
21 EU trade and development policy in Asia: Promoting core EU values

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The EU is Asia's largest trading partner, a major provider of humanitarian aid, and a key promoter of democratic principles, and both regions exchange large amounts of foreign direct investment (Khandekar 2012, Cameron 2017).¹ The EU also has four strategic partners in the region in China, India, Japan, and the Republic of Korea. The growing trade between the EU and Asia, along with the extended competences of the EU, has encouraged it to negotiate trade and investment agreements with a number of Asian countries with reasonable success, as seen through the agreements with Singapore, Vietnam, Korea, and Japan.

The EU recognises the role of future free trade agreements (FTAs) in the Asia-Pacific region, which has seen rapid growth and has worked towards pushing through stalled trade negotiations.² Even though it has signed a number of FTAs with individual countries within the Association of South East Asian Nations (ASEAN), the EU's ultimate goal is to have an EU–ASEAN FTA (Muxfeldt 2013).³ Since Asia has no single organisation which replicates the EU in terms of competences to regulate issues such as trade and investment among its member states, a 'mega-regional agreement' – a treaty between Asia, or parts of Asia, and the EU – is not an achievable option, at least at this time. The closest to such an entity which exists in Asia is the ASEAN, which wants to work towards a single market,⁴ and the Gulf Cooperation Council (GCC),

1 See also the EEAS factsheet on EU-Asia security at: http://ceas.europa.eu/archives/docs/asia/docs/eu_in_asia_factsheet_en.pdf (last accessed 25 November 2018).

2 "A Balanced and Progressive Trade Policy to Harness Globalisation", COM(2017) 492 final, 13.9.2017, p. 3.

3 See also "Commissioner Malmström visits Singapore to advance EU economic ties with South East Asia", European Commission press release, 2 March 2018 (<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1804>) (last accessed 23 November 2018).

4 See <http://investasean.asean.org/index.php/page/view/asean-economic-community/view/670/newsid/758/single-market-and-production-base.html> (last accessed 5 December 2018).

which almost has a common market in place.⁵ Until the Regional Comprehensive Economic Partnership (RCEP)⁶ becomes a reality, there is no organised counterpart for negotiation of a trade or investment agreement with the EU. Therefore, the EU has decided to aim for a country-by-country approach to trade and investment negotiations in Asia. Generally, it will also be possible to have an agreement to which the EU would be a member next to single sovereign Asian countries as other members (i.e. the Trans-Pacific Partnership model). Nevertheless, such an agreement does not seem realistic at the present time, as the structure, political background, and economic systems of Asian countries differ too much.

As part of a very diverse continent, Asian economies vary in size and level of development (Khandekar 2012). Countries like Japan and the Republic of Korea have a high level of economic development, while there are other Asian countries (such as Cambodia, Myanmar, and Laos) which depend on the EU's Everything-but-Arms (EBA) initiative for least-developed countries, under which these countries enjoy duty-free and quota-free access to the EU market.⁷ As such, a single EU policy for the entire Asian continent is not generally possible, even though the EU and Asia interact on a single forum through the Asia Europe Meeting (ASEM) initiative, which has 30 European countries (EU member states + Norway and Switzerland), the EU itself, the ASEAN Secretariat and 21 other countries (including Russia, Australia, and New Zealand) as partners.⁸

The EU and Asian countries do have membership of the WTO and the Energy Charter Conference (ECC) in common, albeit with major exclusions such as India, China, the Republic of Korea, and Singapore from the ECC, and Central Asian countries such as Turkmenistan and Uzbekistan from the WTO. The inability to reach all the countries on a common forum justifies the country-by-country approach.

Current EU strategy on trade and the promotion of core EU principles in Asia

The EU has embarked on the possibility to enter into FTAs with Asian countries because it realises the importance of building a strong trading relationship, but as of now it only has two FTAs fully in force (with the Republic of Korea and with Japan)

5 See "The GCC Common Market and Economic nationality" (last accessed 5 December 2018).

6 The RCEP consists of the member states of the ASEAN and six ASEAN FTA partners (Australia, the People's Republic of China, India, Japan, the Republic of Korea, and New Zealand); see https://asean.org/?static_post=rcep-regional-comprehensive-economic-partnership (last accessed 5 December 2018).

