed to policy preparations paving the way for an FTA with the EU, but the voices of civil society in Thailand and Indonesia are loud and clear.

Rachmi Hertanti, former director of Indonesia for Global Justice:

"The privatization of seeds in Indonesia is a major concern for people in Indonesia and the EU is pushing Indonesia to ratify the relevant conventions."<sup>384</sup>

<sup>374</sup> European Union Intellectual Property Office: *EU Experts Highlight Benefits of Plant Variety Protection to Farmers and Breeders in South-East Asia*, 2021. <sup>375</sup> Nguyen, Ho and Katja Lindroos: *The Regulation of Farmer's Privilege Under Vietnamese IP Law and the Law of the European Union, IIC – International Review of Intellectual Property and Competition Law* 52 (30th Mar. 2021). <sup>376</sup> Manalo, Cid Ryan P. and Normita G. Ignacio: *Plant Variety Protection in Practice in Vietnam: The Pains in the Gains Achieved*, Feb. 2021, [https://www.apbrebes.org/sites/default/files/2021-02/PVP%20TPGA\\_Fin.pdf](https://www.apbrebes.org/sites/default/files/2021-02/PVP%20TPGA_Fin.pdf). <sup>377</sup> Both ENDS: *Both ENDS: Civil Society Calls upon EU and Indonesia to Respect the Rights of Indonesia's Farmers*, Both ENDS, Jun. 22 2022, accessed 4th Jul. 2022, <https://www.bothends.org/en/Whats-new/Press/Civil-society-calls-upon-EU-and-Indonesia-to-respect-the-rights-of-Indonesia-s-farmers-/>. <sup>378</sup> Both ENDS: *BRIEFING PAPER The Reasons Why Indonesia Should Not (Be Forced to) Join UPOV*, Apr. 2022, [https://www.bothends.org/uploaded\\_files/document/BriefingPaper\\_EN\\_The\\_reasons\\_why\\_Indonesia\\_should\\_n.pdf](https://www.bothends.org/uploaded_files/document/BriefingPaper_EN_The_reasons_why_Indonesia_should_n.pdf). <sup>379</sup> GRAIN: *Asia under Threat of UPOV 91*, Dec. 3 2019, accessed 20th Jul. 2022, <https://grain.org/en/article/6372-asia-under-threat-of-upov-91>. <sup>380</sup> Euroseed: *European Seed Sector: World Leader in Seed Trade*, accessed 20th Jul. 2022, <https://euroseeds.eu/subjects/seed-trade/>. <sup>381</sup> UPOV: *MEMBERS OF THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS*, 3rd Nov. 2021, [https://www.upov.int/edocs/pubdocs/en/upov\\_pub\\_423.pdf](https://www.upov.int/edocs/pubdocs/en/upov_pub_423.pdf). <sup>382</sup> Kijtiwatchakul, Kannikar and Liamchanrun Witoon: *Careco Experteninterview mit Kannikar Kijtiwatchakul und Liamchanrun Witoon zu EU ASEAN Freihandelsbeziehungen und Alternativen*, 2022. <sup>383</sup> Indigenous Women Network of Thailand (IWNT): *New Law and Trade Agreement Will Diminish Farmers' Control over Seeds Prachatai English*, Apr. 4 2018, accessed 19th Jul. 2022, <https://prachatai.com/english/node/7704>. <sup>384</sup> Hertanti, Rachmi: *Expert interview with Rachmi Hertanti about EU-ASEAN free trade relations and alternatives*, 2022.

Nengnoi Saeseng, Chairwoman of the Indigenous Women's Network of Thailand:

"The exchange of seeds is very common among indigenous people. We exchange and share the seeds for our food security and for the survival of our seeds. [...] The exchange

of seeds is not only a way to continue our way of life and our culture, but it is also a way to sustain and maintain our food diversity and food security and food sovereignty. We are very concerned about the passing of the new seed policy by our government."<sup>385</sup>

<sup>385</sup> Indigenous Women Network of Thailand (IWNT): *New Law and Trade Agreement Will Diminish Farmers' Control over Seeds*, 2018.

## 4 A LEFT VISION OF TRADE

Our contribution to a left vision of EU-ASEAN trade relations is led by a multitude of existing alternative models and builds upon a large body of knowledge from movements, activists, and scholars from different perspectives. Of course, this chapter stands on the shoulders of giants — we do not have to reinvent the wheel. So many fruitful ideas on progressive alternative trade relations have been articulated. It is, rather, a question of visibility. Critics of free trade do not speak with one voice. They emphasize different aspects and come from different starting points.

In exploring the mosaic of visions and alternatives during this research, many interviewees referred to existing or previous elements of progressive legislation. The conundrum of radical ideas of transformation lies with the embedding of visionary alternatives into current conditions. As the experts Anne Bundschuh and Fabian Flues put it: “How far one deviates from models or WTO rules is a matter of consideration, whether one wants to tie in with realistic feasibility. How far from feasibility do we want to discuss?”<sup>386</sup>

Giving an answer to this question in our investigation, we decided to stress the contingency of visions and alternatives. This means starting with the obstacles of realpolitik and ending with more or less revolutionary visions of a radical shift; a transformation or the sketch of completely different realities while trying to link it back to existing politics.

Not all of the following concepts and approaches are holistic, comprehensive, or ready-to-apply. However, they represent a particular point of debate in their field. We describe a selection from the multitude of concepts and visions that we consider to have significant potential impacts for EU-ASEAN trade relations. Even though the concepts have different focal points, most share common analytical premises, which we were trying to take on during the preceding sections. Accordingly, it does not seem necessary to us to pick up these points during the following presentation.

### 4.1 A MULTITUDE OF ALTERNATIVE PERSPECTIVES AND VISIONS

#### 4.1.1 Existing Pieces of Progressive Legislation

The international trade regime offers quite a few legislative elements that can be considered as a step to social-ecological transformation of trade regimes. At the same time, even a few steps in the right direction might not change the underlying situation at all, especially when the distance between the starting point and the goal is far too long to ever be covered on foot. The goal is inaccessible, at least without fundamentally changing the rules of the game. Nevertheless, progressive trade and investment regulations can provide information and important lessons.

We decided to take a closer look at the Generalized System of Trade Preferences (GSP) as it started from a

progressive idea and remains relevant in trade relations between the EU and ASEAN. Our Philippine interviewee mentioned GSP as one of the most pressing topics in trade relations with the EU. By looking at the GSP in detail, we are very aware of the shortcomings and systematic problems of this instrument. Nevertheless, we consider it to be one of the most obtainable and obvious alternatives to FTAs between the EU and ASEAN countries or even an inter-regional FTA.

The idea of a GSP was born in the 1960s during negotiations for the so-called Kennedy Round of GATT. By this time, one favoured the assumption that developing countries might need to have much easier one-sided market access to the Global North to close the trade gap.<sup>387</sup> The developing countries themselves would not have to reduce import barriers or tariffs.

In 1970, developing countries were finally successful in establishing the GSP, pushing foremost the US and the European Economic Community to remove import duties on imports from developing countries. It was not until 1979 when the Enabling Clause was adopted into the GATT framework as a legal basis for the GSP.<sup>388</sup>

The Enabling Clause is one of the most important exceptions to the general WTO principle of so called “non-discriminatory” market access. However, the EU and US implemented the preference-giving with a number of restrictions, import ceilings, and bureaucratic provisions. In the evaluation of this instrument, the UNCTAD attributed the weak economic impact for developing countries to their strict rules of implementation: “The preferences granted were, in reality, neither general nor a system, but an arbitrary ragbag of nationally determined concessions.”<sup>389</sup>

Today, the EU GSP is described by the EU Commission as a “core pillar of the EU’s commitment to the role of trade in sustainable development.”<sup>390</sup> The GSP is claimed as an instrument to “eradicate poverty, stimulate growth and jobs, [and] promote respect for human rights and labour rights and integrate them into global value chains.”<sup>391</sup> Here, one could see a nexus of foreign policy ambitions for human rights advocacy and sustainable development. In the EU’s track record on the SDGs, the GSP mechanism and the claim to be the most open market in the world were both components of the 2030 implementation agenda.<sup>392</sup>

<sup>386</sup> Bundschuh, Anne and Fabian Flues: *Expert interview with Anne Bundschuh and Fabian Flues about EU ASEAN free trade relations and alternatives*, 2022. <sup>387</sup> Toye, John: *UNCTAD at 50: A Short History*. <sup>388</sup> WTO: *Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries*L/4903, 1979, accessed 15th Sep. 2022, [https://www.wto.org/english/docs\\_e/legal\\_e/enabling\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/enabling_e.pdf). <sup>389</sup> Toye, John: *UNCTAD at 50: A Short History*. <sup>390</sup> GSP Hub: *General GSP*, accessed 14th Sep. 2022, <https://gsphub.eu/about-gsp/standard-gsp>. <sup>391</sup> General Secretariat of the Council: *EU Strategy for Cooperation in the Indo-Pacific - Council Conclusions*, 2021. <sup>392</sup> European Commission: *Sustainable Development Goals and the Agenda 2030* Memo European Commission – European Commission, 25th Sep. 2015, accessed 21st Sep. 2022, [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_15\\_5709](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_5709).

The GSP became an integrated tool of European foreign policy in order to slowly push countries to adopt further environmental and social standards. Since the introduction of GSP, the EU has constantly been trying to pull on ASEAN countries for further GSP compliance. This would strengthen economic ties between the countries as a basis for future FTA negotiations.<sup>393</sup> As we have seen before, the Philippines is

an outstanding example, as they are looking to renew their GSP+ status while also trying to get involved in FTA negotiations.<sup>394</sup>

In the three types of beneficiary mechanisms, the standard GSP, GSP+, and the sub-programme EBA (Everything But Arms, a special agreement for LDCs), six out of ten ASEAN member states are benefiting:<sup>395</sup>

Standard GSP (total 11)	GSP+ (total 8)	Everything but Arms (total 46)
Indonesia	Philippines [75.9 percent]	Cambodia [94.6 percent]
Vietnam*		Laos [89.0 percent]
		Myanmar [95.5 percent]

(Total number of countries worldwide eligible for this provision)  
[utilization of eligible EU imports under general GSP provisions from this country 2019]  
\*after ratification of the EVFTA, Vietnam might no longer be eligible for GSP.

The Standard GSP programme means a “partial or full removal of customs duties on two-thirds of tariff lines.” The GSP+ programme offers a reduction of custom duties to zero, if a country implements additional international human and labour rights conventions as well as agreements on environmental and climate aspects. The EBA initiative offers duty-free and quota-free access for all products from LDCs under the UN classification.<sup>396</sup> The GSP mechanism ends if a country has other preferential trade agreements with the EU, as was the case when Ecuador joined the EU’s trade agreement with Colombia and Peru.<sup>397</sup>

An evaluation of the existing scheme by the EU Commission showed that nearly half of the import volume under the GSP is created by textiles and clothing, with most coming from South Asian countries such as Vietnam, Indonesia, and Cambodia.<sup>398</sup> The EU’s documentation on the utilization of these trade preferences shows that the vast majority of developing countries’ trade volume with the EU28 benefitted from the GSP.<sup>399</sup>

However, when a certain product group of EU imports exceeds a specific point, causes serious competitive difficulties, or comes with dumping prices, it can lose preferential market access and original tariff rates are applied.<sup>400</sup> This was the situation when, in an extraordinary step, the European Commission decided to introduce the so-called safeguard mechanism against rice imports from Myanmar and Cambodia in 2019. According to the Commission’s investigation, domestic EU rice growers like Italy were endangered by the increasing imports and low prices from the two ASEAN member states under EBA.<sup>401</sup> In another important decision, the EU temporarily withdrew the overall tariff preferences for Cambodia’s EBA beneficiaries due to human rights violations.<sup>402</sup>

The EU scheme for generalized preferences is about to fade out at the end of 2023. Hence, a renewal of the system has been debated and is about to be adopted by European institutions. This could be considered

a policy space for progressive intervention. Yet, the proposal for a new scheme of generalized preferences maintains most of the existing system. In addition, it is asking for developing countries to comply with five more human rights and environmental conventions, including the Paris Climate Agreement. There might be closer monitoring of compliance with the increasing participation of civil society and more transparency. Overall, there will be more incentives for countries to achieve GSP+ status.

The effect of the GSP programme on ASEAN countries might differ greatly, as the economic situation is very heterogeneous. From the perspective of social movements in the Philippines, experience is double-edged. The GSP offers leverage towards local governments to implement progressive international legislation, but the EU’s role in it turned out to be disappointing, as union leader Josua Mata explained:

“We supported the GSP+ when it was being deliberated in the EU Parliament. Even when progressive forces from Spain were trying to stop it, we at SENTRO

<sup>393</sup> Cuyvers, Ludo: *The Sustainable Development Clauses in Free Trade Agreements of the EU with Asian Countries: Perspectives for ASEAN?*, *Journal of Contemporary European Studies* 22, no. 4 (2nd Oct. 2014): 427–449. <sup>394</sup> Philippine News Agency, Twitter, and Twitter: *GSP+ Extension, Free Trade Agreement with EU Eyed*, Feb. 5 2022, accessed 10th May 2022, <https://www.pna.gov.ph/articles/1167144>. <sup>395</sup> European Commission: *List of GSP Beneficiary Countries*, Jan. 1, 2022, accessed 14th Sep. 2022, <https://circabc.europa.eu/ui/group/f243659e-26f5-44d9-8213-81efa3d92dc7/library/83191464-a9b5-4973-a3a9-fe17e57d68e8/details>. <sup>396</sup> European Commission: *Generalised Scheme of Preferences*, accessed 14th Sep. 2022, [https://policy.trade.ec.europa.eu/development-and-sustainability/generalised-scheme-preferences\\_en](https://policy.trade.ec.europa.eu/development-and-sustainability/generalised-scheme-preferences_en). <sup>397</sup> Schneider, Bernd: *Expert interview with Bernd Schneider on EU/ASEAN free trade relations and alternatives*, 2022. <sup>398</sup> European Parliamentary Research Service: *New EU Scheme of Generalised Preferences, Briefing* (Jul. 2022): 11. <sup>399</sup> European Commission: *CIRCABC*, Dec. 1, 2020, <https://circabc.europa.eu/ui/#>. <sup>400</sup> European Union: *Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 Applying a Scheme of Generalised Tariff Preferences and Repealing Council Regulation (EC) No 732/2008 OJ L*, vol. 303, 2012, accessed 14th Sep. 2022, <http://data.europa.eu/eli/reg/2012/978/oj/eng>. <sup>401</sup> European Commission: *Press Release: EU Imposes Safeguard Measures on Rice from Cambodia and Myanmar* Text/European Commission – European Commission, Jan. 16 2019, accessed 14th Sep. 2022, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_427](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_427). <sup>402</sup> European Commission: *Trade/Human Rights: Withdrawal of Cambodia’s Preferential Access to the EU Market*, Factsheet, Feb. 12, 2020, accessed 15th Sep. 2022, [https://trade.ec.europa.eu/doclib/docs/2020/february/tradoc\\_158631.pdf](https://trade.ec.europa.eu/doclib/docs/2020/february/tradoc_158631.pdf).

supported it, because the GSP+, when implemented properly, would have been a very good leverage for [the] EU and us to use against the Philippine government, so that they really implement all conventions they are supposed to, which would, of course, imply the ILO core conventions. We've met several GSP+ missions over several years. We strongly participated in its monitoring, we've submitted several testimonies and a couple of reports about the country's ineffectiveness and reluctance. We have shown early on, I think it was the first GSP monitoring team, we actually invited them to join our picket lines, the picket lines of the striking tuna canning factory workers in General Santos, to show them that there is a massive and even systematic violation of workers' rights. Particularly in the tuna industry. (...) That continuous violation was never considered by the EU's GSP+ monitoring. (...) I realised there is a fundamental reason for the EU's inability to enforce GSP+ because the programme does not have clear procedures of how to review or withdraw or suspend the benefit it provided. It is because the EU gives the premium to trade more than human rights. Human rights are just the icing on the cake."<sup>403</sup>

Trade expert Joseph Purugganan also stresses that, even if the GSP+ could have been suitable to support the implementation of human and labour rights, the EU has put itself in a dilemma by trying to increase trade and maintain its image as a human rights supporter at the same time, while not making a clear choice for the latter. The scheme could have at least put the Duterte government in a defensive position when it came to human right violations in the Philippines. "We were saying at the OECD that the deteriorating human rights situation in the Philippines should have compelled the EU at the very least to pretend to withdraw the preferences. (...) This raises the question [of] whether or not the EU was serious at the beginning to use its leverage, to leverage its own market to allow imports from the Philippines coming in, in the name of human rights."<sup>404</sup> Instead of learning lessons from the shortcomings of GSP and the potential use of leverage, for example for local labour associations and others, the EU seems to write a continuous history of missed opportunities or unwillingness to address sustainability issues in trade.

