

WITH BRUSSELS, OR NOT? THE EXTENT OF INFLUENCE OF EUROPEAN UNION-STYLE TRADE AND SUSTAINABLE DEVELOPMENT PROVISIONS FOR ASEAN AND ITS MEMBER STATES

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Abstract

The linkage between international trade regulation and sustainable development is increasingly evident in contemporary regional trade agreements (RTAs). The European Union (EU) has been at the forefront, advocating for the inclusion of trade and sustainable development (TSD) provisions in its regional trade agreements (RTAs) with trading partners, especially with two key Southeast Asian partners, which are Vietnam and Singapore. In contrast, ASEAN's regional economic integration shows a noticeable absence of TSD concerns. This discrepancy points to differing levels of commitment to TSD provisions in RTAs. For AMSs (AMSs), adopting EU-style TSD provisions could either be welcomed or resisted, making it essential to understand the extent of the EU's influence. Drawing from Brunnée & Toope's 'interactional international law' perspective, the article examines the EU's engagement and its influence on AMSs' understanding of TSD. This article concludes that even if the EU views sustainability as a value to be promoted internationally, this does not necessarily mean that AMSs negotiating TSD provisions will adopt the EU's approach verbatim. The agency of AMSs in resisting or adapting EU influence should not be overlooked. It is also important to note that some AMSs may incorporate sustainability considerations into their domestic policies, even in the absence of a cohesive ASEAN-level narrative or direct engagement with the EU on trade and sustainability.

Keywords: sustainable development, regional trade agreements, EU trade policy, ASEAN, TSD provisions

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The linkage between international trade regulation and sustainable development is increasingly evident in contemporary regional trade agreements (RTAs). With the long stagnation of the World Trade Organization (WTO)'s rule-making function, the WTO could only offer a limited plurilateral agreement on trade sustainability.¹ Thus, the creation of trade and sustainable development (TSD) rules has shifted the majority to regional forums. The EU has been at the forefront, advocating for the inclusion of TSD provisions in its RTAs with trading partners. Notably, the EU has established comprehensive TSD chapters in its agreements with two key Southeast Asian partners, Vietnam and Singapore, through the

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1 Anh, L. V. (2025). The agreement on climate change, trade, and sustainability—A new step in establishing a WTO legal framework for environmental trade?. *Vietnamese Journal of Legal Sciences*, 13(1), 54–66. <https://doi.org/10.2478/vjls-2025-0004>

EU-Vietnam and EU-Singapore FTAs.² In contrast, ASEAN's regional economic integration shows a noticeable absence of TSD concerns. This is evident from the lack of TSD provisions in the Regional Comprehensive Economic Partnership Agreement (RCEP), aside from a single reference to the UN Convention on Biodiversity. Given that RCEP was developed with the principle of ASEAN Centrality, this omission is surprising. It is in contradiction to the ASEAN Charter, which explicitly emphasises sustainable development as one of the key objectives in building the region.

This discrepancy points to differing levels of commitment to TSD provisions in RTAs. ASEAN lacks a consensus on how to incorporate TSD provisions into ASEAN Plus and ASEAN's internal trade agreements. This contrasts sharply with the EU's model FTAs, which have TSD provisions that Singapore and Vietnam have already adopted. For AMSs, adopting EU-style TSD provisions could either be welcomed or resisted, making it essential to understand the extent of the EU's influence.

The interaction between EU norms and ASEAN practices raises critical questions about the spread of sustainability norms in international trade, particularly within ASEAN. In terms of methodology, this article uses Brunnée & Toope's "interactional international law" perspective³ to examine the EU's engagement and its influence on AMSs' understanding of TSD. The development of a shared understanding of TSD rules is crucial because, from an interactionalist perspective, such "shared understanding" among rule-making participants legitimizes international rules. In analysing the degree of interaction as reflected through the element of "shared understanding", this paper collects literature, trade agreements and textual data on EU and AMSs practices on TSD using desk research.

By exploring the EU influence on ASEAN's approach to TSD, this paper aims to reveal the extent and the limits of the EU's influence regarding the construction of TSD norms in the context of ASEAN regionalism. The remainder of the article will be divided as follows. The subsequent section discusses the construction of TSD norms through regionalism, including the emergence of the EU, which positioned itself as a promoter of sustainability value in the international trade regime. In the second section, this paper examines the past and ongoing engagement of the EU in engaging ASEAN and AMSs through the creation of EU model RTAs. In the third section, this paper analyses the extent of influence on AMSs' practice. The sustainability value promoted through the EU-style RTA may be welcomed, ignored, or rejected.

2 Huong, N. T. L. (2022). The inclusion of sustainable development into new-generation FTAs—What can be expected in reserving nations' rights to regulate?. *Vietnamese Journal of Legal Sciences*, 7(2), 73–100. <https://doi.org/10.2478/vjls-2022-0009>

3 Brunnée, J., & Toope, S. J. (2010). *Legitimacy and legality in international law*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511781261>

1. Constructing trade and sustainable development norms

1.1. Entanglement of trade and sustainable development

Sustainable development has emerged as a fundamental concept within contemporary international trade law and the broader field of international law. Despite its increasing relevance in regulating international trade, there remains no universally accepted framework for harmonizing the notions of “international trade” and “sustainable development.” The Brundtland Report defines sustainable development as “meeting present needs without compromising the ability of future generations to meet their own needs.” This concept serves as a pathway toward a desirable future – one that reconciles trade liberalisation with the protection of non-economic interests, including environmental preservation, labour rights, and societal well-being.

TSD seeks economic progress through international trade practices that prioritise planetary concern and human welfare. Historically, market-oriented trade regimes, shaped during the height of neoliberalism from the 1970s to the 1990s, often sidelined non-economic considerations. Today, however, the landscape of international trade regulations aims to recalibrate the trajectory of trade liberalisation, steering it toward a more sustainable course.