7 For an explanation on the EBA initiative and the current list of countries under the scheme, see <http://trade.ec.europa.eu/tradehelp/everything-arms>.

8 See <https://www.aseminfoboard.org/about/overview>.

(European Union 2018: 34).⁹ Two more FTAs (with Singapore and Vietnam) have been signed recently and are at various stages of implementation,¹⁰ but the EU's overall push for trade agreements may have been slowed down by its policy on the inclusion of sustainable development clauses in trade agreements (Khandekar 2012). Irrespective of this, it has to be stated that the EU still does not have the recognition and visibility in Asia to reflect its economic importance (Khandekar 2012). Furthermore, the trade relations between the EU and Asia are complex and are based on a network of treaties with varied qualities and content.

The general EU trade policy in Asia is based on its Global Europe Strategy of 2006¹¹, which was subsequently reviewed through the "Europe 2020" Communication,¹² the 2010 Communication "Trade, Growth and World Affairs",¹³ the 2015 Communication "Trade for All",¹⁴ the 2016 EU Global Strategy (European Union 2016), the 2017 New European Consensus on Development (European Union 2017), and the 2018 "Joint Communication on Connecting Europe and Asia".¹⁵ Although all these Communications focused on issues such as sustainable development and transparency, the "Trade for All" Communication specifically recognised that core EU principles such as human rights, sustainable development, fair and ethical trade, and transparency would be promoted through trade agreements and trade preference programmes (Malmstrom 2015). The Commission reiterated its policy of non-compromise on these core principles through a 2017 Communication, "A Balanced and Progressive Trade Policy to Harness Globalisation".¹⁶ EU communications on country-specific strategies have also been issued.¹⁷

The promotion of sustainable development and policies to meet challenges such as climate change, environmental protection, and poverty is one of the core and overarching objectives for the EU in the region.¹⁸ These core objectives and principles for inclusion in trade agreements originate from Art. 21 of the Treaty on the European Union (TEU),

9 See http://europa.eu/rapid/press-release_IP-19-785_en.htm (last accessed 26 July 2019).

10 The EU–Vietnam Free Trade Agreement, the EU–Singapore Free Trade Agreement, and the EU–Japan Economic Partnership Agreement.

11 "Global Europe: Competing in the World a Contribution to the EU's Growth and Jobs Strategy", European Commission COM(2006) 567 final, 4.10.2006.

12 "Europe 2020 A strategy for smart, sustainable and inclusive growth", COM(2010) 2020, 3.3.2010.

13 "Trade, Growth and World Affairs Trade Policy as a core component of the EU's 2020 strategy", COM(2010) 612 final, 9.11.2010.

14 "Trade for All-Towards a more responsible trade and investment policy", COM(2015) 497 final, 14.10.2015.

15 "Joint Communication on Connecting Europe and Asia", JOIN(2018) 31 final, 19.09.2018.

16 Communication from the Commission, A Balanced and Progressive Trade Policy to Harness Globalisation, COM(2017) 492 final, 13.9.2017, p. 4.

17 For examples, see European Commission, "Joint Communication to the European Parliament and the Council, Elements for an EU strategy on India", Brussels, 20.11.2018 JOIN(2018) 28 final; and European Commission, "Joint Communication to the European Parliament and the Council, Elements for an EU strategy on China", Brussels, 22.6.2016 JOIN(2016) 30 final.

18 See http://ec.europa.eu/archives/docs/asia/docs/eu_in_asia_factsheet_en.pdf (last accessed 25 November 2018).

which states the principles under which EU's external relations must be pursued. The EU thus seeks to fulfil its social and economic obligations by the inclusion of these principles in its trade agreements (Asteriti 2017, Beaucillon 2017, Terhechte 2018). Other principles that have been prescribed under Art. 21 TEU and may be seen in EU FTAs include support for democracy and rule of law, preservation of peace, and abolition of restrictions on world trade.¹⁹ Considering that trade in goods within ASEM countries makes up more than 50% of their GDP (European Union 2018), the current EU–Asia trade strategy is focused on including provisions covering these core EU objectives in trade negotiations and free trade agreements (Muxfeldt 2018, European Union 2018). As such, the inclusion of provisions on human rights, sustainable development, and other recognised core EU principles is now a common feature, also in recent EU FTAs in this region (Nakanishi 2018).