The GSP might be a potential and, in some ways, successful instrument to give preferential market access to developing and LDCs and does play an important role for some economies. Nonetheless, as an instrument for envisioning a social transformation by itself, it contains a number of shortcomings. Firstly, the instrument does not address the problems of free trade in general. Instead, it uses trade incentives to encourage countries to pursue sustainable development. Secondly, it keeps putting developing countries in the position of suppliers (in most cases, of cheap textiles and clothing) of the Global North. Thirdly, it still carries the danger of sanctioning successful economic

growth by revoking the GSP when it leads to the loss of the suitable WTO classification.

So, it is a tool to incentivize the ratification of human rights and labour declarations in support of sustainable development and growth, but only where it does not become too competitive to European businesses. So, yes, it is a suitable alternative to FTAs because it does not come with some of the FTA disadvantages for ASEAN countries. But it also contains problems by not pushing an alternative economic model, for example, by giving special incentives to cooperatives or sustainable and green goods.

It does not take into account the role of the Global North in an economic demand for unsustainable goods. One has to keep in mind that it was the developing countries fighting for the introduction of the GSP. The way in which it is used now might appear more as an inconsistent and untrustworthy lecturing tool for the Global South than an actual desirable steering effect.

Without remedying all the problems, it seems possible that a reformed GSP programme with a clear commitment to human rights could provide an alternative to FTAs.

#### 4.1.2 Chain of Custody: The Corporate Sustainability Due Diligence Proposal

Having learned before that the agenda of FTAs is very much pushed by multinational or transnational corporations (TNCs), their concentration of power is of major concern for the Left. A more radical approach to socio-ecological transformation has to come up with ideas to control, regulate, and hold TNCs responsible, while posing the question of property ownership. This means, assessing threats for human rights and the environment in the business practices of TNCs and holding them accountable. One example of visionary legislation which gained public attention lately was the debate on corporate sustainability due diligence. On the European level, starting with France in 2017, a number of countries from the Global North introduced national legislation on corporate due diligence.<sup>405</sup>

Among European NGOs and activists there has been the impression that a strong regulation on corporate sustainability due diligence could effectively address and mitigate many of the devastating consequences and side effects accepted or caused by the international free trade regime and European trade policy.

In 2021, Germany approved a regulation on corporate due diligence.<sup>406</sup> It was criticized for its weak boundaries, short reach, and lack of ambition to shape

<sup>403</sup> Mata, Josua: *Expert interview with Josua Mata about EU ASEAB free trade relations and alternatives*, 2022. <sup>404</sup> Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives*, 2022. <sup>405</sup> Danish Institute for Human Rights (DIHR): *Human Rights Due Diligence | National Action Plans on Business and Human Rights*, Nov. 3 2017, accessed 12th Sep. 2022, <https://globalnaps.org/issue/human-rights-due-diligence/>. <sup>406</sup> Bundesministerium für Arbeit und Soziales: *BMAS - Sorgfaltspflichtengesetz*, [www.bmas.de](http://www.bmas.de), accessed 12th Sep. 2022, <https://www.bmas.de/DE/Service/Gesetze-und-Gesetzesvorhaben/gesetz-unternehmerische-sorgfaltspflichten-lieferketten.html>.

the responsibility of German companies on international markets.<sup>407</sup>

Therefore, a lot of attention and hope was invested in the European Commission's proposal in February 2022 to regulate these issues on a European level with a wider scope and stronger enforcement. The latest regulatory approach on due diligence is, unlike voluntary corporate sustainability standards, legally binding and to a certain extent enforceable.<sup>408</sup> Bernd Schneider even expressed the opinion that a strong European corporate sustainability due diligence, together with strong and serious TSD-chapters in FTAs, could actually be seen as a "game changer".<sup>409</sup>

Accordingly, the Initiative for a European-level regulation, which is supported by more than 115 European organizations, praised the Commission's proposal as a "stepping stone" towards a human and environmentally friendly economy.<sup>410</sup> The major improvement made in the proposal is the introduction of a civil liability regime for EU companies — and even some non-EU companies — in their supply chains. At the same time, substantial criticism by almost 500,000 contributions in the public hearing of the EU proposal have been articulated by citizen and activists.<sup>411</sup>

But what could an effective system of corporate due diligence look like? The European civil society initiative identifies massive potential for loophole fixing as well as clarification and extending the scope and effectiveness of environmental and human rights protection, which we would like to take up at this point.<sup>412</sup>

The radius of the directive should not just apply to large and very large corporations. The finance sector also has to contribute to its responsibilities, which could have huge impact with far-reaching consequences through investment decisions. Further, the reference point for human rights standards would have to imply certain important ILO conventions and would need to ensure that workers in corporate supply chains enjoy the right to a fair living wage. Environmental due diligence would need to be respected by a general clause on prevention, precaution, damage elimination, and a "polluter pays" principle. Responsibility must not be shifted along the value chain. Instead, the role adaptation has to be regulated within the responsibility of the procurement and purchasing actors. Proving measures, assessing risks, and strict documentation also have to be part of the transparency duties for corporations. In cases of violation, comprehensive consultations of stakeholders and those affected must be regulated in advance. Strong and effective sanctions against perpetrators have to be in place as well. The path towards enforcement and a potential conviction only works with a fair burden of proof balance when there is access to information for claimants. Civil society organizations like NGOs and labour unions should be able to support lawsuits and provide resources.<sup>413</sup>

The sheer scale of civil society intervention and debate in the EU's process for corporate sustaina-

bility due diligence is incredible and seems to still be growing.

Of course, on a more international level, the importance of pushing for environmental and human rights compliance by multinational companies has been recognized. In 2011, the UN Human Rights Council approved the "Guiding Principles on Business and Human Rights". Meanwhile, in the same year, the OECD updated its "Guidelines for Multinational Enterprises". Both of these define a framework of corporate responsibility for human rights.<sup>414</sup> However, these guiding principles and guidelines work mostly as a non-binding self-commitment of corporations on a voluntary basis.

Right from the beginning, civil society organizations and human rights groups — especially from the Global South — were calling for internationally binding corporate obligations instead of corporate self-regulation.<sup>415</sup> A voluntary approach to appeal to business was not considered workable.

Due to the initiative of countries from the Global South, an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG) was established by the UN Human Rights Council in 2014.<sup>416</sup> This was a "historic" but highly contested step, as it "touched the nerves of corporate capitalism".<sup>417</sup> In the face of resistance, ignorance, or indifference from industrialized countries like the US, Canada, and Australia, the working group made progress towards a draft for negotiations on a legally-binding treaty.<sup>418</sup>

In no way does the EU play a supportive role to the OEIGWG negotiations, but rather attempts to thwart the process.<sup>419</sup> Key EU members like France, Germany,

<sup>407</sup> Initiative Lieferkettengesetz: *Analyse: Was Das Neue Gesetz Liefert – Und Was Nicht*, Jun. 2021, accessed 9th Sep. 2022, [https://lieferkettengesetz.de/wp-content/uploads/2022/04/Initiative-Lieferkettengesetz\\_Analyse\\_Was-das-neue-Gesetz-liefert.pdf](https://lieferkettengesetz.de/wp-content/uploads/2022/04/Initiative-Lieferkettengesetz_Analyse_Was-das-neue-Gesetz-liefert.pdf). <sup>408</sup> Rudloff, Bettina: *Sustainable International Value Chains: The EU's New Due Diligence Approach as Part of a Policy Mix*, *Stiftung Wissenschaft und Politik (SWP) Working Paper Nr. 2*, June 2022 (Jun. 2022): 21. <sup>409</sup> Schneider, Bernd: *Expert interview with Bernd Schneider on EU ASEAN free trade relations and alternatives*, 2022. <sup>410</sup> Initiative Lieferkettengesetz: *Stellungnahme zum Vorschlag der EU-Kommission* (Apr. 2022): 39. <sup>411</sup> European Coalition for Corporate Justice: *Over Half a Million People across the Globe Tell the EU to Hold Business Accountable*, *ECCJ*, 23rd Feb. 2021, accessed 18th Sep. 2022, <https://corporatejustice.org/news/over-half-a-million-people-across-the-globe-tell-the-eu-to-hold-business-accountable/>; EUROPEAN COMMISSION and DIRECTORATE-GENERAL JUSTICE AND CONSUMERS: *Sustainable Corporate Governance Initiative. Summary Report – Public Consultation*, n.d., file:///home/lohnarbeitcarecol/Downloads/Sustainable-corporate-governance-summary-report-opc.pdf. <sup>412</sup> Initiative Lieferkettengesetz: *Stellungnahme zum Vorschlag der EU-Kommission*, 2022. <sup>413</sup> Initiative Lieferkettengesetz: *Stellungnahme zum Vorschlag der EU-Kommission*, 2022. <sup>414</sup> United Nations Human Rights Council: *Guiding Principles on Business and Human Rights* (HR/PUB/11/04, 2011, accessed 12th Sep. 2022, [https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)). <sup>415</sup> Uribe, Daniel and Danish: *Designing an International Legally Binding Instrument on Business and Human Rights* (Geneva, 2020), accessed 12th Sep. 2022, <https://www.southcentre.int/wp-content/uploads/2020/07/Designing-an-International-Legally-Binding-Instrument-on-Business-and-Human-Rights-REV.pdf>. <sup>416</sup> United Nations Human Rights Council: *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development* (Koninklijke Brill NV, 13th Jul. 2014), accessed 13th Sep. 2022, <https://primarysources.brillonline.com/browse/human-rights-documents-online/promotion-and-protection-of-all-human-rights-civil-political-economic-social-and-cultural-rights-including-the-right-to-development;hrdhrd99702016149>. <sup>417</sup> Brennan, Brid and Gonzalo Berrón: *Touching a Nerve*, 2022. <sup>418</sup> Krajewski, Dr Markus: *Third Draft of the UN Treaty on Business and Human Rights* (n.d.): 28. <sup>419</sup> Brennan, Brid and Gonzalo Berrón: *Touching a Nerve*, 2022.

and Italy voted against the initial resolution, instead favouring voluntary mechanisms like the UN Guiding Principles on Business and HR. Joseph Purugganan criticizes this point sharply: “Since the vote and in succeeding sessions of the open-ended intergovernmental working group sessions, the EU has taken a clear stand to oppose the treaty process arguing from the first session in 2015 (...).”<sup>420</sup>

Now, the EU observes the preparations and the negotiation process from the side-lines. Meanwhile, China, for example, actively participates in the negotiations and pushes the international debate to set global standards for supply-chain due diligence.<sup>421</sup> Nevertheless, in 2018, a civil society counter-forum was organized by the Asia-Europe People’s Forum accompanying the EU-Indonesia negotiations. In its demands for just trade and corporate accountability, the conference put hope into the process for a Binding Treaty on the UN level.<sup>422</sup>

In 2021, the OEIGWG concluded a third revised draft on a legally binding instrument.<sup>423</sup> This led to harsh critiques from grassroots initiatives who claimed that the draft would fail the initial idea of being a binding treaty.<sup>424</sup> Nevertheless, civil society advocates also acknowledged the success that even the “process to establish a Binding Treaty on TNCs has already busted the myth that TNCs are ‘untouchable’”.<sup>425</sup>

Independently, an enormous amount of civil society organizations and human rights advocacy groups launched the Global Campaign to Dismantle Corporate Power and Stop Impunity. They introduced a much more visionary and radical attempt compared to the EU’s proposal and the OEIGWG’s draft on corporate due diligence. The Global Campaign suggested a so-called “people’s treaty”, an approach which tries to contribute to the vision of an “international law ‘from below’”.<sup>426</sup>

Despite the fact that the proposal for the “people’s treaty” was already published in 2014, we found it a very comprehensive and well-elaborated attempt within the mosaic of alternatives in the debate of a global community. It has to be noted that the majority of driving forces in the campaign and the working group on this alternative contributed from a South American and African perspective; only a few came from South East Asia.

The people’s treaty aims to be a counter proposal to the international “architecture of impunity” for TNCs.<sup>427</sup> Following its analysis, international human rights law and UN-level mechanisms are shaped according to the interests of those corporations. TNCs want to avoid a universal, legally binding framework on an international level and cemented this status by building up the Bretton-Woods institutions, the WTO, and various trade and investment treaties and agreements.

For the purposes of our study, it is valuable to present some key aspects of the treaty at this point: The people’s treaty presents a radical alternative concept of a people’s law, which means taking back international law into the hands of social movements and resistance struggles.<sup>428</sup>

Social movements supporting the treaty call on the UN General Assembly to take up the cause and to establish the treaty as a binding norm in international law. Correspondingly, it has to be adopted by nations and institutions into their own legislation. But the treaty also calls for a new international tribunal, which should have the power to file complaints, investigate, and convict potential human rights violations by TNCs.<sup>429</sup>

The people’s treaty goes an important step further than just punishing violations by corporations and, instead, proposes a kind of new international corporate liability. It also holds states responsible when they are involved, either by affirming and enabling violations through trade and investment agreements or by tolerating or ignoring wrongdoing.

In the area of trade and investment provisions, the treaty clarifies legal certainty by declaring a superiority of international human rights law, international environmental law, and international labour law over trade and investment norms. Invoking the superior human rights law means effectively rejecting WTO legal principles like the ISDS mechanisms, the “most-favourable nation” principle, the “fair and equal treatment” principle, and others as soon as they come into conflict with the national legislature of a TNC host country or with international human rights norms.

The legal framework of trade and investment agreements, such as legal certainty for investment, has the precondition of full compliance with human rights provisions. Similarly, sustainability clauses in FTAs and investment agreements are to be the presupposition for the subordinated trade and investment chapters.<sup>430</sup>

As Joseph Purugganan puts it, the previous example of exporting banned chemicals ties up closely with the issue of corporate accountability in the Binding Treaty:

<sup>420</sup> Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives*, 2022. <sup>421</sup> Groneweg, Merle: *Factsheet – Supply Chain Due Diligence: China’s Role in the International Debate and Setting of Standards*, Power Shift – Verein für eine ökologische solidarische Energie- & Weltwirtschaft e.V. (Dec. 2019), accessed 12th Sep. 2022, <https://power-shift.de/wp-content/uploads/2020/01/Factsheet-China-And-Supply-chain-due-diligence.pdf>. <sup>422</sup> Indonesia for Global Justice: *Asian and European campaigners vow to fight destructive trade deals*, 2nd Mar. 2018, accessed 1st Jun. 2022, <https://igj.or.id/asian-and-european-campaigners-vow-to-fight-destructive-trade-deals-and-push-for-a-binding-un-corporate-treaty/>. <sup>423</sup> *Third Revised Draft: Legally Binding Instrument to Regulate, International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises*, 2021, accessed 12th Sep. 2022, <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf>. <sup>424</sup> Global Campaign to Reclaim Peoples’ Sovereignty, *Dismantle Corporate Power and Stop Impunity (Global Campaign): Binding Treaty: Revised Third Draft Is Ineffectual in Regulating Human Rights Violations by Companies | Campaign Statement Via Campesina English*, 9th Sep. 2021, accessed 12th Sep. 2022, <https://viacampesina.org/en/binding-treaty-revised-third-draft-is-ineffectual-in-regulating-human-rights-violations-by-companies-campaign-statement/>. <sup>425</sup> Brennan, Brid and Gonzalo Berrón: *Touching a Nerve*, 2022. <sup>426</sup> Global Campaign to Reclaim Peoples’ Sovereignty, *Dismantle Corporate Power and Stop Impunity: International Peoples Treaty on the Control of Transnational Corporations*, 2014, accessed 12th Sep. 2022, <https://www.stopcorporateimpunity.org/wp-content/uploads/2016/11/PeoplesTreaty-EN-mar2015-1.pdf>. <sup>427</sup> Global Campaign to Reclaim Peoples’ Sovereignty, *Dismantle Corporate Power and Stop Impunity: International Peoples Treaty on the Control of Transnational Corporations*, 2014. <sup>428</sup> Global Campaign to Reclaim Peoples’ Sovereignty, *Dismantle Corporate Power and Stop Impunity: International Peoples Treaty on the Control of Transnational Corporations*, 2014. <sup>429</sup> Global Campaign to Reclaim Peoples’ Sovereignty, *Dismantle Corporate Power and Stop Impunity: International Peoples Treaty on the Control of Transnational Corporations*, 2014. <sup>430</sup> Global Campaign to Reclaim Peoples’ Sovereignty, *Dismantle Corporate Power and Stop Impunity: International Peoples Treaty on the Control of Transnational Corporations*, 2014.