Given the normative value and the ideal future that it wants to achieve, in general, the international community is supportive of the concept of sustainable development as reflected in the UN General Assembly Resolution on Sustainable Development Agenda.⁴ Even further, some scholars argued that the “language of sustainable development is the language of the morality of aspirations.”⁵ Yet, this concept clearly lacked uniform understanding among the international community, particularly regarding the question of *when* and *how* the concept is transposed into legal rules within the trade agreements.

Inclusion of TSD concerns in the framework of international trade rules is already apparent in the post-Rio world. Following the Rio Declaration, trade agreements follow suit by incorporating sustainable development concerns in the text of the agreement. NAFTA was one of the kinds. NAFTA features not only environmental provisions but also provisions that cover social concerns, such as labour. NAFTA’s approach to tackle environment and labour issues is carried on and contemporary regional and megaregional trade agreements such as the United States, Mexico and Canada Agreement (or NAFTA 2.0), and the Comprehensive and Progressive Partnership of Trans-Pacific (CPTPP).

⁴ United Nations General Assembly. (2015, October 21) *Transforming our world: the 2030 Agenda for Sustainable Development* on 25 September 2015. United Nations, A/RES/70/1. https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1. This resolution that adopted Sustainable Development Goals was unanimously adopted by the UN Member State. Read further: United Nations. (2015, September 25). *Unanimously adopting historic sustainable development goals, General Assembly shapes global outlook for prosperity, peace*. United Nations, seventieth session, 4th, 5 th & 6 th meetings, GA/11688. <https://press.un.org/en/2015/ga11688.doc.htm>

⁵ Voigt, C. (2009). *Sustainable development as a principle of international law*. Leiden: Brill/Nijhoff.

In Western Europe, the Maastricht Treaty (1992) was the first constitutive instrument of the EC that incorporated sustainability value within the constitutive structure. It incorporates the task for the Community to achieve “harmonious, balanced, and sustainable economic activities”, which leads to the improvement of the environment and increases the living standard. This instrument was followed by the creation of EC–EC–Hungary Europe Agreement in 1993. This agreement was the first to contain the mandate for Hungary to design economic and social development policies to be guided by the principle of sustainable development.⁶ More recently, after the adoption of Lisbon Treaty, the EU aggressively pursued FTAs which heavily incorporate TSD provisions, as reflected in the EU model of trade agreements.

The North–South divide is apparent in the issue of TSD. For developing countries, the issue of TSD has been seen cautiously. In the GATT meetings, which discussed trade and environment issues, delegates from developing countries were concerned that environmental policies, such as ecolabeling requirements, were imposed by developed countries as trade protectionism.⁷ This view was also shared with AMSs at the time. AMSs, voiced by Malaysia, urged the need for a structural assistance programme to be given to developing countries.⁸ In later development, AMSs embraced the concept of sustainable development, as it finally made its way within the wording of the ASEAN Charter (2007).⁹ This development is seemingly promising; however, in the ASEAN Trade in Goods Agreement (ATIGA) (2009), which functions as internal trade rules between AMSs *inter se*, sustainability provisions are not apparent even in the preamble.

By the time of the adoption of the finalised text of the Marrakesh Agreement (1994),¹⁰ “sustainable development” was already accepted by the WTO members, as enshrined in the preamble of the Marrakesh Agreement. This was reiterated later through the Doha Ministerial Declaration that WTO Members: “Reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakesh Agreement.”¹¹ In

6 Douma, W. Th. (2017). The Promotion of Sustainable Development through EU Trade Instruments. *European Business Law Review*, 28(2), 197 – 216. <https://doi.org/10.54648/eulr2017014>; Article 70 EC–Hungary Europe Agreement stipulates “2. Policies designed to bring about the economic and social development of Hungary, in particular policies relating to industry including the mining sector, construction industry, investment, agriculture, energy, transport, telecommunications, regional development and tourism should be guided by the principle of sustainable development.”

7 General Agreement on Tariffs and Trade. (1991, June28). *Council 29–30 May 1991, Minutes of meeting*. WTO, C/M/250, p. 11. https://www.wto.org/gatt_docs/English/SULPDF/91530724.pdf

8 Chase, B. F. (1994). Tropical forests and trade policy: The legality of unilateral attempts to promote sustainable development under the GATT. *Hastings International & Comparative Law Review*, 17(2), 349–388, p. 376. https://repository.uclawsf.edu/hastings_international_comparative_law_review/vol17/iss2/4/

9 Charter of the Association of Southeast Asian Nations (ASEAN), adopted November 20, 2007 (entered into force December 15, 2008). Its preamble explicitly states: “To promote sustainable development so as to ensure the protection of the region’s environment, the sustainability of natural resources, the preservation of its culturale heritage and the high quality of life of its peoples.”

10 Marrakesh Agreement Establishing the World Trade Organization, April 15, 1994, 1867 U.N.T.S. 154. [hereinafter “Marrakesh Agreement”].

11 World Trade Organization. (2001, November 20). *Ministerial Declaration, adopted November 14, 2001*.

the judicial practice of WTO dispute settlement, the Appellate Body has confirmed the use of the concept of sustainable development as a guiding principle to interpret WTO provisions, particularly with regard to trade and environment disputes.¹² However, in the WTO legal framework itself, as today, there are no specific rules dedicated to guiding WTO Members to tackle the issue of sustainability, except for an instrument. So far, the only materialised single undertaking instrument is the Fisheries Subsidies Agreement, which tackles the issue of subsidies given to the fisheries sector that would harm the sustainability of global fish stocks.