Division between trade and investment

The EU's foreign trade policy and investment policy have traditionally been closely related, but owing to the Opinion of the Court of Justice of the EU (CJEU) with regard to the conclusion and ratification of the EU–Singapore Agreement,²⁰ the Commission has now decided to conclude trade agreements covered by its exclusive competence on trade separately.²¹ Considering this bifurcation, which has already been seen in the EU–Singapore and the EU–Vietnam agreements²² and the standalone EU–Japan Economic Partnership Agreement (EPA) (EUJEPA),²³ the remainder of this chapter will focus mostly on the trade agreements for coherency through comparison of their provisions.

On the subject of investment protection, the Asian countries follow divergent views on certain issues such as investment dispute settlement and protection standards. While the EU has decided to support the establishment of a Multilateral Investment Court (MIC) (Mamlstrom 2018)²⁴ and includes a reference to the establishment of the

19 Art. 21, Treaty on European Union, OJ C 326, 26.10.2012, p. 1.

20 CJEU, Opinion 2/15, 16 May, 2017, ECLI:EU:C:2017:376.

21 Council of the European Union, Outcome Of The Council Meeting- 3618th Council meeting, Foreign Affairs Trade and development issues, Brussels, 22 May 2018, 9102/18, p. 4; Binder, Krisztina, EU–Singapore trade and investment agreements closer to conclusion, European Parliament, October 2018, p. 5; EC Communication, A Balanced and Progressive Trade Policy to Harness Globalisation, COM(2017) 492 final, 13.9.2017, p. 6; Suse, Andrei, Wouters, Jan, The Provisional Application of The EU's Mixed Trade and Investment Agreements, Working Paper No. 201 – May 2018, Leuven Centre for Global Governance Studies, p. 6 et seq.

22 The original EU–Singapore FTA was divided into the EU–Singapore Trade Agreement and EU–Singapore Investment Protection Agreement; the EU–Vietnam FTA was divided into EU–Vietnam Trade Agreement and EU–Vietnam Investment Protection Agreement.

23 See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1684> (last accessed 5 December 2018).

24 See also, Council of the European Union, “Negotiating directives for a Convention establishing a multilateral court for the settlement of investment disputes”, 12981/17 ADD 1, Brussels, 20 March 2018.

court in its current negotiations on investment treaties,²⁵ a few of its Asian negotiating partners, such as Japan and India, do not support such a mechanism (Yanos and Ramos-Mrosovsky 2018). Other Asian countries including Singapore and Vietnam, however, have agreed to include the investment court system in their investment agreements (Mamlstrom 2018). There also exists differences in opinion on issues such as treatment of Chinese state-owned enterprises (SOEs) and their coverage under investment protection standards (Godement and Stanzel 2015), and internal differences among Asian countries over investment protection standards such as ‘most-favoured nation’ (MFN) and ‘fair and equitable treatment’ (FET), which were not included by India in its 2015 model bilateral investment treaty (BIT), but are present in the recent Chinese and Japanese BITs.²⁶ Considering these differences, it is highly unlikely that a common EU–Asia investment agreement would be possible irrespective of whether it was an EU only or a mixed agreement.

EU trade agreements and negotiations with major Asian trade partners

Although traditional discussions on EU–Asia trade focus only on the EU’s trade relations with China, Japan, India, the Republic of Korea, or ASEAN countries, Asia has many other important trade partners of the EU located in Central Asia and the Middle East.

EU trade agreements with Korea, Singapore, Japan, and Vietnam

The EU–ROK FTA (EUKFTA) saw the inclusion of new provisions on transparency and trade and sustainable development.²⁷ These provisions are a part of the values that the EU has sought to promote through trade agreements.²⁸ As of now, these provisions seen in the EUKFTA have also been carried through to the new FTAs with Singapore and Vietnam and an EPA with Japan, but with certain variations which are highlighted below.