“We are hoping for stronger regulations at the international level that seek to penalize companies and hold them accountable for violations will be in place.”<sup>431</sup>

In a nutshell, the people’s treaty is an elaborate, detailed, and compelling counter narrative to the international WTO and FTA-based free-trade regime, created by hundreds of international organizations and transnational networks. Since its introduction in 2014, it has not received the attention it deserves. However, it does not stand alone. It is accompanied by multiple initiatives from international civil society organizations like the People’s Trade Agenda, published by the Philippine-based NGO IBON International.<sup>432</sup> Other examples include the principles for an Alternative Investment Framework and the initiative for the Alternative Trade Mandate.<sup>433</sup> Taken together, this corpus of precisely spelled out ideas constitute an important cornerstone of international left visions and alternatives as a part of a social-ecological transformation.

As mentioned, the broad involvement of civil society organizations in the European debate for Corporate Sustainable Due Diligence also has huge potential to better incorporate sustainability goals. Given this potential, the attempt should not stop there. It should aim to establish visions and alternatives to the free-trade paradigm. Due diligence regulations combine effective implementation across policy fields and trade and investment agreements with basic human and social rights as well as environmental aims. In contrast to WTO regulations and FTAs, due diligence regulations are aimed at value chains regardless of their geographic location.<sup>434</sup> Therefore, this investigation sees strong reason that this would also affect the EU’s trade and investment relationship and value chains with ASEAN countries.<sup>435</sup>

### 4.1.3 Degrowth

The so-called “degrowth” approach has been debated as an umbrella term for numerous concepts.<sup>436</sup> It is broadly understood as an organized throttling down of specific economic sectors. It assumes that humanity has to admit it is massively overshooting planetary boundaries without having any working concept to correct course. Coming from European schools of ecological economics, most theoretical parts and analytical frameworks started with an acknowledgment of the climate crisis.<sup>437</sup> The growing relevance of the degrowth approach, in this context, was underlined by its explicit mention in the latest report of the Intergovernmental Panel on Climate Change.<sup>438 439</sup>

In our study, the degrowth debate is only to be mentioned in those parts which refer to climate justice, international trade, and development. Rather than a coherent concept, the degrowth approach can be characterized as an interconnection of debates. degrowthers seeks to debunk the myth of green growth under the paradigm of global capitalism by showing that the promised decoupling of global climate reactive emissions from economic growth is

not working or, at least, is not working fast enough to have a substantial contribution to preventing the most devastating effects of the climate catastrophe.<sup>440</sup>

Degrowth scholar Jason Hickel’s initial conclusion is that there is a strong causal relationship between the growth in global GDP and specific disastrous ecological consequences. The idea of green growth is to overcome the climate crisis by using the remaining carbon budget until up to 1.5°C to 2°C of global warming to develop negative-emission technologies and more efficient ways of using energy and resources. In contrast, degrowth is defined as a “planned reduction of energy and resources”.<sup>441</sup>

People might assume that GDP reflects a specific dimension of growth; one which equals wealth and prosperity. GDP is considered by degrowth advocates to be inappropriate to indicate society’s sustainable wealth. Rather, it reflects the consumption of energy and materials.<sup>442</sup> Degrowth pleads for a reduction of the throughput of energy and resources and attempts to connect these aspects by focusing on people’s needs. In doing so, it asks which sectors of the economy are actually improving human well-being and contributing to a balanced distribution of wealth. This means that degrowth only works with strong redistributive measures both within countries as well as on a global scale.<sup>443</sup>

The degrowth agenda also advocates for a reduction in weekly working hours. This does not only try to prevent unemployment but also to improve quality of life, labour conditions, and care-taking possibilities.<sup>444</sup> More importantly, degrowth questions the implicit, common understanding of economic growth as something positive and even natural.<sup>445</sup> Degrowth argues

<sup>431</sup> Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives*, 2022. <sup>432</sup> IBON International: *People’s Trade Agenda*, 2015, accessed 16th Nov. 2022, <https://iboninternational.org/wp-content/uploads/attachments/Peoples%20Trade%20Agenda%20PB.pdf>; Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>433</sup> Alternative Trade Mandate: *Trade: Time for a New Vision. The Alternative Trade Mandate*, 2013, accessed 16th Nov. 2022, [https://www.s2bnetwork.org/wp-content/uploads/2013/11/trade-time\\_for\\_a\\_new\\_vision1.pdf](https://www.s2bnetwork.org/wp-content/uploads/2013/11/trade-time_for_a_new_vision1.pdf). <sup>434</sup> Rudloff, Bettina: *Sustainable International Value Chains: The EU’s New Due Diligence Approach as Part of a Policy Mix*, 2022. <sup>435</sup> Our interview partners mentioned the significance and attention which is given to these regulations in their countries, see, for example, Hertanti, Rachmi: *Expert interview with Rachmi Hertanti about EU-ASEAN free trade relations and alternatives*, 2022. <sup>436</sup> Kallis, Giorgos et al.: *Research On Degrowth, Annual Review of Environment and Resources* 43, no. 1 (2018): 291–316. <sup>437</sup> Treu, Nina and Matthias Schmelzer: *Degrowth in Movement(s): Exploring Pathways for Transformation* (Lanham, UNITED STATES: John Hunt Publishing, 2020), accessed 7th Sep. 2022, <http://ebookcentral.proquest.com/lib/subhh/detail.action?docID=6190584>. <sup>438</sup> Parrique, Timothée: *Degrowth in the IPCC AR6 WGIII*, 7th May 2022, accessed 7th Sep. 2022, <https://timotheeparrique.com/degrowth-in-the-ipcc-ar6-wgiii/>. <sup>439</sup> Intergovernmental Panel on Climate Change (IPCC): *IPCC AR6 Working Group III Full Report* (2022, n.d.), accessed 7th Sep. 2022, [https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC\\_AR6\\_WGIII\\_Full\\_Report.pdf](https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_Full_Report.pdf). <sup>440</sup> Hickel, Jason: *What Does Degrowth Mean? A Few Points of Clarification Globalizations* 18, no. 7 (3rd Oct. 2021): 1105–1111. <sup>441</sup> Hickel, Jason: *What Does Degrowth Mean?*, 2021. <sup>442</sup> As an alternative best practice: Bhutan has implemented the concept of Gross National Happiness (GNH) as a guideline for assessing public policy measures and including decisions of large effects on national economy. See United Nations: *Gross National Happiness Index, Sustainable Development Knowledge Platform*, accessed 5th Sep. 2022, <https://sustainabledevelopment.un.org/index.php?page=view&type=99&nr=266&menu=1449>. <sup>443</sup> Guzman, Rosario: *Who Is Afraid of Degrowth? A Global South Economic Perspective*, IBON Foundation, 12th Oct. 2021, accessed 14th Jun. 2022, <https://www.ibon.org/who-is-afraid-of-degrowth-a-global-south-economic-perspective/>. <sup>444</sup> Hickel, Jason: *What Does Degrowth Mean?*, 2021. <sup>445</sup> Schmelzer, Matthias: *The Hegemony of Growth: The OECD and the Making of the Economic Growth Paradigm* (Cambridge: Cambridge University Press, 2016).

that growth always comes with an increase in the throughput of energy and resources.<sup>446</sup> Opponents of the concept might mistake degrowth with recession. This is, in fact, a misleading interpretation as they are different words with different meanings. Recessions are not pre-planned, do not address ecological impact, or favour an even distribution of wealth. degrowth, therefore, is a planned and organized conversion of economic sectors which are evidently ecologically destructive and do not provide human wellbeing, while favouring others, such as healthcare and education.

Although degrowth offers a holistic approach, it is not to be applied universally. It pays tribute to the fact that global emissions historically and per capita are produced by countries of the Global North.<sup>447</sup> Applying the same framework of degrowth to countries worldwide would essentially mean treating countries unequally as they have different responsibilities and abilities.<sup>448</sup> The applicability of the concept to countries of the Global South is questionable, with a large share of people not even having achieved decent living conditions. That is why degrowth is articulated as an imperative to the high-income countries which are driving the consumption of resources and energy and exceeding their fair-share. At least a kind of degrowth-ish reduction of resources in the Global North, with a special focus on primary commodities, is the key precondition for a fundamentally more symmetrical economic relationship with the Global South.<sup>449</sup> At the same time, the Global South is disproportionately suffering from the consequences of the global climate disaster and has, by no means, the instruments to adopt or adjust.<sup>450 451</sup>

Degrowth concepts in the Global South argue that the international paradigm of growth, which has been spread by international financial institutions over the past 40 years, has painfully traumatized the Global South.<sup>452</sup> By linking growth to prosperity as well as economic openness, the Global North has effectively plundered the South.<sup>453</sup> Where growth in terms of GDP surplus has been achieved by opening up markets and inviting foreign investment, in trying to achieve the promises of the growth imperative, it has often led to the dead-end of a widening ecological disaster. The answer to this, from a Global South perspective, implies a vast reduction of resource and energy consumption by the Global North, which goes along with a call for decolonization in terms of raw-material extraction and the exploitation of human labour and culture.<sup>454</sup>

Degrowth's relevance and applicability to developing countries, in this understanding, stays rather opaque. Thai researcher Prapimphan Chiengkul demanded, in her benevolent critique, that the approach has to pay attention to structural power relations of the global political economy by also looking at its technologies and institutions, but also that the relations within countries from the Global North as well as from the Global South have to be discussed in further detail.<sup>455</sup>

Joseph Purugganan follows the line of Walden

Bellow on the issue of degrowth, which he sees as a proposal worth considering. They argue that the radical conversion of the economy to end the growth paradigm and the excessive consumption has to be a task for rich countries, while the Global South will have to experience the kind of growth that battles poverty and restores some global justice.<sup>456</sup> Carlo Navera from IBON demands: "degrowth should [be] a northern thing because we still need the room for growth in the south for our societies to be uplifted. It is a great injustice that northern countries still keep consuming the remaining carbon allowance. The remaining carbon budget should be assigned to [the] development of the south. It should not be allowed to be used for more and more material growth in countries that are already developed."<sup>457</sup> This important point is also stressed by Malaysian researcher Yin Shao Loong, who underlines the importance of emissions history and argues against straining mitigation potentials for the decarbonization of the Global South. Fewer resources and higher vulnerability can make it a necessity to priorities and finance adaptation measures, which he considers to be quite substantial.<sup>458</sup> Although, voices from the Global South also point out that, in this critical remaining phase, the South must not allow itself to be misled by the previous classical neoliberal understanding of growth built on the exploitation of labour and natural resources.<sup>459</sup>

Aiming at the mechanism of the global economy, Hickel offers a set of concrete measures to be undertaken to address global inequality as a reason for climate injustice within degrowth:<sup>460</sup>

- Free trade schemes should be in place for developing countries only or an intentional bias should be established towards poor countries. This could be done like the WTO member provisions, which provide free-market access on all goods to all developing countries either smaller or poorer than themselves (in terms of GDP and GDP per capita).

<sup>446</sup> Hickel, Jason: *What Does Degrowth Mean?*, 2021. <sup>447</sup> Hickel, Jason: *Quantifying National Responsibility for Climate Breakdown: An Equality-Based Attribution Approach for Carbon Dioxide Emissions in Excess of the Planetary Boundary* *The Lancet Planetary Health* 4, no. 9 (1st Sep. 2020): e399–e404. <sup>448</sup> Gore, Tim: *Confronting Carbon Inequality: Putting Climate Justice at the Heart of the COVID-19 Recovery*, Oxfam (21st Sep. 2020): 12. <sup>449</sup> Bundschuh, Anne and Fabian Flues: *Expert interview with Anne Bundschuh and Fabian Flues about EU ASEAN free trade relations and alternatives*, 2022. <sup>450</sup> Dorninger, Christian et al.: *Global Patterns of Ecologically Unequal Exchange: Implications for Sustainability in the 21st Century*, *Ecological Economics* 179 (1st Jan. 2021): 106824. <sup>451</sup> Hickel, Jason, Dylan Sullivan, and Huzaifa Zoomkawala: *Plunder in the Post-Colonial Era: Quantifying Drain from the Global South Through Unequal Exchange, 1960–2018*, *New Political Economy* 26, no. 6 (2nd Nov. 2021): 1030–1047. <sup>452</sup> Guzman, Rosario: *Who Is Afraid of Degrowth?*, 2021. <sup>453</sup> Hickel, Jason, Dylan Sullivan, and Huzaifa Zoomkawala: *Plunder in the Post-Colonial Era*, 2021. <sup>454</sup> Guzman, Rosario: *Who Is Afraid of Degrowth?*, 2021; Tyberg, Jamie: *Unlearning: From Degrowth to Decolonization* RLS-NYC, 3rd Jul. 2020, accessed 8th Sep. 2022, <https://rosalux.nyc/degrowth-to-decolonization/>. <sup>455</sup> Chiengkul, Prapimphan: *The Degrowth Movement: Alternative Economic Practices and Relevance to Developing Countries*, *Alternatives* 43, no. 2 (1st May 2018): 81–95. <sup>456</sup> Purugganan, Joseph: *Trade Justice in the Era of CovidFocus on the Global South*, 22nd May 2021, accessed 8th Sep. 2022, <https://focusweb.org/trade-justice-in-the-era-of-covid/>. <sup>457</sup> Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>458</sup> Yin, Shao Loong: *Expert interview with Yin Shao Loong on EU ASEAN free trade relations and alternatives*, 2022. <sup>459</sup> Guzman, Rosario: *Who Is Afraid of Degrowth?*, 2021. <sup>460</sup> Hickel, Jason, Dylan Sullivan, and Huzaifa Zoomkawala: *Plunder in the Post-Colonial Era*, 2021.

- A suspension of all existing trade agreements and a subsequent renegotiation that happens transparently, in public, and under democratic conditions.
- An immediate moratorium on investment protection court systems, including a transfer of existing cases to national court systems.
- Decreasing the duration for patent protection under the TRIPS Agreement by half, as well as a relaxation of other existing patent regulations.
- Stricter rules on originality regulations should prevent corporations from patenting seeds, plants, medicines, and genetic material that already exists.
- Putting a stop to the existing regime of bad agricultural subsidies in the Global North in order to halt the flooding of markets in the Global South with agricultural goods as a prerequisite of a development towards self-sufficiency
- Acknowledging the presumptions of the degrowth movement seems to become an important precondition for global climate justice as well as a global system of production and consumption. What this could look like in the area of food production is emphasized in the section on food sovereignty.

#### 4.1.4 Deglobalization

A concept debated by activists and NGOs in the ASEAN region is the idea of deglobalization. One of its major intellectual voices is the Philippine scholar and activist Walden Bello, who published a theoretical conceptualization of deglobalization in 2003.<sup>461</sup> We will follow his train of thought in this section more closely.

Initially, the concept was driven by a grave concern about the disruption of small-scale local community farming getting suppressed by large volumes of subsidized agricultural imports from TNCs.<sup>462</sup> But soon, the analytical framework was widened. The deglobalization approach makes explicit bridges to the debate on degrowth and the concept of food sovereignty to which we also refer. Now, almost twenty years later, Bello is calling for a re-visitation and a reclaim of deglobalization.<sup>463</sup>

Gaining momentum with the rise of the anti-corporate driven movement against the WTO Conference in Seattle 1999, the idea of deglobalization was to provide a holistic framework for decentralized and multiple strategies in developing countries to overthrow the way of global economic governance, according to particular needs, values, and local conditions.

It is, therefore, more of a policy claim in the field of international political economy and not to be mistaken with nationalistic and protectionist right-wing concepts of anti-globalization. The claim is made to establish an alternative to a lacking and complicated system of global wealth production, which is kept running by adding layer after layer of complex adjustments to defend its initial premises. Instead of the constant expansion of the power and jurisdiction of the WTO and the Bretton-Woods institutions, which Bello sees as the “most powerful multilateral instrument of

the global corporations”,<sup>464</sup> the institutionalized pillars of global inequality have to be deconstructed drastically. When the self-image of the WTO urges us to be a rolling bicycle, it is the strategic hope of deglobalization to slow the drive of these institutions until they collapse.<sup>465</sup>

But, also within the UN’s contradictory approaches, the spirit of neoliberal globalization is inherent, as our interviewee Carlo Navera stresses. He exemplifies this point at the incongruence and contradictions of private corporate initiatives within the UN SDGs.<sup>466</sup> Deglobalization is not arguing against multilateral institutions per se. Rather, it calls for a radical reduction of their power while strengthening international environmental and climate protection agreements and democratic actors such as UNCTAD or the International Labour Organization.<sup>467</sup>

Regional economic blocs could also have their role in this model as long as they are not regional elite projects. At the same time, social movements have to push their ideas for concrete alternatives and establish a two-fold movement of deglobalizing national economies while, simultaneously, “constructing a ‘pluralist system of global economic governance’”.<sup>468</sup>

One illustrative example is to shorten the distance of food production and its consumers, as the absurd travel distance of a single fruit from the Global South to the plates of the Global North is playing an obvious part in the social and environmental crisis. In this case, deglobalization is the concept of slowing down export orientation and focusing on domestic production and local markets. Wealth and land redistribution would stimulate the internal market and reduce dependency on foreign financial markets.