Given the limited role and achievement of the rule-making function in the WTO, the proliferation of TSD norms is emerging through the practices of regionalism. This is guided by Article XXIV GATT, which enables more liberal trade arrangements between the WTO/GATT Members. Article XXIV also enables extra-WTO rules and arrangements, insofar as the arrangements are not more trade-restrictive and in line with the WTO/GATT itself.

As an overarching concept, there is no exact approach to transpose sustainable development into the text of a trade agreement. In this sense, the approach of each region toward the linkage between trade and sustainable development could vary. There are, however, some indicatives of typical substantive TSD provisions contemporary trade agreements as highlighted by the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), namely:¹³ (i) labour rights and standards; (ii) environment; (iii) human rights; (iv) small- and medium-sized enterprises (MSMEs); (v) gender; and (vi) health. Discursive overview of FTA with TSD norms indicates that TSD would include variety of provisions, such as:

- Explicit non-application, exception and exemption rules that go beyond Article XX GATT-style exception that could accommodate flexibility for parties to implement environment and social development measures;
- Acknowledgement of rights and obligation deriving from other Multilateral Environmental Agreements (MEAs) or other international agreement that is relevant for social development (e.g. ILO conventions);
- Arrangement for commodity-specific sustainability rules (e.g. commodity certification scheme);

Ministerial Conference, WTO, WT/MIN(01)/DEC/1. https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.pdf

12 WTO Appellate Body. (1996, April 29). *United States—Standards for reformulated and conventional gasoline*, WT/DS2/AB/R, adopted 20 May 1996. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/2ABR.pdf&Open=True>; WTO Appellate Body. (1998, October 12). *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, adopted 6 November 1998. https://www.wto.org/english/tratop_e/dispu_e/58abr.pdf

13 United Nations. (2023). *Handbook on provisions and options for inclusive and sustainable development in trade agreements* (Prepared by Katrin Kuhlmann). United Nations publication. p. 3. https://www.newmarketslab.org/assets/legal_guide/2.pdf

- Specific TSD rules enforcement, monitoring or dispute settlement mechanism;
- Intellectual property provisions which support the protection of biodiversity and traditional knowledge;
- Some indirect provisions that may be related to sustainable development such as, paperless trading or electronic custom procedure.

These provisions often appear in the contemporary RTAs, whether contained in a specific sustainability chapter or in independent provisions.

1.2. 'Brussels effect' of trade and sustainable development norms

As briefly pointed out above, the EU has placed itself in the global stage to promote sustainable development through trade. This is driven by the constitutional mandate given by the Treaty on European Union that "in its relations with the wider world, the Union [...] shall contribute to the sustainable development of the Earth."¹⁴ Prior to the inclusion of sustainability language in the EU constitutional structure, the EU had played a significant role in promoting sustainable development, among others, the Rio Declaration on Environment and Development, Agenda 21, and the 2030 Agenda. This is the EU's approach to promoting sustainable development through trade and investment, including using relations with external partners. In this way, the EU attempts to advocate a European way of sustainability values toward the world.¹⁵ This approach is what scholars have described as the Brussels effect, that is, the value projection by the EU, which is subsequently followed by the EU's external partners.

The first FTA that would serve the EU's value exportation experiment project is the EU–the Caribbean Forum (CARIFORUM) Economic Partnership Agreement.¹⁶ The negotiation started in 2004 and was signed in 2008. To date, the Commission claimed that the EU-CARIFORUM EPA featured "some of the strongest language on rights and sustainable development available in EU agreements."¹⁷ The EU's practice of incorporating TSD chapters/provisions in its FTAs with trading partners continues. The commitment to include a stronger and hardened norm was reiterated by the Commission. The latest document by the Commission entitled "the power of trade partnership: together for green and just economic growth,"¹⁸ reiterates the strong implementation of TSD norms. Consequently, the EU-style TSD chapter would typically include mechanisms to ensure effective

14 Article 3(5) of the Treaty on European Union, OJC 202, the consolidated version 7 June, pp. 13–46.

15 Nhung, N. T. & Trinh, H. Y. (2022). Demystifying the sustainable development chapter in the EU-Vietnam FTA. *Legal Issues of Economic Integration*, 49(2), 217 – 236, 223. <https://doi.org/10.54648/leie2022010>; Douma (2017), *supra* note 6, p. 204.

16 Douma (2017), *supra* note 6, p. 210.

17 European Commission. (2008). *The EU-CARIFORUM Economic Partnership Agreement*. <https://trade.ec.europa.eu/access-to-markets/en/content/eu-cariforum-economic-partnership-agreement>

18 European Commission. (2022, June 22). *The power of trade partnership: together for green and just economic growth*. Brussels, COM(2022) 409. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022DC0409>

implementation of ILO Conventions and Multilateral Environmental Agreements that each party adheres to.

Currently, the EU has concluded and is still negotiating over 40 FTAs with external partners. Each FTA contains the language of sustainable development, albeit with a different degree and depth of commitment. The deeper and more comprehensive FTAs, which have a dedicated TSD chapter, are those concluded with, among others, Canada, Singapore, South Korea, Vietnam, and Japan. Typical EU-style TSD provisions would cover compliance with international labour and environmental standards and commitments for trading partners to access treaties if they are not already parties to them. There are commitments to effectively enforce each party's environmental and labour laws, and to not lower these standards to attract trade or investment, thereby preventing a 'race to the bottom' in host countries (non-regression provision). Additionally, there are commitments to sustainably trade natural resources, such as timber and fish, and to combat illegal trade of threatened and endangered species. Encouragement of trade that supports climate change mitigation, provisions on corporate social responsibility, promotion of sustainable public procurement, and removal of barriers to trade and investment in renewable energy are also included. The implementation and enforcement of sustainable development provisions, along with the establishment of various commissions, committees, and expert groups to supervise the FTA's implementation, are also required.¹⁹

Interestingly, this style of TSD chapter is also followed by the EFTA states and incorporated by EFTA with its trading partners. Thus, in this sense, we could label this approach of TSD as a European-style TSD chapter. The Brussels effect not only impacted non-European EU's external partners, but also among fellow European states within the EEA.