Transparency: The issue of transparency is covered in all four agreements – the EUKFTA, the EU–Vietnam Free Trade Agreement (EU–VFTA), the EU–Singapore Free Trade Agreement (EU–SFTA) and the EU–JEPA – but with variations in the actual

25 See http://europa.eu/rapid/press-release_MEMO-16-4350_en.htm (last accessed 5 December 2018).

26 See https://www.mygov.in/sites/default/files/master_image/Model%20Text%20for%20the%20Indian%20Bilateral%20Investment%20Treaty.pdf (last accessed 5 December 2018); see also Ranjan and Pushkar (2017), Japan–Israel BIT, 2017; China–Tanzania BIT, 2013.

27 Chapter 12 and 13, Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (EU–ROK FTA), OJ L 127, 14.5.2011, p. 6.

28 Clause 4.2, “Trade for all Towards a more responsible trade and investment policy”, European Commission, 2015, p. 5.

provisions of the chapter. While three of the agreements provide for consideration of comments from interested persons on new proposed measures, the EUJEPa omits the provision.²⁹ The EUJEPa is also the only agreement that does not contain a broad provision on cooperation and exchange of information and best practices on regulatory quality and performance, and merely includes a provision on cooperation in international fora.³⁰ Amongst other provisions, the EUKFTA is the only agreement out of the four that does not provide for designation of officials to respond to enquiries on measures of general application under the agreement.³¹ It is also the only agreement that includes a non-discrimination provision for application of the transparency standards.³²

Trade and sustainable development: Trade and sustainable development is a separate chapter in all the four agreements, with provisions on the right to regulate, labour standards and agreements, review on sustainability impacts, civil society dialogue mechanisms and review mechanisms for the implementation of the provisions.

Variations are seen in the issue of multilateral labour standards among the four agreements. While the EUSFTA and the EUVFTA talk only about “consideration” of ratification of other ILO conventions except those specifically mentioned in the agreements based on domestic circumstances, the EUJEPa and the EUKFTA call for “continued and sustained” efforts towards their ratification without any mention of “domestic circumstances”.³³ The provision in the EUKFTA is, however, even slightly more stringent than that in the EUJEPa because it does not provide any discretion to the parties on which ILO conventions they “consider appropriate to ratify” and call upon them to make efforts to ratify “up-to-date” conventions of the ILO.³⁴

In relation to environmental protection, all three new agreements (EUVFTA, EUJEPa and EUSFTA) contain special provisions of forestry protection and fisheries.³⁵ However, the EUVFTA stands out amongst them as it contains a provision for a future *Forest Law Enforcement Governance and Trade (“FLEGT”) Voluntary Partnership Agreement*.³⁶ It is also the only agreement in the group that contains a separate article on “Climate

29 Article 17.3 EU–Japan EPA; compare with Article 12.3 EU–ROK FTA, Article 14.3 EU–Vietnam FTA, and Article 13.3 EU–Singapore FTA.

30 Article 17.7 EU–Japan EPA; compare with Article 12.7 EU–ROK FTA, Article 14.7 EU–Vietnam FTA, Article 13.7 EU–Singapore FTA.

31 See Article 12.4, EU–ROK FTA; Article 13.4 EU–Singapore FTA; Article 17.4 EU–Japan EPA; Article 14.4 EU–Vietnam FTA.

32 See Article 12.8, EU–ROK FTA.

33 Article 13.4 (3) EU–ROK FTA; Article 12.3 (4) EU–Singapore FTA; Article 16.3 (3) EU–Japan EPA; Article 13.4 (3) (b) EU–Vietnam FTA.

34 Cf. Article 13.4 (3) EU–ROK FTA and Article 16.3 (3) EU–Japan EPA.

35 Article 12.7, 12.8 EU–Singapore FTA; Article 16.7, 16.8 EU–Japan EPA; Article 13.8 and 13.9 EU–Vietnam FTA.

36 Article 13.8 (2) (a) EU–Vietnam FTA.

Change³⁷ and one of the two agreements (the other being the EUJEPa) with a separate article on “Biological Diversity”.³⁸

With regards to a common provision both for labour and environmental standards, the three most recent agreements (EUVFTA, EUSFTA, EUJEPa) specifically mention the precautionary principle, which was omitted in the EUKFTA.³⁹ The EUVFTA and the EUSFTA also replace the civil society dialogue mechanism with interaction with stakeholders.⁴⁰