The approach acknowledges the potential decrease in efficiency and increasing unit costs. However, at the same time, one would also have to consider the invisible costs in supply chains when it comes to human rights violations and environmental pollution. In addition, the potential for regaining integrity for community development, democratic stability, solidarity, and sustainability needs to be taken into account.

Deglobalization as a pluralistic concept explicitly creates a space to preserve and document local alternative or indigenous economic models. This orientation on the needs and values of communities is

<sup>461</sup> Bello, Walden F.: *Deglobalization: Ideas for a New World Economy*, New updated ed., Global issues in a changing world (Dhaka: Univ. Press [u.a.], 2004). <sup>462</sup> Bello, Walden: *Revisiting & Reclaiming Deglobalization* (Apr. 2019): 36. <sup>463</sup> Bello, Walden: *Revisiting & Reclaiming Deglobalization*, 2019. <sup>464</sup> Bello, Walden F.: *Deglobalization*, 2004. <sup>465</sup> The ‘bicycle theory’ is a metaphor most commonly used to describe the process of trade liberalisation. See, for example, “As the bicycle of trade liberalisation slowed, the gravitational pull of special interests and anti-globalisation movements felled the shaky vehicle.” by Zoellick, Robert B.: *So What Is There to Cover? Globalization, Politics, and the U.S. Trade Strategy* (Phoenix, 30th Apr. 2002), accessed 13th Sep. 2022, [https://ustr.gov/archive/assets/Document\\_Library/USTR\\_Speeches/2002/asset\\_upload\\_file718\\_4245.pdf](https://ustr.gov/archive/assets/Document_Library/USTR_Speeches/2002/asset_upload_file718_4245.pdf). <sup>466</sup> Navera points at the example of incongruence between SDG 17 and SDG 12. Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>467</sup> Bello, Walden: *Multilateral Organizations and the Architecture of Global Governance*. *Transnational Institute* (2005), accessed 13th Sep. 2022, <https://www.tni.org/es/node/6758>. <sup>468</sup> Bello, Walden F.: *Deglobalization*, 2004.

in contrast to the worldwide aspiration of neoliberalism or centralized socialism.<sup>469</sup>

In his current attempt to revisit deglobalization, Bello concedes that the overall term has been embraced or hijacked by the right. Bello diagnoses that, all over western countries, right wing groups are cherry-picking elements of a left critique of globalization and have largely taken ownership over the critique of it. Bello demands an awareness of the term community and that it not be determined by concepts like race, ethnicity, or blood. His alternative approach offers community as a concept of shared values.<sup>470</sup>

Hence, deglobalization does not intend to isolate a national economy from the international economic sphere. Instead, it aims to use tariffs and quotas, to a certain extent, for example, to ensure the survival of local agricultural systems which are under pressure by highly transnationalized corporate giants. Other organizations operating with a slightly different approach highlight the regaining of economic sovereignty for nations.<sup>471</sup> Bello's important analytical distinction from Trumpian nationalistic protectionism is that the right urges to "shore up the economic power of a section of society to support its political and cultural hegemony".<sup>472</sup>

When Bello addresses critics of deglobalization, he also points out that his development approach has no intention of suggesting a linear, one-way path to go for the Global South to catch up with the Global North. His vision of development is also not meant to be a short run consolation for ecological and social crisis. Neither is the concept purely in favour of the agricultural sector, nor opposed to industrial policy. Yet, the preconditions for the industrial structure have to be self-reliance and harmony with environmental and social protection. Sustainable development should no longer depoliticize transformation by negating structural inequalities. These kinds of structural inequalities are namely economic and environmental exploitation, an addiction to growth, and the capitalistic drive to create poverty.<sup>473</sup>

Instead, an alternative perspective also has to pay tribute to the invisible, mainly unpaid, work such as care work, often done by women — for example, by managing households and caring for people with special needs, children, sick people, and the elderly. The value of a society's reproductive work is only vaguely measured by statistics. The unpaid work of (mostly) women is not reflected in national economic indices such as GDP and, therefore, is made invisible in economic debates. Deglobalization also means a prioritization of care economics and the creation of social values and welfare.

One might wrongfully presume that deglobalization is not opposing technological change. In fact, it is highlighting the danger that technology, such as artificial intelligence, in the guise of "efficiency", could endanger more jobs than it creates. The vast concentration of technology in the hands of corporations is

creating unprecedented power to manage, control, and oppress the labour and life of most people. Trade and investment restrictions are an instrument to regulate labour-destructive technology, but again, at the same time, care-work has to be strengthened. In order to get rid of the chains of capitalist wage labour, deglobalization also supports the idea of a universal basic income.

The global right seems to have captured the face of deglobalization, calling it anti-globalization, a shift that is also driven by unequal distribution of wealth in industrialized countries.<sup>474</sup> But the inherent disturbances of globalization during the last few years has opened up opportunities to halt corporate-driven capitalist globalization. With Brexit, the era of Trump, the Covid-19 pandemic, the massive disruption of global chains of custody, and the war in Ukraine, one could argue that there is a window of opportunity to articulate a deglobalization approach from the Global South and to take back concessions made for the benefit of the Global North.<sup>475</sup> One indication could be seen in the broad alliance of developing countries for the TRIPS waiver in order to fight the pandemic and its effects, a waiver that could allow access to technology protected by IP provisions.<sup>476</sup>

In a case study from 2017, Walden Bello was assigned to apply the deglobalization paradigm in the development of an alternative economic strategy for Myanmar. This is a good example of the possible applicability of some of the deglobalization ideas to an ASEAN country. The study, "Paradigm Trap: The Development Establishment's Embrace of Myanmar and How to Break Loose", was published under the impression of a slight shift away from Myanmar's military regime to a more democratic model. But, as we know today, this transition period led by Aung San Suu Kyi in 2016 was ended by a military coup in February 2021.

With this political context in mind, we have to read the study against the background of the circumstances of the time. Instead of favouring the liberalization programmes of the Asian Development Bank and World Bank, Bello promoted the idea of not growing in traditional terms but defining what kind of growth should be supported as well as what kind of foreign

<sup>469</sup> Bello, Walden F.: *Deglobalization*, 2004. <sup>470</sup> Bello, Walden: *Revisiting & Reclaiming Deglobalization*, 2019. <sup>471</sup> Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>472</sup> Bello, Walden: *Revisiting & Reclaiming Deglobalization*, 2019. <sup>473</sup> Bello, Walden: *Revisiting & Reclaiming Deglobalization*, 2019. <sup>474</sup> Haberly, Daniel et al.: *How Anti-Globalisation Switched from a Left to a Right-Wing Issue – and Where It Will Go Next? The Conversation*, 25th Jan. 2018, accessed 16th Nov. 2022, <http://theconversation.com/how-anti-globalisation-switched-from-a-left-to-a-right-wing-issue-and-where-it-will-go-next-90587>. <sup>475</sup> Bello, Walden: *The Global South in the WTO: Time to Move from the Defensive to the Offensive, Focus on the Global South*, 8th Jun. 2022, accessed 25th Aug. 2022, <https://focusweb.org/the-global-south-in-the-wto-time-to-move-from-the-defensive-to-the-offensive/>. <sup>476</sup> The Declaration on the TRIPS Agreement and Public Health does at least understand to some degree the lack of a "one size fits all" free trade approach in multilateral negotiations. The declaration affirms the right of WTO members to use the flexibility measures in the TRIPS Agreement to the full, which include among others the right to grant compulsory licenses to address problematic effects of intellectual property provisions on access to medicine. WTO Ministerial Conference: *Ministerial Conferences – Doha 4th Ministerial – TRIPS Declaration*, 2001.

investment is welcome, instead of fitting into the dress of neoliberalism.

However, Myanmar's recent past of a centralized military government would not put its trust in regulatory powers instead of unleashed market forces. The development of market liberalization in most other ASEAN countries is a cautionary example for Bello that market forces destroying community and solidarity should not be traded against well-known state coercion.

Bello suggests a post-neoliberal paradigm for Myanmar instead. Starting with the creation of a Ministry of Agrarian Justice, it should put an end to land-grabbing policies, wrongful confiscation of land, and the current Agricultural Development Strategy. This would also mean fighting the dispossessions that occur in connection with ethnic cleansing against the Rohingya people. At the same time, Myanmar would have the possibility to re-establish a "right to land" which goes beyond ownership.<sup>477</sup> An accompanying step should imply a repeal, revision, or amendment of agrarian laws.

Further, Bello gives specific legal advice on how to adopt a new National Land Use Policy and he promotes alternatives to an export-orientation in the agricultural sector. He tends to define categories of essential agricultural products, which he considers to be most important on the way to self-sufficiency. At the same time, he calls for a programme to replace the extensive use of chemicals. Responding to markets should always be a process of democratic decision-making with consideration of important factors such as "equity, gender justice, and social solidarity."<sup>478</sup>

Instead of focusing on high-volume foreign investment for monstrous infrastructure projects, Bello emphasizes that the development potential of local industries also needs to be considered. He chooses to pick certain branches with a low demand for capital input, for example, by following India's special path in the pharmaceutical industry by promoting and supporting the development of generic bulk drugs. He sees the abolition of pharmaceutical patents as a key game-changer for the small but growing possibilities of domestic drug manufacturers (we saw the potential threats to this area earlier in the section about the Thai healthcare system).

In other industrial areas, such as energy supply, Myanmar could start using its "disadvantages" (such as low domestic electrification rate) to promote a scheme of decentralized renewable energy technologies.

Bello also drafts a strategy on trade which adopts a responsive role between consumption and production. Therefore, he demands a scope of action for governments which also includes the possibility to regulate trade flows through tariffs, quotas, and licensing schemes according to its industrial and agricultural strategies.

Furthermore, technology transfers could be reinforced by reverse engineering, local-content policies,

and by avoiding getting caught in the regime of TRIPS. Where the government is already involved in FTAs and Investment Protection Agreements, his advice is to exploit interpretations or use escape or exceptional clauses to the greatest extent possible.

The introduction of a post-neoliberal policy asks for a large degree of reticence from governments, only to act modestly and with balance. In many areas, the local authorities and regional actors could implement a post-neoliberal-policy in accordance with their needs — in interaction and comprehension with civil society organizations from below.<sup>479</sup>

#### 4.1.5 Food Sovereignty

FTAs pushing the privatization of seed systems is a major threat to local farming culture in ASEAN. This is mainly due to the UPOV Act, as a result of which, legislation is also becoming stricter in non-signatory states. Farmers are exposed to the danger of not being allowed to produce, exchange, and save their own seeds. Of course, this is one of farmers' normal activities. The concept of food sovereignty has become a growing international framework and a point of reference for a worldwide social movement, fighting for its implementation. In general terms, the conceptual term food sovereignty describes the idea of food self-sufficiency. In political practice, it can be understood as using this concept to respond to neoliberal corporate globalization by formulating an alternative through "understanding and transforming international governance around food and agriculture."<sup>480</sup>

The concept of food sovereignty argues that the main part of food and agricultural products produced in a region should also be consumed in that region. Domestic production would meet domestic demand. Therefore, people are supposed to decide and democratically control their way of food production and consumption, meeting local needs and circumstances for production diversity.<sup>481</sup> The regime of production and consumption of food is no longer determined by profitability and not structured by global value chains but by preserving a multitude of culturally diverse ways of producing healthy and good quality products.

The idea is to find a new equilibrium of rural agriculture and industrial urbanism which, so far, has led to massive destruction of natural resources. Also, agricultural reforms have to promote collective ownership, define new standards of production according to "ecological stewardship", and put an end to land-grabbing.<sup>482</sup> A fair distribution of goods

<sup>477</sup> Bello, Walden: *Paradigm Trap: The Development Establishment's Embrace of Myanmar and How to Break Loose*, Published by Transnational Institute (TNI), Paung Ku and Dawei Development Association (DDA) (Jul. 2018): 88. <sup>478</sup> Bello, Walden: *Paradigm Trap: The Development Establishment's Embrace of Myanmar and How to Break Loose*, 2018. <sup>479</sup> Bello, Walden: *Paradigm Trap: The Development Establishment's Embrace of Myanmar and How to Break Loose*, 2018. <sup>480</sup> European Coordination Via Campesina, ed.: *Food Sovereignty Now! A Guide to Food Sovereignty* (2018), accessed 25th Aug. 2022, <https://viacampesina.org/en/wp-content/uploads/sites/2/2018/02/Food-Sovereignty-A-guide-Low-Res-Vresion.pdf>. <sup>481</sup> Bello, Walden: *Revisiting & Reclaiming Deglobalization*, 2019. <sup>482</sup> Bello, Walden F.: *Deglobalization*, 2004.

has to be implemented, meeting the needs of farmers and consumers. This does not go along with industrial agriculture, genetic engineering, chemical-intensive cultivation, and patents on seeds. To sum up, one of its perspectives has to be a shift from transnational corporation food production to cooperative, small-scale, or indigenous farming. The major pillars of food sovereignty were launched at an international forum in 2007 in Mali:<sup>483</sup>

- Focuses on Food for People: It articulates a right to food for all people while responding to marginalized individuals and groups. Food is not to be an ordinary business commodity.
- Values Food Providers: Humans who cultivate, grow, harvest, and process food are to be valued, respected, and protected.
- Localizes Food Systems: Local relationships among providers and consumers mean the participation of both and the protection of healthy food and local markets.
- Put Control Locally: Instead of unaccountable corporations, local providers treat the sources of food in a sustainable way. This opposes the privatization of natural resources.
- Builds Knowledge and Skills: Local knowledge of providers has to be preserved for future generations. People are not to be shut out by commercial contracts and intellectual property rights regimes.
- Works with Nature: Ecosystems and their biodiversity provide the foundation of food sovereignty and are crucial to fighting the climate crisis.

The food sovereignty social movement stresses the idea at an international governance level to institutionalize its standing point in the forum of international organizations such as the UN. It is working on international guidelines, networking, and promoting the human right to food and increasing civil society participation.

Ecological aspects, such as climate change and reduction of biodiversity, are closely linked with the way in which societies produce and trade agricultural products. Therefore, food sovereignty is a transformational approach, addressing fundamental circumstances. It ultimately means building relationships between producers and consumers in solidarity and common responsibility.

The international Agreement on Agriculture was established during the WTO's Uruguay Round.<sup>484</sup> It was introduced mainly due to pressure from the US and commits to a reduction of subsidies in the agricultural sector.<sup>485</sup> In contrast to this agreement, advocates for food sovereignty demand that agricultural goods should no longer be produced and traded under the requirement of limiting production costs. The approach opens a new debate about people's needs for healthy food and the interaction of countries in order to preserve cultures and ecosystems. The framework also pleads for a diversification of production methods in accordance with local situations. Food is to

be seen primarily as a necessity for every day life and, therefore, as a human right and not to be regarded as a mere market commodity that is sold and traded. This is not just a question of food distribution, but connected to constituent parts like soil, water, seeds, fisheries, forests, and knowledge.<sup>486</sup>

In 1996, the transnational social movement of small-holder farmers, La Via Campesina, started to advertise for food sovereignty in criticism of the World Food Summit's definition of food security: "Food security exists when all people, at all times, have physical and economic access to sufficient, safe, and nutritious food to meet their dietary needs and food preferences for an active and healthy life. In this regard, concerted action at all levels is required."<sup>487</sup>

The mainstream concept of food security seems to be promoted by national governments and corporations, deliberately failing to specify the conditions, origins, and circumstances for the production and consumption of food. Food security only takes the first step in the right direction, but it justifies the current system of vast food imports. Initially, food sovereignty could be seen as a direct answer to the corporate-driven food security approach. In contrast to food sovereignty, the concept of food security also implies that a country could cover its food demand through imports.<sup>488</sup>

In contrast, food sovereignty does not only guarantee access to food, but it focuses on the rights of individuals and their ability to define their markets as well as production and consumption policies. Starting in Latin America, the movement promoted the concept of food sovereignty worldwide and became a movement also in developing countries in Africa and Asia where different conditions were found to adjust and adopt the principles of food sovereignty under particular circumstances and with different national frameworks.<sup>489</sup>

Obviously, the concept counters the interests of multinational food industry corporations as it challenges the paradigm of capitalist food system as a whole. It is not without conflict among different local, national, and international actors, but it could also broaden the path to several ways of emancipation.<sup>490</sup>

Countries in ASEAN, like Vietnam and the Philippines, have constantly shrinking agricultural sectors with a declining number of people working in the

<sup>483</sup> European Coordination Via Campesina: *Food Sovereignty Now! A Guide to Food Sovereignty*, 2018. <sup>484</sup> WTO: *Legal Texts – Marrakesh Agreement*, accessed 25th Aug. 2022, [https://www.wto.org/english/docs\\_e/legal\\_e/14-ag\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm). <sup>485</sup> Tandon, Yash: *Trade Is War*, 2015. <sup>486</sup> IBON Foundation, ed.: *Ibon Primer on Food Sovereignty and the Food Crisis* (Quezon City, Philippines: Ibon International, 2012), accessed 16th Dec. 2022, <https://iboninternational.org/download/ibon-primer-on-food-sovereignty-and-the-food-crisis/>. <sup>487</sup> FAO: *Rome Declaration and Plan of Action*, accessed 25th Aug. 2022, <https://www.fao.org/3/w3613e/w3613e00.htm>. <sup>488</sup> Bello, Walden: *Revisiting & Reclaiming Deglobalization*, 2019. <sup>489</sup> Quang, Nguyen Vinh, Nguyen Minh Duc, and Nguyen Duc Manh: *FOOD SOVEREIGNTY: INTERNATIONAL EXPERIENCE AND PRACTICE TO ETHNIC MINORITY FARMERS IN VIETNAM* (n.d.): 43. <sup>490</sup> Leroy, Aurélie: *Food Sovereignty: A Feminist Struggle? The Case of Mindanao, Philippines* Centre Tricontinental, 7th Sep. 2022, accessed 7th Sep. 2022, <https://www.cetri.be/Food-sovereignty-a-feminist>.

sector and an ever-decreasing overall share of GDP.<sup>491</sup>

The process of implementing food sovereignty policies in ASEAN entails a vast set of obstacles and challenges. The following section addresses the ways in which some steps towards food sovereignty have, nevertheless, been taken into account or at least debated, and reflects upon the potential prospects of implementing such a concept.