1.3. Constructing trade and sustainable development norms as an interactive process

Inclusion of sustainability norms within the trade agreement is a result of an interactive process in international law. International norms are not created in a vacuum but are created through the social process of actors involved. Sustainability norms are introduced not in sterile laboratory settings, but through social interaction; consequently, the norms might be accepted, challenged, and even rejected. This is the basic premise of the constructivist paradigm in international relations.

Brunnée and Toope argue that constructivism assumes legal norms emerge from social norms based on a shared understanding, but these legal norms are distinct from social norms themselves. The transition from social norms to legal norms involves what they term the "process of legality", which

¹⁹ Summarised from various Trade & Sustainable Development chapters of EU FTAs.

includes eight essential preconditions. These criteria are: (i) the general nature of legal norms; (ii) norms must prescribe or prohibit specific actions; (iii) legal norms must be publicly promulgated and accessible; (iv) legal norms must not be retroactive; (v) legal norms must be consistent; (vi) legal norms must not demand the impossible; (vii) legal norms must require consistent adherence; and (viii) there must be alignment between legal norms and the officials enforcing them. When these eight criteria are satisfied, Brunnée and Toope suggest that norms achieve “fidelity to law”.²⁰ In trade agreement negotiations, if there is no “shared understanding” and the criteria of legality are not met, the treaty’s implementation may be ignored because the agreement fails to promote fidelity.²¹

Shared understanding in the norm-making process requires beyond mere technical consent as understood in the treaty law regime. Building shared consensus requires a process of interaction that would subsequently lead to internalised commitment toward the norms.²² In the case of the construction of TSD norms as a European value, it is understood that the value was built over time and reiterated and repeated on many occasions. Thus, this social practice subsequently shapes the identity and values and creates norms, as understood by constructivists. The EU has been firm about the value-based approach in trade negotiations as emphasized by Commissioner Malmström in 2015, that the EU is:

“Using trade agreements and trade preference programmes as levers to promote, around the world, values like sustainable development, human rights, fair and ethical trade and the fight against corruption.”

Sustainability as a value for the EU is therefore considered a red line that should not be lowered, as this is the core value that the EU adheres to. This value is well-established in the discourse of the EU itself. However, this might not be the case when we analyse the EU’s FTAs with third states. Gammage questions the legitimacy of the EU–South African Development Community EPA as it lacks discourse legitimacy due to unequal exchange during the agreement negotiations.²³ In this sense, shared understanding needs to be built through an acceptance process by discourse and mutually equal exchange. The promotion of TSD norms should eventually involve meaningful engagement between the actors involved. As provisions of TSD are typically unenforceable in the dispute settlement, or they contain a weak hortatory language, these provisions rely on internalised commitment built upon a shared understanding. As such, the legitimacy of rules plays an important role in norm internalisation.

20 Brunnée & Toope (2010), *supra* note 3, p. 27.

21 *Ibid.*, p. 49.

22 Gammage, C. (2017). *North-South regional trade agreements as legal regimes. A critical assessment of the EU-SADC Economic Partnership Agreement*. Cheltenham: Edward Elgar.

23 *Ibid.*

2. European Union engagement with the Association of Southeast Asian Nations

2.1. *The vision towards the European Union—the Association of Southeast Asian Nations free trade agreements*

The EU's FTA-making policy and practice prefer inter-regional bloc integration through FTA rather than making separate bilateral agreements with member States. This practice is consistent with the creation of the EU–CARICOM, EU–SADC EPA, and EU–West Africa EPA. Presently, the EU is negotiating an agreement with Mercosur. However, when it comes to ASEAN, the EU faced challenges in the past. In 2007, the EU and ASEAN concluded an agreement that initiated a negotiation round between the two blocs. The trajectory towards ASEAN is intuitive because at the time, the EU was ASEAN's key trading partner. The EU desired a WTO-plus agreement with ASEAN, meaning that the agreement would feature deeper trade, services, investment liberalisation commitment beyond WTO, and IP provisions and government procurement, respectively. Thus, the EU set an ambitious plan to bridge the two regions.

As Cuyvers notes, ASEAN also prefers region-to-region FTA negotiations.²⁴ But the negotiation process of ASEAN with external partners has proven to be challenging. Even Meissner called these negotiation efforts an example of “failed interregionalism”.²⁵ The EU initially perceived ASEAN as a unitary and cohesive bloc; however, in reality, ASEAN is a complex and heterogeneous bloc. Gaps of development also appear among the AMSs, there are initial AMSs that more economically developed, and there are three AMSs (Cambodia, Myanmar, and Laos) that are economically lesser developed compared to the others.²⁶ Thus, negotiation at the bloc level using the assumption of ASEAN cohesiveness is rather naïve.