Other provisions: Recognising the important role of SOEs in Japan and Vietnam, and special circumstances governing their functioning, a separate chapter on SOEs was included in the EUJEPa and EUVFTA, which provide rules for their treatment under the FTAs.⁴¹ The EUSFTA is the only agreement within the four that refers to the Santiago Principles for sovereign wealth funds (SWFs).⁴² Lastly, considering the fact that among all the four agreements discussed above, only the EUVFTA was with a developing country, it is perhaps fitting that it is the only agreement which contains a separate chapter on “Cooperation and Capacity Building” which specifically covers sustainable development as one of the areas for cooperation.⁴³

Thus, it can be understood from the discussion above that the EU has been successful in the inclusion of provisions regarding its core principles such as sustainable development, fair and ethical trade, and transparency, with variations according to the specific situations. The progress on issues such as labour rights and environmental protection, particularly with Vietnam, has been impressive. It may be noted, however, that the failure to recognise the role of the civil society in agreements with Singapore and Vietnam may lead to future issues on the participation of these groups in the implementation and review process of these agreements (Orbie et al. 2016, Martens et al. 2018).

EU relationship with China and India

China and India are two major Asian economies which follow different economic models and political systems (Mandelson 2007) but have in common the fact that they do not have either a standalone or mixed trade or investment agreement with the EU. It is essential, however, that both countries are included as a part of the broader EU

37 Article 13.6 EU–Vietnam FTA.

38 Article 16.6 EU–Japan EPA; Article 13.7 EU–Vietnam FTA.

39 Article 12.9 EU–Singapore FTA; Article 16.9 EU–Japan EPA; Article 13.11 EU–Vietnam FTA.

40 Article 12.15 EU–Singapore FTA; Article 13.15 EU–Vietnam FTA.

41 Chapter 13 EU–Japan EPA; Chapter 11 EU–Vietnam FTA.

42 Article 16.8 EU–Singapore FTA.

43 Chapter 16 EU–Vietnam FTA.

agenda on issues such as climate change and sustainable development, with trade at the centre of the discussion (Barichella 2017). Furthermore, it also has to be taken into account that the China's Belt and Road Initiative (BRI) might lead to new linkages in the direction of bilateral/EU–China integration (Saarela 2018).

The EU needs a stable and coherent strategy for China that can deal with the large number of trade and political issues which affect the relationship, such as market economy status, climate change, and human rights standards (Maher 2016). As a major trade and investment partner, the EU needs to chalk out a strategy through which it can promote its core values through the future investment agreement as a stepping-stone and then work towards a possible FTA while maintaining the current trade relationship (de Jonquières 2015, Chi 2017, Rühlig 2018).

India and the EU face stalled negotiations on a proposed FTA and have disagreed on issues such as human rights and migration (Cameron 2017). Both parties also disagree on the inclusion of environmental and labour protection standards in the future FTA (Amighini 2016: 24, Vickers and Khorana 2018). It is essential that the EU and India work together since they share common values on democracy, human rights, and a rules-based global order, and India is an important partner for the EU in the region.⁴⁴ The EU and India are a part of a bilateral human rights dialogue in the form of the EU–India Human Rights Dialogue, which deals with a wide range of issues such as the death penalty, decent work, and gender issues.⁴⁵

EU–Central Asia relations

The EU has partnership and cooperation agreements (PCAs) with four of the five countries considered as Central Asian countries by the European Commission,⁴⁶ but no FTAs with any of these countries. With the exception of Kazakhstan, the other four Central Asian countries enjoy favourable access to EU markets under the Generalised Scheme of Preferences (GSP).⁴⁷ The EU has been successful in including provisions on the promotion of sustainable development, labour conditions, democracy, rule of law, human rights, and environmental protection in all the four PCAs, which is a significant

44 See https://ceas.europa.eu/headquarters/headquarters-Homepage/4010/eu-india-relations-fact-sheet_en (last accessed 25 November 2018).

45 See https://ceas.europa.eu/sites/ceas/files/eu_india_factsheet.pdf (last accessed 25 November 2018).

46 Central Asia: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan; PCAs with all except Turkmenistan. On this, see <http://ec.europa.eu/trade/policy/countries-and-regions/regions/central-asia/> (last accessed 25 November 2018).