For Vietnam, most relevant shifts in the agricultural sector were taking place during recent decades: Farming households were orientating more and more on the cultivation of exotic plants according to the demand of seed suppliers and agricultural corporations. This is aligned with a political restructuring of the agricultural sector and a new strategy of cultivation.<sup>492</sup>

The Vietnamese economy is clearly developing from its reliance on agriculture to a GDP value adding in the sectors of services and agriculture.<sup>493</sup> The ongoing shift to large-scale and market-orientated farming poses a threat to the conditions of small-scale farming and raises the question of food sovereignty in Vietnam. As mentioned above, the impacts of IP provisions in the EVFTA, pre-shaped by UPOV, could lead to further negative consequences for smallholders and a rising danger of national food insecurity.<sup>494</sup>

A study on the implementation potentials of food sovereignty in Vietnam found that the most considerable and urgent factors include the reduction of environmental impacts by promoting organic and ecological agriculture.

In addition, the ongoing process of land accumulation and tendency towards large-scale farming has to respect the situation of smallholder farmers. Cooperative farming and distribution systems could also help to consolidate the position of smallholder farming and promote indigenous and traditional farming methods. Finally, short connections between small producers and consumers could lead to a strengthening of domestic markets and short value chains.<sup>495</sup>

Vietnam's official agricultural development policy is mainly following the path of food security instead of food sovereignty. Even so, some fragments of food sovereignty have found their way into the country's policy. This sums up in a mixed situation. Although the trend of Vietnamese policy is towards highly technical large-scale agriculture, which entails special risks for ethnic minorities and small farmers, at the same time, the concept of food sovereignty offers the direct participation of small farmers to shape the development according to their needs and possibilities and, in doing so, to ensure food sovereignty.<sup>496</sup>

In ASEAN, Indonesia institutionalized elements of food sovereignty ahead of other countries in the Indonesian Food Law 2012. This legislation acknowledges food as a basic human need and urges the state to ensure the food supply. Furthermore, the state can use Indonesia's resources to fulfil its duty. During the presidency of Joko Widodo (Jokowi), food sovereignty became an official national doctrine after Jokowi used

the buzzword of food sovereignty to win the support of voters in rural areas during his electoral campaign.<sup>497</sup> Jokowi's strategy on food sovereignty was to cover domestic consumption with local production. This could be seen as a state-centric interpretation of the concept to achieve political independence from international disturbances. Still, it supports the idea of surplus exports.<sup>498</sup>

The Indonesian way of thinking about food sovereignty under Jokowi also contains the involvement of the country's military in agriculture, as proposed in the strategy to achieve 100 percent rice self-sufficiency.<sup>499</sup> This step is highly controversial, as it seems to be paradigmatic for food security in contrast to food sovereignty.<sup>500 501</sup>

An important case in relation to food sovereignty is also described in regards to Indonesia's most important exported agricultural good (palm oil): The long-term development of the "agro-industrialization" in Indonesia met with the discourse that considers palm oil important for the domestic food staple in Indonesia as an essential cooking oil.<sup>502</sup> In a comprehensive analysis about the power relations in the Indonesian palm oil plantation sector, Hariati Sinaga showed that narratives of food security were used against the critics of Indonesian palm oil plantation development, so "food security discourses are played out for justifying the development initiative, despite the negative impact on food sovereignty."<sup>503</sup>

At the same time, Indonesian Via Campesina member FSPI (Federasi Serikat Petani Indonesia — Indonesian Peasant Union) was important for promoting organic agricultural practice in palm oil farming.<sup>504</sup> The FSPI promoted organic farming as political resistance to market orientation and as a step to sovereignty of smallholder farmers away from the

<sup>491</sup> Quang, Nguyen Vinh, Nguyen Minh Duc, and Nguyen Duc Manh: *FOOD SOVEREIGNTY: INTERNATIONAL EXPERIENCE AND PRACTICE TO ETHNIC MINORITY FARMERS IN VIETNAM*, ; Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>492</sup> Quang, Nguyen Vinh, Nguyen Minh Duc, and Nguyen Duc Manh: *FOOD SOVEREIGNTY: INTERNATIONAL EXPERIENCE AND PRACTICE TO ETHNIC MINORITY FARMERS IN VIETNAM*. <sup>493</sup> World Bank: *Vibrant Vietnam Forging the Foundation of a High-Income Economy* (New York, 2020), accessed 7th Sep. 2022, <https://documents1.worldbank.org/curated/en/745271590429811414/pdf/Main-Report.pdf>. <sup>494</sup> Nguyen, Ho and Katja Lindroos: *The Regulation of Farmer's Privilege Under Vietnamese IP Law and the Law of the European Union*, 2021. <sup>495</sup> Quang, Nguyen Vinh, Nguyen Minh Duc, and Nguyen Duc Manh: *FOOD SOVEREIGNTY: INTERNATIONAL EXPERIENCE AND PRACTICE TO ETHNIC MINORITY FARMERS IN VIETNAM*. <sup>496</sup> Quang, Nguyen Vinh, Nguyen Minh Duc, and Nguyen Duc Manh: *FOOD SOVEREIGNTY: INTERNATIONAL EXPERIENCE AND PRACTICE TO ETHNIC MINORITY FARMERS IN VIETNAM*. <sup>497</sup> Lassa, Jonatan Anderias: *The Rise of Food Sovereignty in Southeast Asia Year*, in *Review 2014*, RSIS Non-Traditional Security (NTS) (2014), accessed 6th Sep. 2022, <https://www.rsis.edu.sg/wp-content/uploads/2014/12/RSIS-NTS-Year-in-Review-2014.pdf>. <sup>498</sup> Lassa, Jonatan Anderias: *The Rise of Food Sovereignty in Southeast Asia*, 2014. <sup>499</sup> RSIS: *CO15040 | Jokowi's Food Sovereignty Narrative: Military in the Rice Land?*, Feb. 2015, accessed 6th Sep. 2022, <https://www.rsis.edu.sg/rsis-publication/nts/co15040-jokowis-food-sovereignty-narrative-military-in-the-rice-land/>. <sup>500</sup> Bainus, Aray and Dina Yulianti: *Food Security or Food Sovereignty?* (2018): 16. <sup>501</sup> Napitupulu, Heri et al.: *Food Securitization In Indonesia: The Involvement Of Indonesian Military In Food Security Program*, *Spesialis Ugdymas* 1, no. 43 (4th Jun. 2022): 3338–3352. <sup>502</sup> Sinaga, Hariati: *Competitive Pressures and Labour Rights: The Indonesian Oil Palm Plantation and Automobile Sectors*, Labor and globalization Volume 19 (Augsburg München: Rainer Hampp Verlag, 2020). <sup>503</sup> Sinaga, Hariati: *Competitive Pressures and Labour Rights*, 2020. <sup>504</sup> Schreer, Viola and Martina Padmanabhan: *The Many Meanings of Organic Farming: Framing Food Security and Food Sovereignty in Indonesia*, *Organic Agriculture* 10, no. 3 (1st Sep. 2020): 327–338.

control of multinational agricultural corporations. On the other hand, the Indonesian government solely seems to adopt the buzzwords, claims, terms, and vocabulary of organic farming but urges an increase in efficiency, exports, and market development.<sup>505</sup>

While the adaptation of food sovereignty in ASEAN often lacks essential aspects and conditions or leads to nationalistic adaptations of the concept, local civil society organizations are clear about the requirements for food sovereignty at the level of international trade. Also, the liberalization through the ASEAN single market is a problem for food self-sufficiency of Philippine rice production. IBON International rejects any FTAs which impede regulations for local governments to ensure protection mechanisms of domestic food production. It also pleads for the dismantling of the international WTO framework on the issues of food and agriculture.<sup>506</sup>

A new multilateral trading system should be based on fair trade premises, people's food sovereignty, and democratic participation not just by governments but also by civil society organizations and those most affected by the conditions of production and consumption.<sup>507</sup>

In summary, the concept of food sovereignty is being debated in ASEAN countries as a people's alternative and as an open concept that does not follow a one-size-fits-all approach. At the same time, this makes the approach open for adaptation according to specific contexts, which brings certain difficulties to the attempt to establish it in contrast to the free-trade paradigm of existing and future FTAs.

#### 4.2 AN ALTERNATIVE RELATIONSHIP BEYOND TRADE: THE CONCEPT OF SOCIO-ECOLOGICAL TRANSFORMATION

In the previous section, we explored the possibilities and obstacles of realpolitik and tried to narrow down or at least sketch radical alternatives and visions for the future conditions of trade. In this part, we continue to end up with a continuum of measures and ideas, none of which can claim exclusivity. We try to determine the vision of a socio-ecological transformation for the relationship between ASEAN and the EU. This section illustrates potential and necessary changes in the relationship beyond trade policy by questioning which way of life and development model is promoted in European societies.

Civil society organizations in Europe and ASEAN have followed the publication of the so-called Alternative Trade Mandate very closely. A conclusive vision of a turning point in European trade policy was developed by a broad alliance of NGOs, mainly based in Europe, but with contributions of associated networks and organizations worldwide.<sup>508 509</sup>

The concept did appeal for a new approach in trade and investment policy and, even though the authors and contributors were non-governmental players, activists, and grassroots organizations, their demands

were comprehensive. Not only did they address their demands to governments and call for more democratic decision-making possibilities for governments and parliaments, but they agreed on visionary improvements that fundamentally question the mechanisms of the current economic system. Many of the aspects call for a different way for the EU to deal with partners and other regions of the world. In particular, it is also a question of maintaining and reviving democratic scope for action. But red lines are also named, for example, when it comes to the commodification of goods and areas of public services. Health, food, water, and education must not be subjected to profit-oriented commercial logic.

There are at least three aspects we have to look at extensively before we even talk about the nature of trade itself. Firstly, as we have elaborated before, an essential aspect of alternative trade models must always take into account the uneven preconditions for trade relations. Josua Mata puts it in his own words by seeking "An alternative trading system that does not put [a] premium on the profit of global cooperations and, at the same time, is sensitive to the needs of the Global South".<sup>510</sup>

Secondly, trade can no longer be seen as an end in itself just similar to GDP growth. Trade must be brought back into the fold to meet demand and need, which forces the EU as the spearhead of energy and resource consumption to examine its demand and to cut back.<sup>511</sup> An increase in trade can no longer be seen as a means for increasing wealth and sustainable development that preserves our natural livelihoods and planet.<sup>512</sup> A cut back in European demand and consumption of resources and energy has to be massive. Only shifting the existing demand and consumption towards "green" and ecological fake solutions shifts the problem from fossil resources towards agricultural industry, deforestation, and land-grabbing.

Thirdly, trade itself has to be taken into account not just with its impact on the trading partners but with its impact on climate and the environment. Clearly, aviation is a source of emissions, but almost 90 percent of the worldwide volume in traded goods are shipped.<sup>513</sup> The effects of maritime shipping are expected to

<sup>505</sup> Quang, Nguyen Vinh, Nguyen Minh Duc, and Nguyen Duc Manh: *FOOD SOVEREIGNTY: INTERNATIONAL EXPERIENCE AND PRACTICE TO ETHNIC MINORITY FARMERS IN VIETNAM*. <sup>506</sup> Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>507</sup> IBON Foundation: *Ibon Primer on Food Sovereignty and the Food Crisis*, 2012. <sup>508</sup> Allianz für ein Alternatives Handelsmandat: *HANDEL: Zeit für eine neue Vision*, Nov. 2013, accessed 22nd Sep. 2022, [http://www.ttip-unfairhandelbar.de/fileadmin/download/dokumente/Time\\_for\\_a\\_new\\_vision-DE.pdf](http://www.ttip-unfairhandelbar.de/fileadmin/download/dokumente/Time_for_a_new_vision-DE.pdf). <sup>509</sup> From the ASEAN the following organization contributed: Monitoring sustainability of globalization (Malaysia), Indonesia for Global Justice (Indonesia), EU-ASEAN regional campaign network (Asia) and Focus on the Global South (Asia). <sup>510</sup> Mata, Josua: *Expert interview with Josua Mata about EU ASEAB free trade relations and alternatives*, 2022. <sup>511</sup> Hickel, Jason: *Quantifying National Responsibility for Climate Breakdown*, 2020. <sup>512</sup> Schaum, Henrike: *Warum Der Welthandel Zur Verfestigung Der Klimakrise Beiträgt*, in *AK-Globalisierungskompass. Orientierungshilfe Für Eine Gerechte Weltwirtschaft*, AK Wien, Abteilung EU & Internationales (Wien, 2021), accessed 7th Apr. 2022, <https://www.anders-handeln.at/wp-content/uploads/downloads/2021/06/AK-Globalisierungskompass.pdf>. <sup>513</sup> OECD: *Ocean Shipping and Shipbuilding*, accessed 22nd Sep. 2022, <https://www.oecd.org/ocean/topics/ocean-shipping/>.

increase drastically with further impacts on biodiversity and the climate.<sup>514</sup>

Addressing these aspects of trade and investment policy opens the path for a socio-ecological transformation which includes global solidarity, assures food sovereignty, as well as social and environmental justice. It lays the foundation for grounding the control of transnational cooperation and could support peace saving mechanisms on a multilateral basis. Meanwhile, feminist movements and migrant struggles for sanctuary cities could profit as a part of these beneficiary achievements.<sup>515</sup>

#### 4.2.1 A Left Vision of EU-ASEAN Relations: Geopolitical and Development Policy Implications

What will the EU-ASEAN relationship be under the terms of fair and sustainable trade? Here, we want to sum up the examination together with the geopolitical implications of re-thought international relations between the two regions.

The multiple crises of 2022 seems to leave most people thrown back and incapable of action. However, one could easily interpret the existing free trade paradigm and the international trade agreements as pillars of heavy vulnerability in the current crisis.<sup>516</sup> The two major challenges in economic politics are the fight against the global pandemic and the ongoing climate crisis. In this fragile environment, the Russian war against Ukraine and soaring food prices are just another tremor for global value chains and trade routes.

Existing trade agreements have been proven to be part of the problem, not part of the solution. They drag out the pandemic by hindering swift and adequate responses through strict patent laws on medical products.<sup>517</sup> They also hinder the emergency escape from fossil energies, by giving corporations sources to sue against climate legislation. In short, they protect the fatal status quo. If the EU could shake off the narratives of competitiveness and the concern over supply channels there might be some room for debate in the light of a necessary socio-ecological change. However, a change in strategy only has a chance for change if it does not take place solely on a discourse level. Re-shoring, as in “bringing back important businesses and supplier and production facilities to European soil” must not be driven by nationalistic impetus but by regionalizing value chains on a small scale.<sup>518</sup>

Growing populations and demographic shifts in ASEAN might intersect with the necessities of climate adjustment. The European dependency on raw materials are about to put some ASEAN countries in a stronger position for negotiations. But this fact needs strong accompanying support by civil society organizations to make this actually profitable for peoples’ lives.

As for now, the Russian war in Ukraine could lead to a fundamental questioning of FTAs and open paths besides a “back to business as usual” approach. The

dependency on Russian fossil fuels could spark more than a turn to new supply lines and new (but old) proposals on FTAs like the EU-ASEAN inter-regional deal. On the contrary, it shows a strategic pressure point for progressive movements around the globe: The nexus of trade, climate, and agricultural policy. This could be the way to go if, for example, the debate about an EU Carbon Border Adjustment Mechanism is neither led by the concern about market share nor used as a protectionist tool against LDCs.