Cohesiveness of ASEAN is starting to develop just after the ASEAN Community project was initiated in 2007. The ASEAN Community project was initiated and was scheduled to be implemented in 2015 and later revised to be in place by 2025. It comprises three main pillars of ASEAN: Political-Security Community (APSC); Economic Community (AEC); and Socio-Cultural Community (ASCC). This ‘community’ project cannot be equated with the experiences of Western European states in integrating Europe. ASEAN, institutionally speaking, is an intergovernmental organization with does not have a mandate to govern using top-down approaches. Thus, institutionally, ASEAN lacks an EU Commission-style executive function

24 Cuyvers, L. (2007, October). An EU-ASEAN Free Trade Agreement: Reflections on Issues, Priorities, Strategies. The Workshop: *The EU-ASEAN FTA: Perspectives of European Business*, European Institute for Asian Studies (Brussels; 28 September 2007), *CAS Discussion Paper*, (53), p. 13. <https://repository.uantwerpen.be/docman/irua/16fa63/4010.pdf>

25 Meissner, K. L. (2016). A case of failed interregionalism? Analyzing the EU-ASEAN free trade agreement negotiations. *Asia Europe Journal*, 14, 319–336. <https://doi.org/10.1007/s10308-016-0450-5>

26 Cuyvers (2007), *supra* note 24, p. 13.

within ASEAN, as AMSs want ASEAN to remain an intergovernmental organisation. Also, ASEAN adheres to the ASEAN Way as a guiding value for regionalism. At a very minimum, the ASEAN Way entails consensus-based decision making, respect for Member States' sovereignty and autonomy, non-interference in the domestic affairs of Member States, avoidance of a formalistic judicial dispute settlement process and preference toward closed-door diplomacy. These values and practices are culminated from a post-colonial perspective, which has endured among the majority of AMSs. Thus, compared to the EU experience and expectations, negotiation with ASEAN is seemingly cumbersome and complex.

In 2009, the EU–ASEAN Joint Committee determined that they were to pause negotiations. Other than institutional challenges, the Myanmar issue has also become a problem.²⁷ Moreover, substantively wise, the EU and AMSs could not agree on the degree of liberalisation commitment for ASEAN Least Developed Countries (LDCs). Also, there are WTO-plus commitments that are hard to form a consensus on, such as issues on government procurement and TSD.²⁸ These factors, substantively and institutionally, explain why the EU–ASEAN integration project had remained unrealised. Even the effort was labelled as “failed interregionalism” scholars still explore the possibility of future interregional EU–ASEAN FTAs.²⁹

2.2. The European Union's bilateralism: Approaching the Association of Southeast Asian Nations through its Member State(s)

Following up on the stall of EU–ASEAN FTA negotiations, the EU moved toward a strategy to conclude FTA negotiations with individual AMSs. Rather than aiming for the conclusion of bloc-to-bloc negotiation, the EU pursued deals with certain individual AMSs on a bilateral basis. In the Trade for All policy document, the Commission strategises a bilateral approach based on the assessment of the economic and political readiness of the EU's external partner.³⁰ Considering the AMSs' readiness and like-mindedness to smooth negotiation, the EU chose Singapore as the pilot project of bilateralism toward AMSs, as the negotiation began in 2010. The opening of bilateral talks with Singapore was subsequently followed up with Vietnam (began in May 2012), Thailand (since 2013), the Philippines (since 15 December 2015) and Indonesia (since 18 July 2016). So far, only FTAs with Singapore (2018) and Vietnam (2019) are finished and in force.

27 Council Regulation (EC) No 194/2008 of 25 February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006. *Official Journal of the European Union*, L 66, 10 March 2008, 1–9. <https://eur-lex.europa.eu/eli/reg/2008/194/oj>

28 Hsieh, P. L. (2022). Shaping new interregionalism: The EU–Singapore free trade agreement and beyond. *Leiden Journal of International Law*, 35(1), 129–154. <https://doi.org/10.1017/S0922156521000558>

29 Hsieh (2022), *supra* note 28; Limenta, M. E. (2022). Toward an ASEAN–EU FTA: Examining the trade and sustainable development chapter in the Prospective Indonesia–EU CEPA. *Legal Issues of Economic Integration*, 49(2), 191–216. <https://doi.org/10.54648/LEIE2022009>

30 European Commission. (2015). *Trade for all: Towards a more responsible trade and investment policy* (p. 30). Brussels, COM(2015) 497. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52015DC0497>

The EU's FTAs with Singapore and Vietnam follow the EU-style model of TSD provisions. When the EU expresses politically sensitive issues such as the environment and human rights with AMSs, it must approach the issues cautiously. Exportation of the EU's value through trade agreements has been challenging.³¹ As briefly mentioned above, trade and environment issues have been contested since the GATT meetings by AMSs.³² Challenges also on the dimension of trade–human rights nexus, such as labour, as AMSs are quite sensitive about external comments on domestic human rights situation, given the non-interference principles embodied in ASEAN Way.³³ Thus, the conclusion of an FTA with Singapore would serve as the stepping stone as well as the barometer to indicate the approximation of AMSs' readiness to follow the EU de facto regulatory standards on TSD. For the future trajectory, the EU desires that AMSs' constructed identity supports the promotion of TSD to the same level as the EU.³⁴ Thus, as Hsieh notes, the creation of TSD with Singapore serves as a constructive foundation of future EU–ASEAN FTA as initially intended.³⁵

3. The influence of the European Union trade and sustainable development norms on the Association of Southeast Asian Nations Member States

The preceding discussions highlighted the complexity of trade negotiations between ASEAN and AMSs. Emphasis on a bilateral approach would add another layer of complex entanglement of FTAs of ASEAN and AMSs. Given the importance of the region in the 21st century, the Asia-Pacific region has been attractive enough for ASEAN trading partners to follow up with the region by creating trade agreements. In the Asia-Pacific region, ASEAN is the only established trading bloc. Eastern Asian states like Japan, Korea, and China are, on the contrary, absent from a cohesive regional bloc. Thus, ASEAN serves as an anchor point for ASEAN trading partners should they aim for deeper beyond WTO relationships with East Asian countries. To date, only AMSs that have trade relationship that intersects with China and the West (North America, and the EU) through trade agreements.

The table below indicates the complexity of overlapping trade agreements that entangle ASEAN and Member States at their centre. Some of the contemporary FTAs include sustainable development provisions, albeit at different depths of commitment.