47 See <http://ec.europa.eu/trade/policy/countries-and-regions/regions/central-asia/> (last accessed 25 November 2018).

step in the promotion of the core EU values in the region, considering the political situation prevalent in the region.⁴⁸

EU and the Gulf region: A possibility for a stronger relationship

The Gulf region, which consists of the Gulf Cooperation Council (GCC) members, is an important trading partner.⁴⁹ The framework for trade with this region is, however, governed by an old EU–GCC cooperation agreement⁵⁰ without any significant mention of the core EU values such as rule of law, democracy, or sustainable development. It is important that the EU takes steps to revive the FTA negotiations with the GCC, which were suspended in 2008, to modernise the trading framework and promote core EU values in the region.

Other South Asian nations

The EU has ongoing negotiations for a trade and investment agreement with Malaysia, Philippines and Indonesia, while its negotiations for a similar agreement with Thailand has been suspended until the election of a democratically elected government.⁵¹ Negotiations are also underway for an investment protection agreement with Myanmar.⁵²

EU soft power through trade and investment agreements and current challenges

The EU and many of its Asian partners continue to have major differences over issues such as the inclusion of clauses regarding protection of human rights and sustainable development (Khandekar 2012, Youngs 2015). This must not overshadow the fact that the EU has enjoyed recent success in the promotion of its core values through trade agreements and specialised schemes which promote compliance with sustainable development and human rights standards through trade preferences.⁵³

The GSP, GSP+ and EBA schemes, with their clearly defined policies on sustainable development, are the flag bearers of the EU external policy for developing countries and

48 See Partnership and Cooperation Agreement between EC and Uzbekistan, OJ L 229, 31.8.1999, p. 3; Partnership and Cooperation Agreement between EC and Tajikistan, OJ L 350, 29.12.2009, p. 3; Partnership and Cooperation Agreement between EC and Kyrgyz Republic, OJ L 196, 28.7.1999, p. 48; Enhanced Partnership and Cooperation Agreement between EU and Kazakhstan, OJ L 29, 4.2.2016, p. 3.

49 See http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113482.pdf (last accessed 25 November 2018).

50 EU–GCC Cooperation Agreement, OJ L 54, 25.2.1989, p. 3.

51 See http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf (last accessed 5 December, 2018).

52 Ibid.

53 European Commission, “Report from the Commission to the European Parliament and the Council, Report on the Generalised Scheme of Preferences covering the period 2016–2017”, COM(2018) 36 final, 19.1.2018, p. 1.

have been largely successful in their objective of promoting the values of sustainable development and good governance.⁵⁴ A number of Asian countries (including Afghanistan, Bangladesh, Laos and Vietnam) benefit from the GSP, GSP+ or EBA criteria.⁵⁵ As the three schemes permit the suspension of benefits in case of violations of the prescribed standards which generally relate to the core EU values, the countries have incentives to adhere to them.⁵⁶ However, even if the GSP status is much desired, countries such as Cambodia have repeatedly seen incidents of serious human rights violations and political instability. While initially, the EU declined to remove GSP privileges as a reaction to the transgressions (Youngs 2015), it has recently been forced to react on these issues in Myanmar and Cambodia.⁵⁷

The implementation of the EU's goals for the promotion of human rights and democratic values has also seen double standards depending on the economic and political strength of the other country (Khandekar 2012, Cameron 2017). While the EU has pushed for strong sanctions on Myanmar, it has built a strong relationship with, and provided humanitarian aid to, Pakistan and only has an arms embargo on China, although the human rights record of all the three countries is regularly questioned (Khandekar 2012, Cameron 2017, Timmermann 2018).⁵⁸ Its reaction to human rights violations in Vietnam has also been questioned considering that it has moved ahead to sign an FTA with the country (Youngs 2015).⁵⁹ If it is to remain a convincing advocate of these issues, it is clear that the EU needs to build a consistent policy for support of democratic institutions and build stronger relationships with existing democracies, rather than compromising with specific countries based solely on economic considerations (Khandekar 2012, Timmermann 2018).⁶⁰ Rather than ignoring the human rights and sustainable development issues in major Asian economies, it must push forward for standalone FTAs or investment agreements that include normative clauses with these countries in order to succeed in the promotion of its core values in Asia; to date its record on success in human rights issues in Asia is rather patchy (Youngs 2015).