Other aspects of climate protection policy would have to be consistent with the Paris Agreement, at a minimum. Human rights protection at European borders and enforcement of labour rights within the EU would be the precondition for the credibility to demand compliance with international norms from trading partners.<sup>519</sup>

A re-orientation of EU-ASEAN trade relations would have to pay respect more broadly to the devastating effects of colonialism and the trade relations between the two regions in the past. ASEAN should no longer be seen as an area of exploitable workforce and resources, or just as an area of economic importance or as the geo-strategic junction of trade routes.

#### 4.3 SUSTAINABLE NETWORKING, EXCHANGE, AND DEBATE ON THE LEVEL OF SOCIAL MOVEMENTS AND CIVIL SOCIETY

Finally, could the multitude of approaches presented here affect alternative relations between activists and movements? And, if so, how? The potential for a common struggle in the face of crises is compelling.

As we have learned from our interviews with activists, union leaders, researchers, and campaigners, civil society in the countries we looked at is doing profound and strategic work. Often, they take the risk of paying a high price for it. Social movements in the Philippines, for instance, have been resilient in withstanding repressive state attacks. Meanwhile, at the same time, they keep up the fight against new FTA negotiations.<sup>520</sup>

Joseph Purugganan shared the example of a successful social struggle by Philippine civil society

<sup>514</sup> International Maritime Organization: *Fourth Greenhouse Gas Study 2020*, 2020, accessed 22nd Sep. 2022, <https://www.imo.org/en/OurWork/Environment/Pages/Fourth-IMO-Greenhouse-Gas-Study-2020.aspx>; UNCTAD: *Review of Maritime Transport 2021* (Erscheinungsort nicht ermittelbar: United Nations, 2021). <sup>515</sup> Kanzleier, Boris: *Globale Solidarität Für Einen Internationalismus Der Zukunft*, Rosa-Luxemburg-Stiftung, online Publikation (Feb. 2020), accessed 22nd Sep. 2022, [https://www.rosalux.de/fileadmin/r/s\\_uploads/pdfs/Artikel/2-20\\_Onl-Publ\\_Globale\\_Solidaritaet.pdf](https://www.rosalux.de/fileadmin/r/s_uploads/pdfs/Artikel/2-20_Onl-Publ_Globale_Solidaritaet.pdf). <sup>516</sup> Strickner, Alexandra: *Wie Geht's Weiter? Nächste Schritte, Um Die Hyper-Globalisierung Zurückzudrängen, Regionalisierung Nicht Zu Nationalisierung Und Protektionismus Werden Zu Lassen Und Die Solidarischen Alternativen on the Ground Zu Fördern* (Lunch & Learn presented at the Lunch & Learn 4.0 – Gemeinsam selber anpacken – Solidarische Re-Regionalisierung statt neoliberaler Handelspolitik im Ernährungsbereich, online, 4th Jul. 2022), <https://power-shift.de/lunch-learn-4-0/>. <sup>517</sup> Kittitakul, Chalerm Sak: *Expert interview with Chalerm Sak Kittitakul about EU ASEAN free trade relations and alternatives*, 2022. <sup>518</sup> Strickner, Alexandra: *Wie Geht's Weiter? Nächste Schritte, Um Die Hyper-Globalisierung Zurückzudrängen, Regionalisierung Nicht Zu Nationalisierung Und Protektionismus Werden Zu Lassen Und Die Solidarischen Alternativen on the Ground Zu Fördern*, 2022. <sup>519</sup> Yin, Shao Loong: *Expert interview with Yin Shao Long on EU ASEAN free trade relations and alternatives*, 2022. <sup>520</sup> Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives*, 2022.

organizations against ratification of RCEP. “On RCEP, the combined efforts of broad agricultural stakeholders (farmers and fishers) and Trade Justice Philippines were instrumental in convincing the Senate that the RCEP agreement, negotiated by the outgoing Duterte administration, deserves closer scrutiny because of the serious concerns raised, particularly the potential negative impact on the agriculture sector. The interventions also put the issue of trade liberalization back in the public consciousness, particularly the failed promises of past administrations that liberalization would be good for the country — increasing jobs, improving productivity, and make the economy more competitive. The anti-RCEP groups were able to show that liberalization efforts in the past continue to haunt us to this day, and RCEP will not reverse but accelerate further this process.” Eventually, Joseph urges campaigning against the EU-Philippine FTA.<sup>521</sup>

But, of course, civil society activists like those in the Philippines are well aware that, with authoritarian or fascist leaders in power, there can never be true sustainability<sup>522</sup> Nevertheless, they are the ones gathering data and revealing social injustices and environmental impacts of government policies and corporate activities. Whenever they have the chance, they connect the dots between their situation to the causes that often lie in European responsibilities.

Those allies addressing the responsibilities did get clear homework during our research, as Carlo Navera emphasized: “Calling out the bullshit of southern

governments in high-level political forums. But, more importantly, northern civil society can create pressure in [their] home countries on governments not to pursue these trade deals.”<sup>523</sup> A European approach for progressive movements and organizations could also take successful initiatives with partners from Latin America against the EU-Mexican FTA and the EU-Mercosur-FTA as an inspiration. Therefore, it is the task of European civil society to draw attention to EU trade policy in South East Asia. It is notable that the negotiations between the EU and ASEAN countries seem to have much less public attention in Europe given the bilateral EU-to-country approach. A small exception might be the attempt by the NGO Indonesia for Global Justice to highlight the dangers of an upcoming EU-Indonesian CEPA and the devastating consequences of the COVID patent-constraints by the Global North.<sup>524</sup>

By not just fighting against certain FTAs, but by constantly pointing at the international WTO framework, ASEAN NGOs make the fundamental mechanisms of the free trade paradigm visible.<sup>525</sup> This task is much less obvious for European actors, given the obvious benefits for the discursive comfort zone of the Left in the Global North. Partnerships and strong engagement are important in the long run to understand the region and maintain valuable support towards it. These partnerships need long-term commitments and are built on trust. Creating awareness, networking, and providing information would surely be a very useful contribution.

<sup>521</sup> Purugganan, Joseph: *Expert interview with Joseph Purugganan about EU ASEAN free trade relations and alternatives*, 2022. <sup>522</sup> Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>523</sup> Navera, Carlo: *Expert Interview with Carlo Navera (IBON) about EU ASEAN Free Trade Relations and Alternatives*, 2022. <sup>524</sup> See for example the workshop organized by IGJ with Flues, Fabian: *Raw Materials and the Indonesia-EU CEPA*, 2021. <sup>525</sup> Bello, Walden: *The Global South in the WTO*, 2022.

## 5 CONCLUSIONS

Inevitably, trade between economies is producing winners and losers, as changing markets are creating gains and adjustment costs. FTAs are a key element in securing markets and trade routes, setting standards and creating a climate suitable for corporations and investors. FTAs do not give answers to the question of who will benefit or lose from trade, neither do they intend to care for the distribution of potential gains or costs or answer how to care for losers of trade. Trade Agreements do create business opportunities for those entities who have the resources to participate on an international level. At the same time they are shrinking the policy space, in which effective answers for the devastating problems they create, can be found.

Status of EU-ASEAN negotiations and status of interregional FTA. What conclusions can be drawn for the status of FTA negotiations?

- An interregional FTA is not in the near future, but will be back on the agenda after bilateral FTAs are concluded.
- For ASEAN countries, the EU is not a decisive factor economically or politically, but plays an important role for economic balance-of-power in the region.
- For social movements, mobilizations against FTAs are important crystallization points.
- The shift towards negotiating bilateral FTAs has taken away attack surface from a European civil society perspective and prevents common struggle in ASEAN states.
- The common platform in the region against an interregional EU-ASEAN FTA was consistently named as a positive reference point.
- Criticism of FTAs have a clear impact on a potential EU-ASEAN FTA and are already impacting existing bilateral FTAs as well as the negotiations.

Existing effects of FTAs and future effects of a potential EU-ASEAN FTA on ASEAN countries

- The ASEAN states find themselves in a role between economic weight (most important prospering economic area of the future) and a corset of bilateral and international trade rules that do not represent social and environmental costs adequately.
- ASEAN countries have felt diverse negative effects of investment protection regulations and civil society stakeholders expect an increase from the EU trade agenda.
- FTA negotiations moving forward means manoeuvring space for democratic participation & sovereignty will be restricted rather than the opposite.
- A closer look at the trade with pesticides exemplifies that further trade liberalization carries dangers of increasing existing threats to health and biodiversity.
- The example of Thailand shows that the strategy the EU has shown so far in implementing IP provisions in the FTAs with ASEAN puts pressure on public health and complicates access to medicine.

How and where can alternatives, visions and counter-strategies develop, spread and network? What is their effective power?

- The instruments GSP and supply chain laws have a limited reach and little transformative character.
- The nexus of free trade, climate and agricultural policy issues requires more engagement from European NGOs/movements and stronger linkages. In ASEAN countries, the link has already been drawn/identified.
- European actors must problematize the role of international free trade institutions more strongly in their visions and alternatives and point out the function of free trade agreements as anti-democratic instruments of power.
- Progress towards EU-ASEAN bilateral or interregional free trade agreements undermines and complicates the possibilities of alternative visions to manifest themselves in socio-economic transformation of trade.

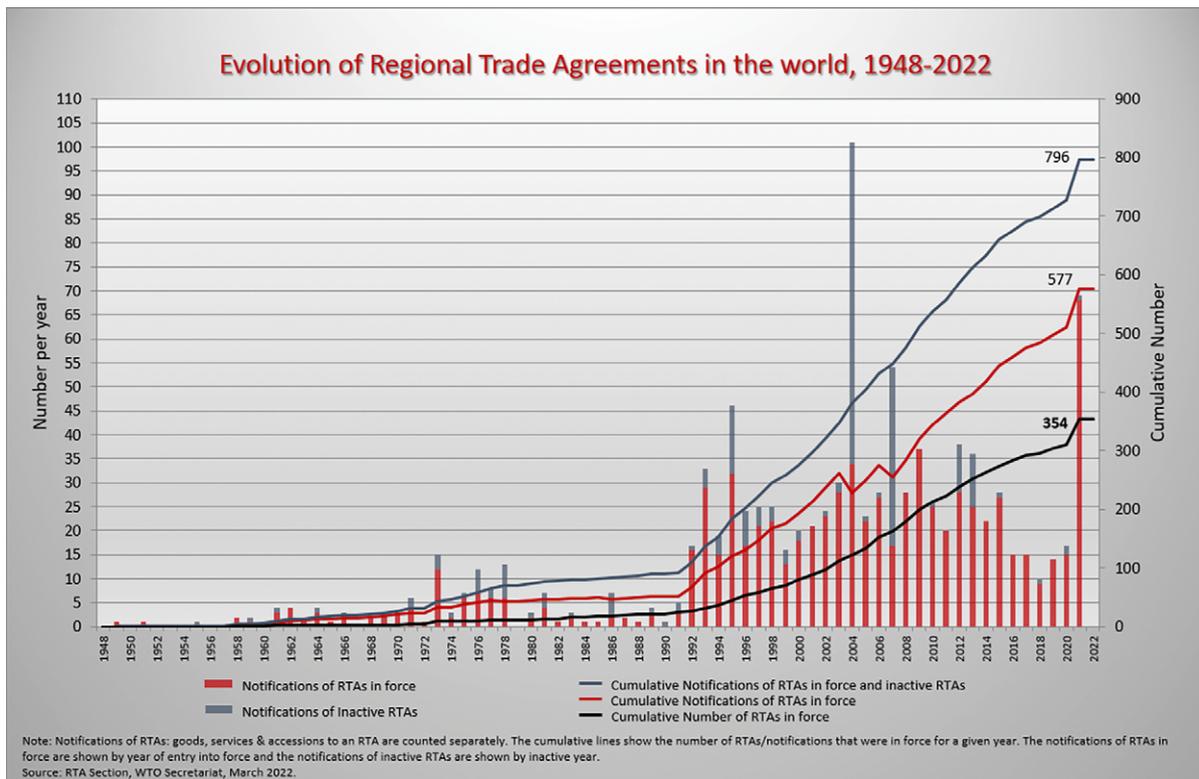
## 6 ANNEX

### 6.1 INTERVIEW PARTNERS

- Anne Bundschuh and Fabian Flues
  - Anne Bundschuh and Fabian Flues are researchers working on trade and investment policy at the NGO PowerShift e.V., Germany.
- Bernd Schneider
  - Bernd Schneider is Trade Policy Advisor to Member of the European Parliament Helmut Scholz, Coordinator of the Committee on International Trade for the Confederal Group of the European United Left/Nordic Green Left (GUE/NGL group) and responsible for Delegation Relations EU – USA as well as EU – PR China.
- Chalernsak Kittittrakul
  - Mr. Chalernsak Kittittrakul started his career related to intellectual property (IP) and access to medicines when he worked with an international NGO, Oxfam Great Britain, in 2003. Since then, he has worked as Coordinator of the Access to Medicines Campaign at AIDS Access Foundation, and has been involved in the civil society’s policy-advocacy movement to promote access to hepatitis C direct acting anti-retrovirals (HCV DAAs).
- Carlo Navera
  - Carlo Navera is policy officer for trade and investment with the Philippine based NGO IBON International. IBON is developing concepts of alternative trade and people-powered democracy.
- Prof. Christoph Scherrer
  - Prof. Christoph Scherrer is Professor Emeritus of Globalization and Politics at the University of Kassel. He is also Director of the International Center for Development and Decent Work (ICDD) and a member of the Steering Committee of the Global Labour University.
- Joe Buckley
  - Joe Buckley is an independent researcher and author, monitoring labour rights situations in Southeast Asia. His special interest is in militant labour protest in Vietnam.
- Joseph Purugganan
  - Joseph Purugganan heads the Philippine office of the international NGO Focus on the Global South, an activist think tank in Asia that provides analysis and develops alternatives for just social, economic, and political change.
- Josua Mata
  - Josua Mata is labour rights activist and Secretary-General of the Philippine Worker Union SENTRO. The union is organizing workers from various branches with a social movement unionism approach.
- Annika Kijtiwatchakul
  - Annika Kijtiwatchakul is a researcher and activist and vice chair of FTA Watch Thailand. FTA Watch Thailand is an umbrella organization bringing together various NGOs in their work to monitor the adverse effects of free trade agreements.
- Kartini Samon
  - Kartini Samon is the coordinator of GRAIN, an international NGO working to support small farmers and social movements in their struggles for community-controlled and biodiversity-based food systems.
- Witoon Lianchamroon
  - Witoon Lianchamroon is the founder and executive director of Biothai, a Thai grassroots NGO working on biodiversity and agro-ecology.
- Rachmi Hertanti
  - Rachmi Hertanti is former director of Indonesia for Global Justice, working on all issues of trade policy and investment regulations. Currently, she is a researcher with the Transnational Institute.
- Sofia Scassera
  - Sofia Scasserra is an associate researcher with the Transnational Institute (TNI) and specializes in digital economy, labour, and development. She is based in Argentina.
- Suzan Cornelissen
  - Suzan Cornelissen is Programme Officer for Indonesia at CNV International, Netherlands. She is working closely with Indonesian labour unions to improve local working conditions.
- Tran Thi Thuy Duong
  - Trần Thị Thùy Dương is a scholar of International Law at Ho Chi Minh City University of Law, Vietnam. She published on the EVFTA and its relationship with Vietnamese law.
- Vu Ngoc Binh
  - Vu Ngoc Binh is an independent human rights researcher in Vietnam working on children, rights, women’s rights, and gender equality. She previously worked for the Institute for Population, Family and Child Studies (IPFCS), as well as for domestic NGOs in Vietnam and UN agencies.
- Yin Shao Loong
  - Yin Shao Loong is a Senior Research Associate at the Khazanah Research Institute, working on issues such as climate, industrial policy, and technology. He has held previous jobs in the public sector, civil society organizations, and academia.