31 Hsieh, P. L. (2022). The Roadmap to the ASEANUE FTA in the PostPandemic Era. *Legal Issues of Economic Integration*, 49(2), 125–148. <https://doi.org/10.54648/LEIE2022006>

32 Chase (1994), *supra* note 8, p. 376.

33 Langlois, A. J. (2021). Human Rights in Southeast Asia: ASEAN's rights regime after its first decade. *Journal of Human Rights*, 20(2), 151–157. <https://doi.org/10.1080/14754835.2020.1843144>

34 Hsieh (2022), *supra* note 35, p. 134.

35 *Ibid.*, p. 147.

**Table 1. Trade Agreements of ASEAN and Member States
and their content of TSD provisions**

	Instrument	Acknowledgement of SD	Legal Provisions	Level
1	ASEAN Charter	Yes, in the Preamble	No	ASEAN constitutive instrument
2	ASEAN Trade in Goods Agreement (ATIGA) ³⁶	No	No	Intra-ASEAN agreement
3	RCEP	Yes	Yes, limited to UN CBD and Anti-corruption	ASEAN Plus
4	AANZFTA	Yes	Yes	ASEAN Plus
5	Indonesia–EFTA CEPA	Yes	Yes, TSD Chapter	ASEAN Member State bilateral
6	Singapore–EU CEPA	Yes	Yes, TSD Chapter	ASEAN Member State with ASEAN Plus Dialogue Partner
7	Viet Nam–EU CEPA	Yes	Yes, TSD Chapter	ASEAN Member State with ASEAN Plus Dialogue Partner
8	Philippines–EFTA FTA	Yes	Yes, TSD Chapter	ASEAN Member State bilateral
9	Comprehensive and Progressive Partnership for Trans-Pacific (CPTPP)	Yes	Yes, TSD Chapter	Four AMSs are also members of CPTPP

The table above indicates that FTAs that contain TSD provisions are influenced either by the North American model, which was derived from NAFTA, or the EU-style TSD provisions. So far, unlike the EU's explicit value-based promotion of TSD norms, ASEAN's policy preference for its

³⁶ ATIGA is currently under negotiation process for upgrading the text. It is aimed that ATIGA in the future will support 'digital transformation and sustainability agenda', not only serves as 'traditional trade-in-goods' agreement. See Association of Southeast Asian Nations (ASEAN). (2023, September 5). *Chairman's Statement of the 43rd ASEAN Summit*, para. 65. Jakarta, Indonesia.

approach to TSD provisions remains unstated. The most reflective agreement practice we could observe is from the conclusion of the RCEP. RCEP was negotiated with ASEAN at its centre, or the ASEAN Centrality principle.³⁷ Therefore, anything that appears on ASEAN reflects ASEAN's view or is at least accepted by ASEAN on a consensus basis.

Without explicit policy preference of ASEAN's approach to TSD, the position and the practice of AMSs toward TSD provisions are highly relevant. Individual position of AMSs, particularly from more influential AMSs, could possibly form as basis for the construction of ASEAN's identity for TSD in the future. It should be noted, however, that identity-making processes do not occur in a social vacuum. Constructed and borrowed values from AMSs' external partners might play significant roles. Thus, this is why it is imperative to understand AMSs' reception of TSD norms that stem from the ASEAN partners' policy. The European approach is one of the predominant approaches in the region, as notable influential AMSs have formed trade agreements with the EU and EFTA, respectively. Interaction and engagement between AMSs and the EU are discourse practices that could form value, identity, and norms. As a discourse, of course, there is no uniformity in understanding between the actors. Subsequently, we will divide the acceptance of TSD norms into three forms: rejection, ambivalence, and acceptance.

3.1. The rejection

As mentioned earlier, historically, AMSs, which comprise developing countries, are quite critical of non-traditional international trade rules from developed countries. The sustainability issue initially was seen as a protectionist agenda that confines room for economic development of AMSs. AMSs was also posited counter-narratives against the environmentalism of developed countries that trade and environment nexus as green protectionism. At the initial emergence of TSD norms, AMSs perceive sustainable development as a political device and not only serves as moral utopianism. AMSs stressed that environmental issues are never meant to be discussed within the WTO framework, and nor was the environment at the heart of GATT. In the 90s, Malaysia and Indonesia were two of AMSs that the most vocal against the trade and environment policy implemented by developed countries. They contended that the implementation of trade and environment policy was Western hypocrisy, as the West was trying to impose uniform environmental standards where they gained economic benefit in the past by polluting the developed world. The view by one critic from Juwana has a similar tone to what ASEAN has voiced out, that environmental standards tied to trade agreements could constitute a forms of political pressure.³⁸

37 Shimizu, K. (2021). The ASEAN economic community and the RCEP in the world economy. *Journal of Contemporary East Asia Studies*, 10(1), 1–23. <https://doi.org/10.1080/24761028.2021.1907881>

38 Juwana, H. (2003). Hukum Internasional sebagai Instrumen Politik: Beberapa Pengalaman Indonesia

This view is not only shared by AMSs but also practised in another region, such as Mercosur. Commenting on the context of EU–Mercosur FTA negotiation, Silva contended that the languages of TSD used by EU negotiators are masking the false neutrality that would give more favourable rights for the EU.³⁹ In crafting TSD rules, indeed, there are political interests that are reflected within legal text. It is important to note, however, that rejection here does not necessarily mean that AMS rejects the whole idea of sustainable development. But rather, AMS rejects certain approaches and methods to enable linkage between trade and sustainable development. It is unilateralism and the encroachment of regulatory autonomy using a sustainability narrative that are being rejected here.