54 European Commission, "Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 978/2012 applying a Scheme of Generalised Tariff Preferences and repealing Council Regulation (EC) No 732/2008", COM(2018) 665 final, 4.10.2018, p. 7.

55 For more on these schemes and beneficiaries of the schemes, see <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/> (last accessed 25 November 2018).

56 Art. 19, Regulation (EU) No 978/2012 applying a Scheme of Generalised Tariff Preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303, 31.10.2012, p. 1; European Commission, EU trade policy encourages sustainable development and respect for human rights in vulnerable economies, January, 2018, http://trade.ec.europa.eu/doclib/docs/2018/january/tradoc_156538.pdf last accessed 25 November, 2018).

57 See http://europa.eu/rapid/press-release_IP-18-4467_en.htm (last accessed 25 November 2018) and <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1936> (last accessed 25 November 2018).

58 See also <https://euobserver.com/opinion/143141> (last accessed 23 November 2018).

59 See also <https://euobserver.com/opinion/143141> (last accessed 23 November 2018).

60 See also <https://euobserver.com/opinion/143141> (last accessed 23 November 2018).

Furthermore, the EU–Asia relationship is influenced by the fact that, in many situations, the member states of the EU act in a standalone manner in Asia and the EU has to undertake independent political engagements and commercial diplomacy (Khandekar 2012, Youngs 2015). The EU member states, particularly the major economies of Germany, France, and the UK, have pushed forward their individual engagements with the Asian countries through multiple visits of their political leaders to further business deals (Youngs 2015). However, similar visits by top EU officials to push forward a common EU agenda or reciprocal visits by Asian ministers or officials to Brussels have been rare (Khandekar 2012).

The EU member states have also continued their individual policies on delivery of developmental assistance towards the Asian countries. The EU will have to better coordinate with its own member states in building its relationships in Asia. Until now, the EU has faced a lack of common policy which would protect the interests of the Union as a whole instead of merely building bilateral relations between a few member states and Asian countries (Khandekar 2012, Cameron 2017). It is a particularly significant challenge in its relations with China owing to a Chinese strategy of ‘divide and rule’ through which it has cultivated strong individual relations via forums such as ‘16+1’ and has also built strong trading and investment relations with individual countries (Maher 2016, Cameron 2017).

Conclusion: Charting the future of Europe’s soft power in Asia

The EU needs to have a realistic and dedicated Asia strategy, supported by its member states. It needs to understand, however that Asia has developmental issues even though it may be home to many large economies. ‘Asia’ is changing and the growth of regional agreements such as the RCEP implies changing global trade and political equations. However, as of now it cannot be seen as a ‘mega-regional’ that could be the counterpart of a comprehensive trade agreement; instead, the current country-by-country approach with regard to negotiation and conclusion of trade and investment agreements should prevail.

Major Asian economies such as China are likely to use their dominance in trade and investment to push forward their political agenda. This can be seen in the fact that securing a common EU position against human rights violations in China has been very tough due to lack of support from certain member states who decline to condemn China owing to economic considerations.

The EU can play a key role in this region owing to its status as a major trading power and a politically stable partner in a world which has seen increased geopolitical instability. It must seek to harness the strong relations built by its member states for the promotion of its trade policy and associated core principles. The EU has had limited success in Asia, especially in the ASEAN and Myanmar, on human rights and political issues. It has ongoing negotiations for FTAs with Thailand, Malaysia, Indonesia, and Philippines which are at various stages. It is known that these future FTAs are likely to contain specific provisions on sustainable development in line with the broader EU agenda. The successful conclusion of these FTAs is crucial, as support from Asia is essential for the EU to succeed in its policies on issues such as trade, sustainable development, and climate change. Furthermore, the EU also needs to represent itself as a unified entity with support from all member states to prevent any divisive policies and ensure that interests of all member states are protected. A people-centred approach, which reinforces core EU values while taking into consideration local sensitivities, would be recommended.