6.2 FIGURES

Figure 16: Evolution of Regional Trade Agreements 1948–2022



Source: Evolution of Regional Trade Agreements 1948-2022 (RTA Section, WTO Secretariat)

Figure 17: Export of goods from EU to ASEAN (Eurostat with own calculation)

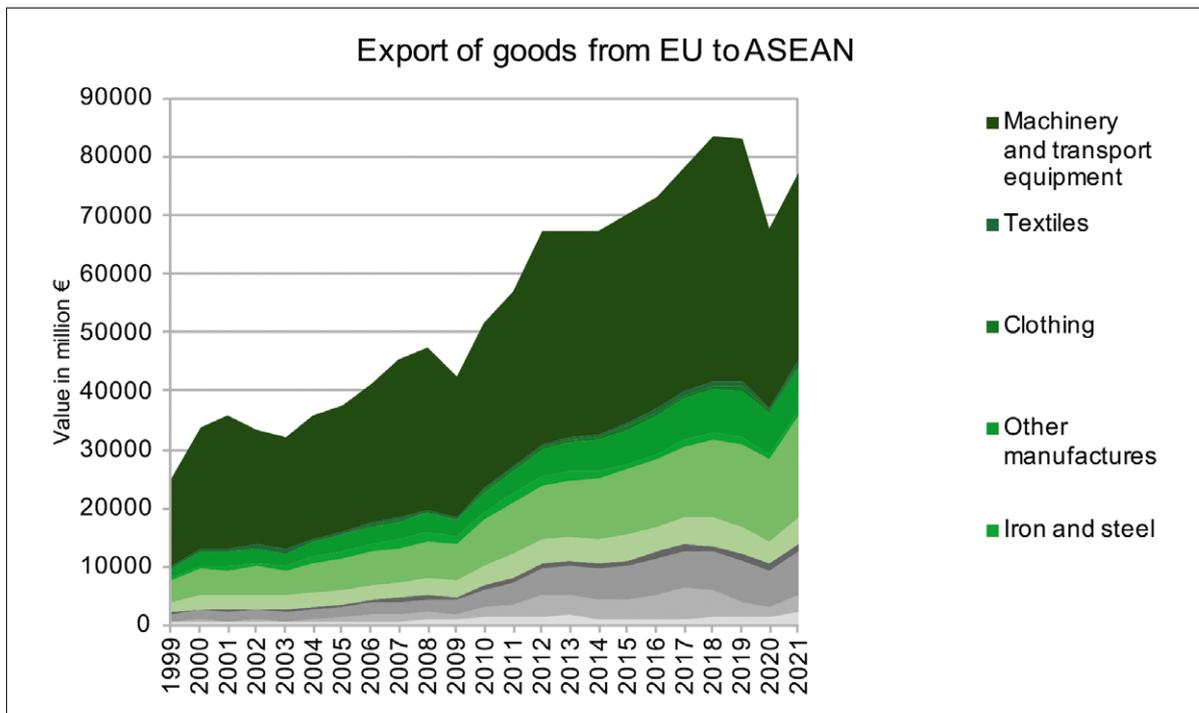


Figure 18: Share of goods exported of from EU to ASEAN (Eurostat with own calculation)

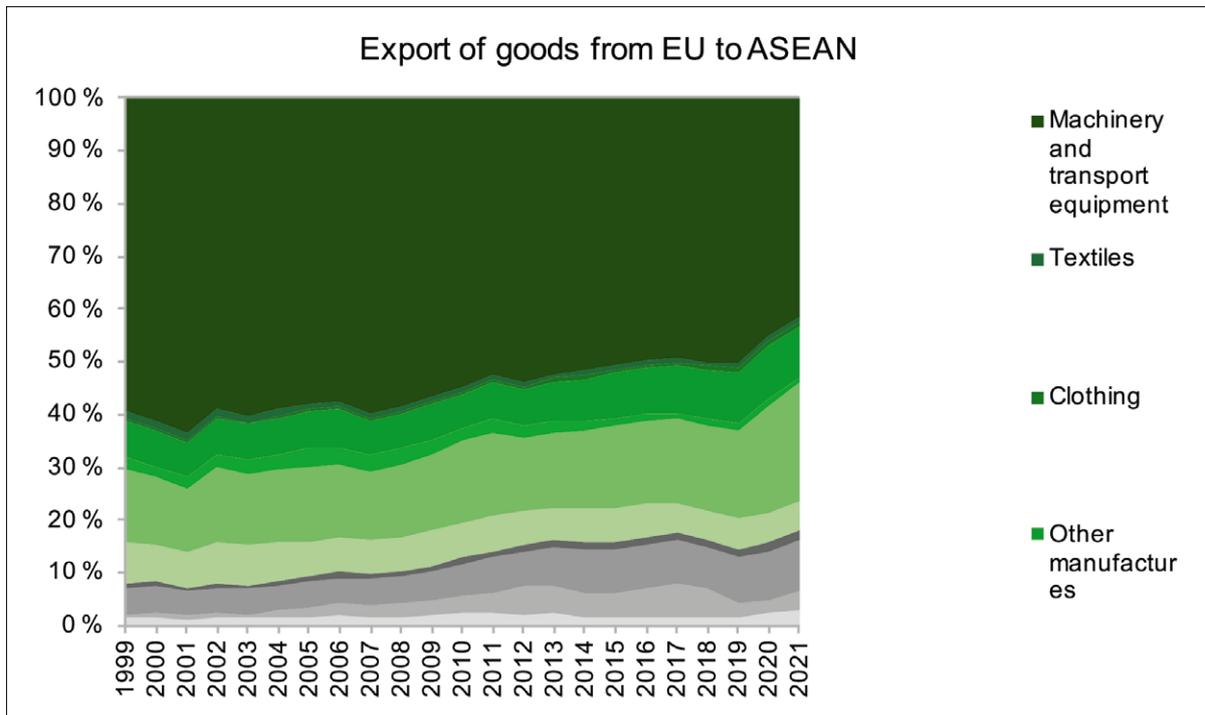


Figure 19: Export of goods from ASEAN to the EU (Eurostat with own calculation)

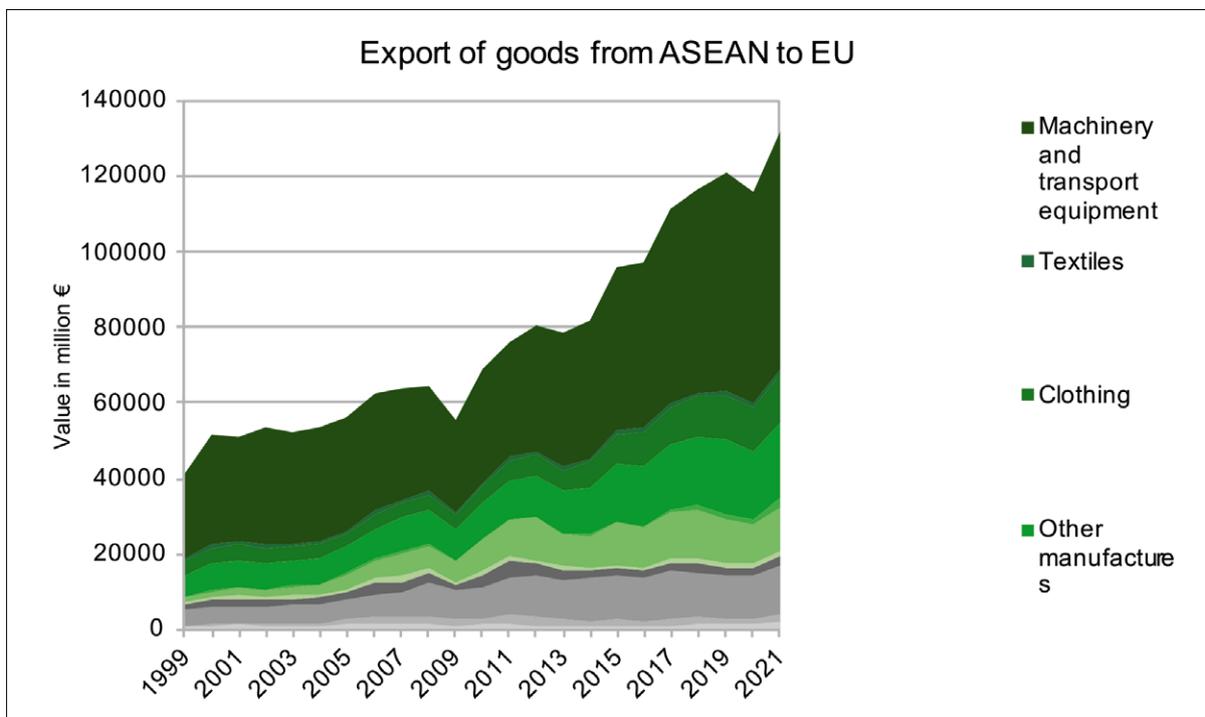


Figure 20: share of goods exported of from ASEAN to EU (Eurostat with own calculation)

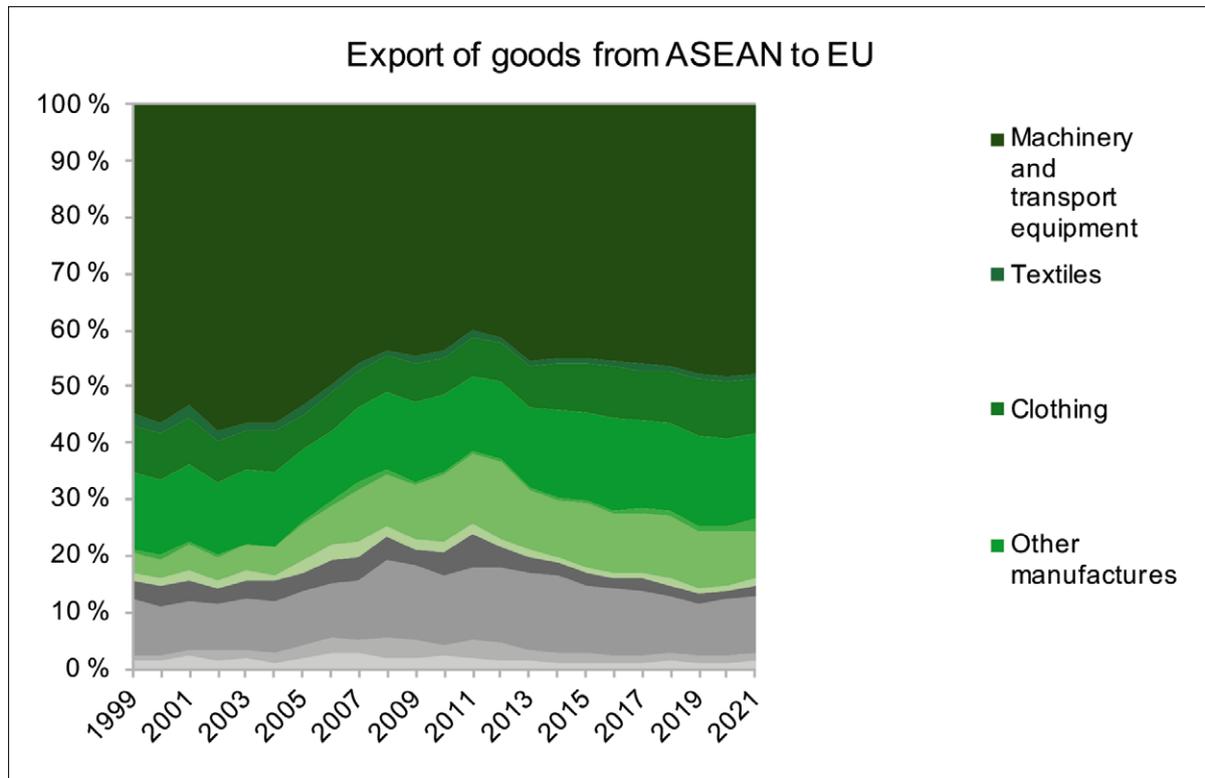


Figure 21: Share of ASEAN countries of total ASEAN – EU import and export (Eurostat)

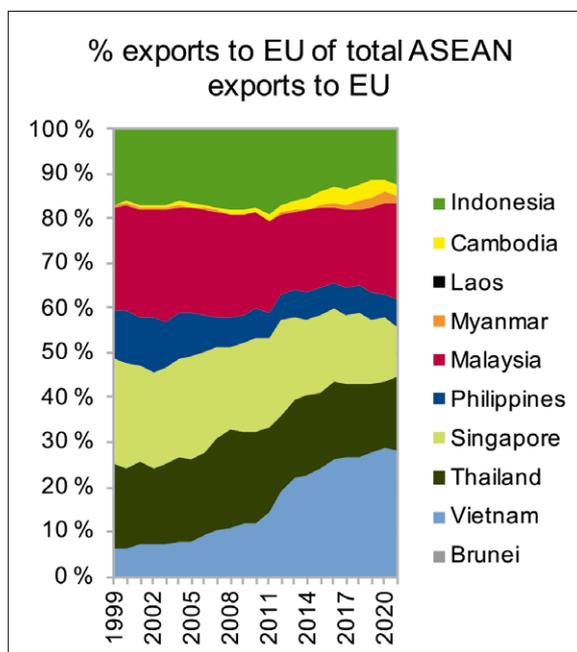


Figure 22: Value and share of services imported from ASEAN to EU (Eurostat)

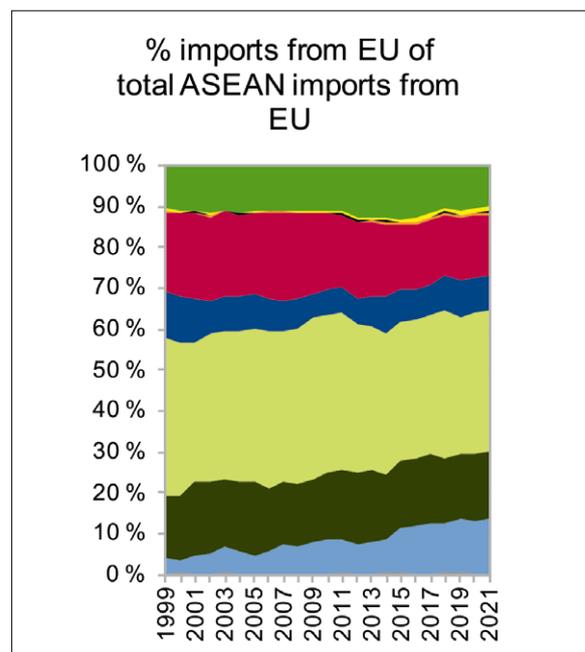


Figure 23: Value and share of services exported from EU to ASEAN (Eurostat)

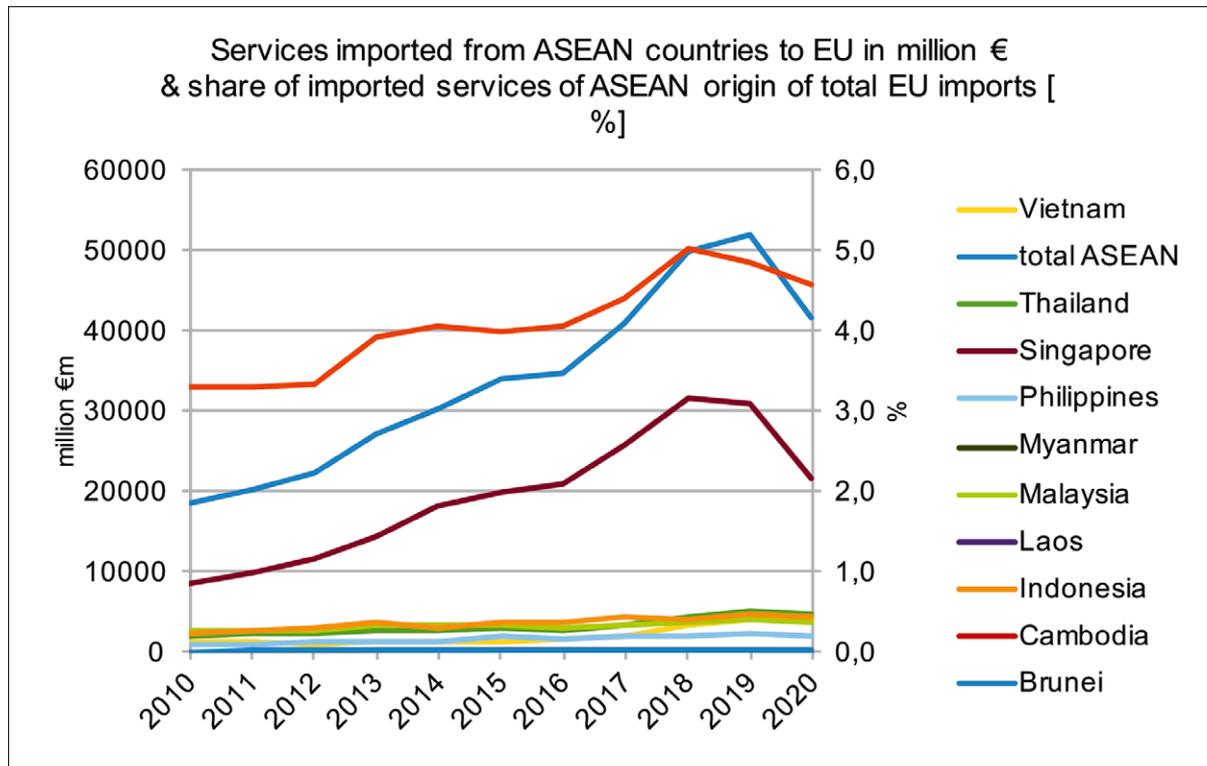


Figure 24: Services by category exported from ASEAN to EU (Eurostat)