One interesting position is maintained by the Philippines during the TPR meeting at the WTO. The Philippines stated in the TPR document:

“Foundations for sustainable development. All of these will be underpinned by ensuring national security against internal and external threats. At the same time, territorial integrity and sovereignty will be upheld and protected. [...] An important partner of development is the environment and natural resources sector, and maintaining its integrity is crucial for the long term.”⁴⁰

This statement is particularly interesting because the Philippines asserted that the issue of TSD should be seen in conjunction with national security, territorial integrity, and sovereignty as its primacy. Thus, from the Philippines’ perspective, TSD is an issue could harm the sovereignty, particularly the natural resources policy of the state. This is the hardest statement of AMSs on the TSD issue.

3.2. *The ambivalence*

Despite the initial rejection of non-trade issues within the discourse of international trade regulation, the issue of sustainability has gradually gained acceptance. Consequently, the initial position of AMSs has evolved into a somewhat ambivalent stance. Indonesia has been engaged in FTA negotiations with the EU and expects to agree by mid-2025,⁴¹ following in the footsteps of Singapore and Vietnam.

Indonesia’s main export commodity, along with Malaysia’s, is palm oil—one of the most criticised commodities for its unsustainable practices by civil society organisations and EU consumers. In response, both Indonesia

sebagai Studi Kasus [trans: International Law as political instrument: Several of Indonesia’s experiences as a case study]. *Indonesian Journal of International Law*, 1(1), 78–100. <https://doi.org/10.21776/ub.arenahukum.2012.00502.4>

39 Silva, R. L. (2022, January). European Union and Mercosur Association Agreement through a TWAII Perspective. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 27(1), Series 6, 01–04, p. 3. <https://www.iosrjournals.org/iosr-jhss/papers/Vol.27-Issue1/Ser-6/A2701060104.pdf>

40 World Trade Organization. (2018). *Philippines Trade Policy Review* (WT/TPR/G/368; Secretariat report WT/TPR/S/368), the WTO Secretariat (Geneva), https://www.wto.org/english/tratop_e/tp_r_e/s368_sum_e.pdf

41 Reuters. (2025, June 7). *Indonesia expects to conclude free trade talks with EU by end of June*. Reuters. <https://www.reuters.com/markets/commodities/indonesia-expects-conclude-free-trade-talks-with-eu-by-end-june-2025-06-07>

and Malaysia, driven by their interests, have sought to advance sustainability standards by introducing their own national schemes: Indonesia Sustainable Palm Oil (ISPO) and Malaysia Sustainable Palm Oil (MSPO), respectively. These government-sponsored standards aim to improve the perception of palm oil in sustainability-sensitive markets. These government-sponsored standards are forms of alternative to the private initiative certification schemes, such as the Roundtable of Sustainable Palm Oil (RSPO), thus, represent a form of resistance to Western-imposed standards that have historically dominated the discourse.

In this context, Indonesia appears to interpret TSD norms as being closely linked to sustainable commodity practices, as reflected in its TPR document.

“Indonesia believes in a balanced approach to sustainable palm oil management, taking into account the sector’s contribution in absorbing 17 million local workers, as well as the accompanying law enforcement against deforestation efforts. This approach has been Indonesia’s commitment to the 2030 Agenda, which Indonesia presented at the WTO Committee on Trade and Environment (CTE) regular meeting in June 2018 in Geneva”.⁴²

This understanding also confirmed in concluded Indonesia–EFTA CEPA which incorporates a dedicated TSD chapter. In IEFTA CEPA TSD chapter, “Sustainable Vegetable Oil” is one of the TSD provisions that was accepted and agreed by Indonesia.⁴³ Moreover, in a recent dispute regarding the nickel ore ban, Indonesia defended the ban policy through sustainability narratives. Indonesia argued that export ban for nickel ore is necessary to achieve sustainable mining, and this argument’s merit is partially shared by the panel.⁴⁴ In the recent CEPA negotiation round with the EU, Commission reported that some key provisions of TSD chapter in an ongoing negotiation were agreed by Indonesia. The remainder of the pending issues are about right to regulate, climate change and sustainable management of marine resources.⁴⁵ Given the contemporary turn toward trade sustainability, the hardest rejection among AMSs is gradually shifted.

3.3. The acceptance

Existing scholarship on ASEAN’s practice of TSD pinpoints to the practices of Singapore and Vietnam as the key countries that have been studied. In Singapore TPR document, Singapore emphasised the importance of promoting sustainable trade policy:

“[...] Singapore’s trade policies focused on four key priorities: (i)

42 Trade Policy Review Body. (2020, November 4). *Trade Policy Review–Indonesia: Report by the Secretariat*. World Trade Organization, WT/TPR/G/401. https://www.wto.org/english/tratop_e/tp_r_e/g401_e.pdf

43 Article 8.10 of the Indonesia–EFTA CEPA.

44 *Indonesia–Raw Materials*, WT/DS592/R.

45 European Commission. (2024, July 1–5). *Report of the 19th round of negotiations for a Comprehensive Economic Partnership Agreement between the European Union and Indonesia*. DG Trade.

navigating the post-pandemic economic landscape; (ii) supporting and contributing to the global multilateral trading system; (iii) enhancing regional and bilateral trade cooperation; and (iv) promoting an inclusive and *sustainable trade policy*.”⁴⁶ (*emphasis added*).

As an AMSs with significant limitations on natural resources, Singapore put their environmental concerns on the diplomatic agenda. Internal measure put in place in the promotion of environmental sustainability such as ecolabeling.⁴⁷ Thus, concerning environmental sustainability, it is safe to conclude that Singapore and the EU are on the same side. It is, on the contrary, however, on the issue of social sustainability, particularly issues that intersect with human rights and civil society engagement. EU Directorate General for External Policies notes the absence of a civil society forum to engage with sustainability issues, in contrast with CETA and EU–UK FTA.⁴⁸ Civic space in Singapore has been a long-standing issue for human rights scholars.⁴⁹ McKenzie and Meissner are even concerned that the creation of the EU–Singapore FTA would diminish the role of the EU to promote democratic values and thus legitimise Singapore’s practices.⁵⁰

Nguyen & Trinh’s research elaborates on internal dynamics in Vietnam’s domestic regulation, thus a gradual turn toward the realisation of trade and sustainability in Vietnam, independent of ASEAN’s lack of overarching policy on TSD linkage.⁵¹ Thus, at large, Vietnam is supportive of the EU’s position and the two interests met and realised with the inclusion of the TSD Chapter within the EU–Vietnam FTA.