References

- Amighini, A (2016), “EU external trade strategy vis-à-vis Asia”, European Parliament, 12 May.
- Asteriti, A (2017), “Article 21 TEU and the EU’s Common Commercial Policy: A test of Coherence”, in M Bungenberg, M Krajewski, C J Tams, J P Terhechte and A R Ziegler (eds), *European Yearbook of International Economic Law 2017*, Vol. 8, Springer, pp. 111-138.
- Barichella, A (2017), “How Europe can and should become the guardian of the Paris Agreement on climate change”, Foundation Robert Schuman European Issue n°450.
- Beaucillon, C (2017), “Opinion 2/15: Sustainable Is the New Trade. Rethinking Coherence for the New Common Commercial Policy”, *European Papers* 2(3): 819-828.
- Cameron, F (2017), “It’s Asia, Stupid: Time for the EU to deepen relations with Asia”, GIGA Focus No. 6.
- Chi, M (2017), “The China-EU BIT as a stepping stone towards a China-EU FTA”, in M Bungenberg, M Krajewski, C J Tams, J P Terhechte and A R Ziegler (eds), *European Yearbook of International Economic Law 2017*, Vol. 8, Springer, pp. 475-490.
- de Jonquières, G (2015), “The European Union’s China Policy: Priorities and Strategies for the New Commission”, ECIPE Policy Brief 3/2015.

European Union (2016), *Shared Vision, Common Action: A Stronger Europe, A Global Strategy for the European Union's Foreign And Security Policy*.

European Union (2017), "New European Consensus on Development - 'Our world, our dignity, our future'", Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission.

European Union (2018), *Exploring ASEM Sustainable Connectivity: What brings Asia and Europe Together?*

Godement, F and A Stanzel (2015), "The European Interest in an Investment Treaty with China", ECFR Policy Brief No. 127.

Khandekar, G (2012), "The Changing Landscape of EU-Asia Relations," *Jindal Journal of International Affairs* 2(1): 72-89.

Maher, R (2016), "The elusive EU-China strategic partnership", *International Affairs* 92(4): 959-976.

Malmstrom, C (2015), "Foreword" in *Trade for all Towards a more responsible trade and investment policy*, European Commission.

Malmstrom, C (2018), "A Multilateral Investment Court: a contribution to the conversation about reform of investment dispute settlement", speech by the European Commissioner for Trade, Brussels, 22 November.

Mandelson, P (2007), "Europe's Trade Policy with India and China", CESifo Forum, 1/2007.

Martens, D, L Van den Putte, M Oehri and J Orbic (2018), "Mapping Variation of Civil Society Involvement in EU Trade Agreements: A CSI Index", *European Foreign Affairs Review* 23(1): 41-62.

Muxfeldt, L (2013), "Overview of EU Trade Policy in Southeast Asia", EU-Asia Centre, 11 June.

Nakanishi, Y (2018), "Mechanisms to Protect Human Rights in the EU's External Relations", in Y Nakanishi (ed.), *Contemporary Issues in Human Rights Law: Europe and Asia*, Springer, pp. 3-21.

Orbic, J, D Martens and L Van den Putte (2016), "Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation", CLEER Papers 2016/3, T.M.C. Asser Institute.

Ranjan, P and P Anand (2017), “The 2016 Model Indian Bilateral Investment Treaty: A Critical Deconstruction”, *Northwestern Journal of International Law & Business* 38(1): 1-54.

Rühlig, T (2018), “The EU’s New China Resolution: Principled But Not Strategic”, *The Diplomat*, September.

Saarela, A (2018), “A new era in EU-China relations: more wide-ranging strategic cooperation?”, European Parliament Study.

Terhechte, J P (2018), “Common Commercial Policy and External Trade”, in H C H Hofmann, G C Rowe, and A H Turk (eds), *Specialized Administrative Law of the European Union*, Oxford University Press, pp. 60-101.

Timmermann, M (2008), “EU-Asia human rights policy- Pursuing the path of institutionalism”, in J Ruland, G Schucher and C Storz (eds), *Asian-European Relations: Building Blocks for Global Governance?*, Routledge, pp. 143-172.

Vickers, B, and S Khorana (2018), *Navigating Uncertainty: Towards a Post-Brexit Trade and Development*, Commonwealth Secretariat.

Yanos, A A and C Ramos-Mrosovsky (2018), “Investor-State Arbitration and the ‘Next Generation; of Investment Treaties”, in B Legum (ed.), *The Investment Treaty Arbitration Review*, 3rd Edition, Law Business Research Limited, pp. 347-346.

Youngs, R (2015), *Keeping EU-Asia Reengagement On Track*, Carnegie Europe.

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