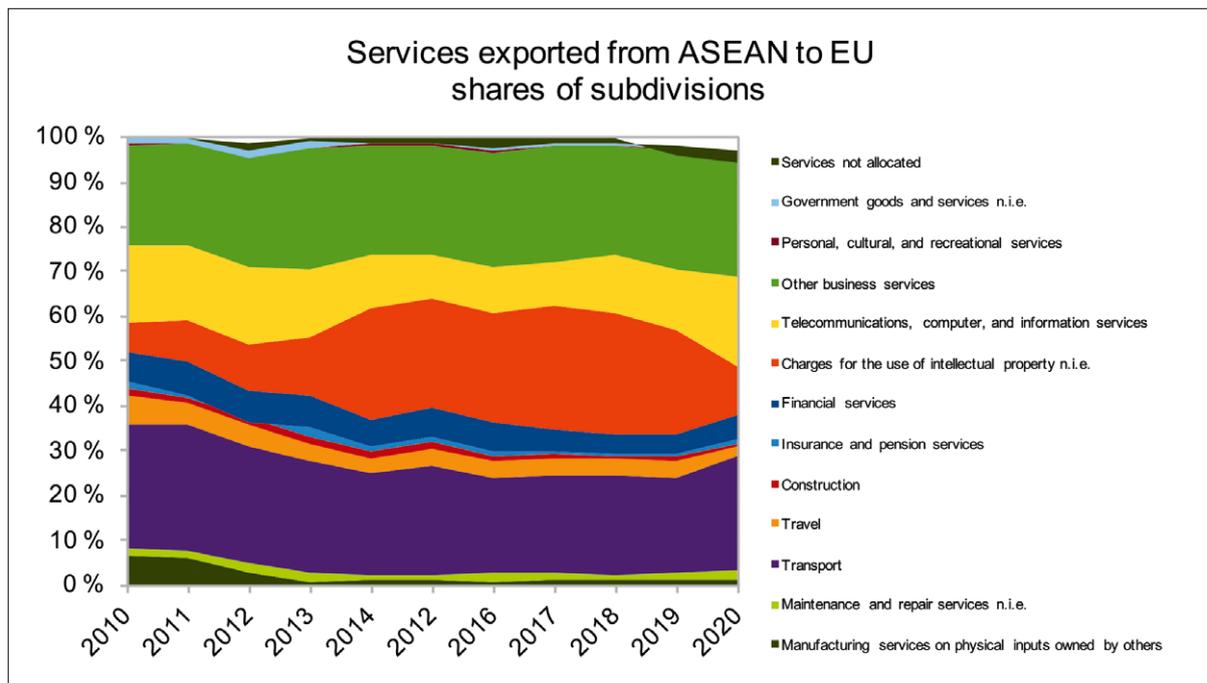


Figure 25: Services by category exported from EU to ASEAN Eurostat)

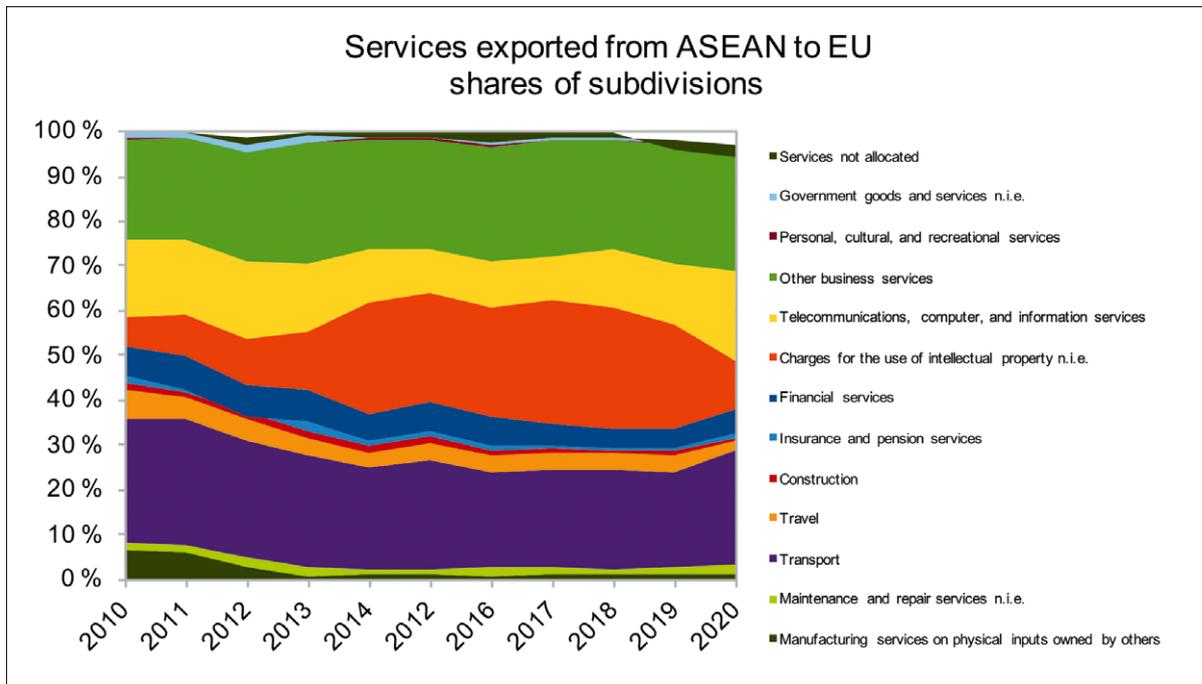


Figure 26: FDI stocks ASEAN – EU (data.aseanstats.org)

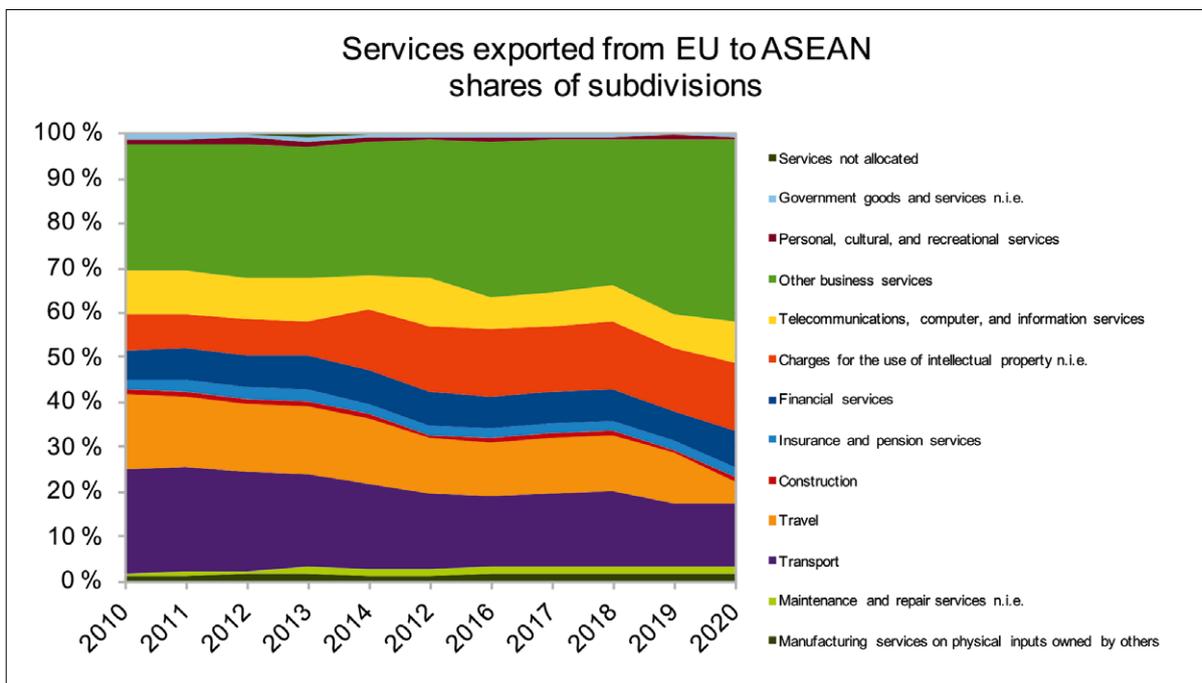


Figure 27: EU FDI stocks ASEAN by origin (data.aseanstats.org)

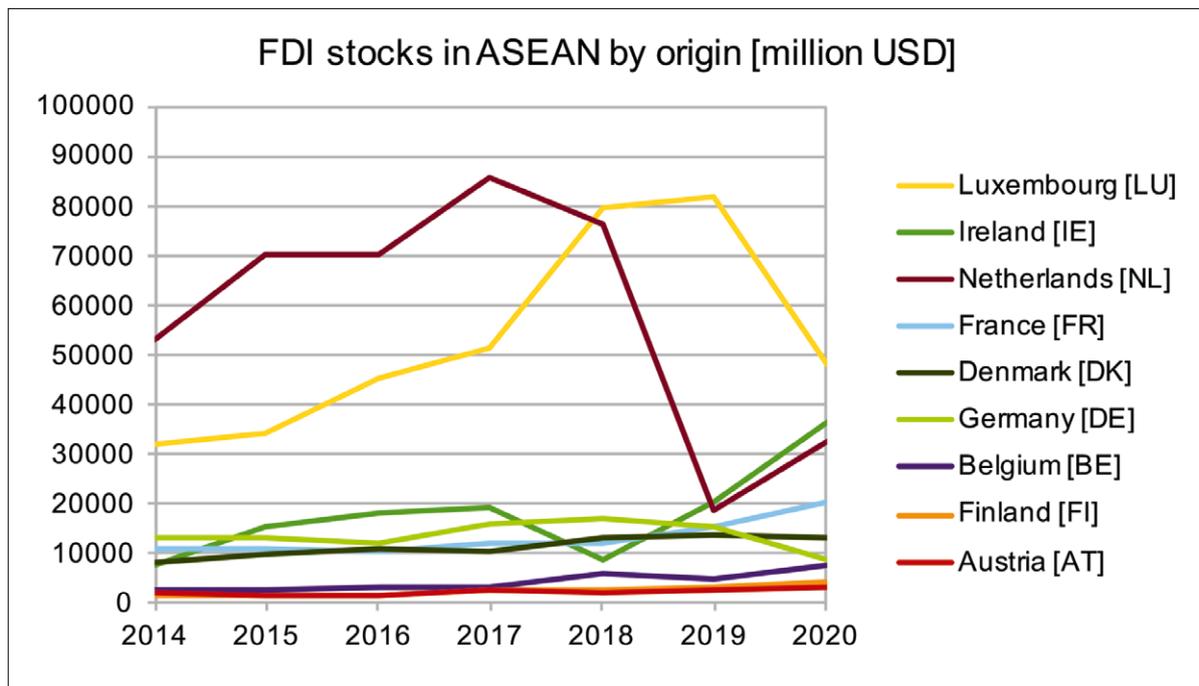


Figure 28: FDI regulatory restrictiveness index in EU and ASEAN (www.oecd.org)

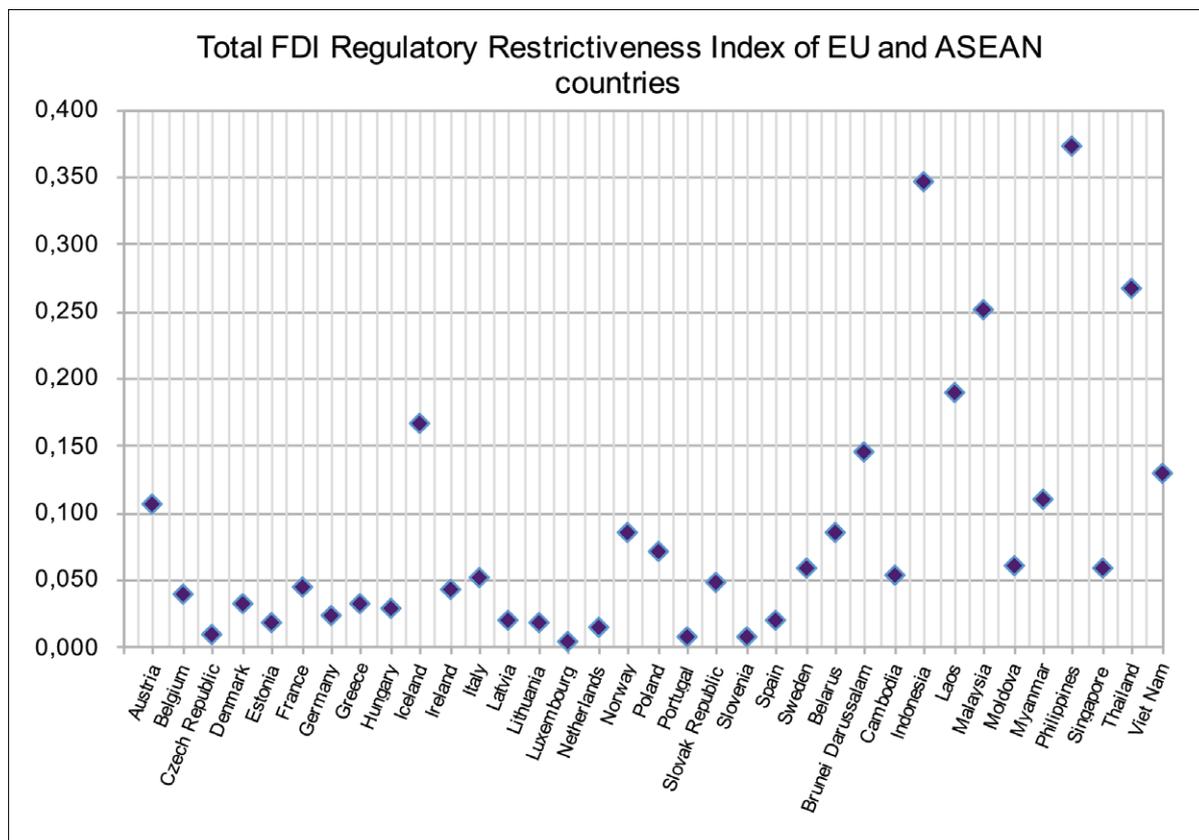


Figure 29: GDP per capita in EU and ASEAN countries (databank.worldbank.org)

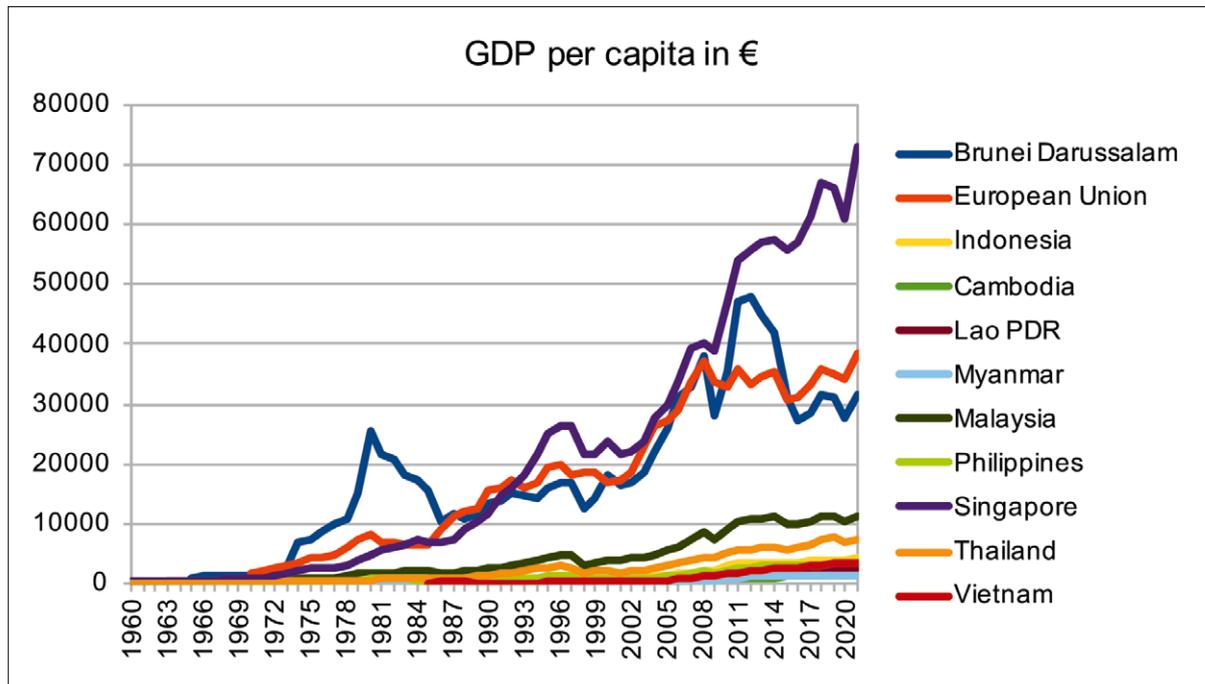


Figure 30: GDP PPP per capita in EU and ASEAN countries (databank.worldbank.org)