3.4. *With Brussels or not?*

As discussed above, historically, AMSs have been critical of the imposition of the sustainability agenda introduced by the developed countries. Short analysis featured in this article indicates the gradual acceptance of AMSs on the concept of TSD linkage, even if there is a lack of policy coordination at the ASEAN level. The EU has been promoting and influencing its values regarding sustainability and integration through trade with external partners. This does not mean, however, that the EU’s partners are without agency to determine their agenda and interests to be mapped on the TSD chapter. EU–Singapore FTA has been proclaimed as the first building bloc to promote EU values to

46 Trade Policy Review Body. (2021, July 28). *Trade policy review: Report by the Secretariat–Singapore*. World Trade Organization, WT/TPR/S/413. https://www.wto.org/english/tratop_e/tptr_e/g413_e.pdf

47 Peck, T. G. (1999). *Balancing trade and environmental needs–Singapore’s experience*. Winnipeg, Canada: International Institute for Sustainable Development. https://www.iisd.org/system/files/publications/pk_singaporecase.pdf

48 Directorate General for External Policies. (2018). *Free Trade Agreement between the EU and the Republic of Singapore–Analysis*. European Parliament. [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603864/EXPO_STU\(2018\)603864_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603864/EXPO_STU(2018)603864_EN.pdf)

49 Song, J. (Ed.). (2017). *A history of human rights society in Singapore 1965–2015*. London: Routledge.

50 McKenzie, L., & Meissner, K. L. (2020). Overlapping Negotiations, Conflicting Interests? EU–Singapore Negotiations. *Robert Schuman Centre for Advanced Studies Research Paper*, (RSCAS 2020/67). <http://dx.doi.org/10.2139/ssrn.3710712>

51 Nhung & Trinh (2022), *supra* note 15.

AMSs, and functions as a stepping stone toward ASEAN-wide FTA with the EU. However, as discussed above, Singapore, which is particularly sensitive about human rights issues, advocates for leaving the EU fundamental value-related⁵² clause, e.g. civil society forum clause, outside of the TSD chapter.

Different from the EU, ASEAN does not opt for cross-sector/issues integration. In the ASEAN structure, the issue of human rights and sustainable development is in a different room from economic issues. Human rights are within the APSC, whereas the issue of sustainable development is within the ASCC. This is how AMSs are most comfortable.⁵³ Negotiation and subsequent FTA conclusion with the EU alone does not make full acceptance of the EU's approach to TSD. If the EU promotes value through trade agreements, then the negotiations of the TSD chapter should not only limited to 'mere' creation of the TSD chapter with a quid pro quo or take-it-or-leave-it approach. As Gammage suggests, drawing from the insight of Brunnée & Toope, the legitimacy of TSD norms requires more than that.⁵⁴ The construction of value and shared identity, which subsequently leads to shared understanding, would require proper discourse practices through interaction.

Conclusion of TSD chapter with EU is either motivated by AMS(s)' "market-access oriented pragmatism" and "internalised value-driven sustainability commitment." If market-access concessions are pursued by AMS(s) in return for the TSD chapter, then the norm within the TSD chapter would hardly like to be internalised. Literature on TSD suggests that an enforcement mechanism is necessary to ensure proper adherence. The complicated part is that the ASEAN Way, as adhered to by AMSs as a shared value, seeks harmonious dialogue through non-judicial avenues, and litigation could be perceived as a direct threat towards regulatory autonomy. Therefore, inclusion of an enforceable TSD provision through the dispute settlement chapter will not be sought by the AMSs when negotiating with the EU.

Conclusion

TSD issue is a politically sensitive trade issue. Contemporary international trade regulation cannot neglect the sustainability aspect. For that reason, the EU placed itself as a forerunner of sustainable development promotion, exporting the EU value of sustainability to trading partners. The Brussels effect entails the promotion of sustainability value to create a better world. With the failure of EU–ASEAN FTA, the EU pivoted toward engaging each AMS that aligned with the EU interests. However, historically speaking, AMSs as a bloc of developing countries see the issue of TSD to be seen cautiously.

The conclusion of the TSD chapter with the EU is driven either by

52 Hsieh (2022), *supra* note 35, p. 147.

53 *Ibid.*, p. 152.

54 Gammage (2017), *supra* note 22.

AMSs' pragmatic pursuit of market access to the EU, or by their internalised commitment to sustainability as a core value. If an ASEAN Member State pursues market-access concessions in exchange for agreeing to a TSD chapter, seen from the interactional international law perspective, it is unlikely that the norms within that chapter will be genuinely internalised.

From the discussion above, it can be concluded that even if the EU views sustainability as a value to be promoted internationally, this does not necessarily mean that AMSs negotiating TSD provisions will adopt the EU's approach verbatim. The agency of AMSs in resisting or adapting to EU influence should not be overlooked. This is exemplified by Singapore, which strongly advocates for environmental sustainability; however, when it comes to social sustainability (particularly in relation to human rights) the civil society participation clause is notably absent in the EU–Singapore Free Trade Agreement. It is also important to note that some AMSs may incorporate sustainability considerations into their domestic policies, even in the absence of a cohesive ASEAN-level narrative or direct engagement with the EU on trade and sustainability. ●

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Author Contribution

All authors contributed to the study conception and design. All authors read and approved the final manuscript.

Declarations

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