

Free Trade Agreements and responsible business: Examples from the EU's bilateral agreements in East and Southeast Asia

Erja Kettunen-Matilainenⁱ and Claes G. Alvstamⁱⁱ

Abstract

This chapter analyses the impact of free trade agreements on responsible business in Asian emerging economies. We review the origins of the discussion on sustainable development in international negotiations and conventions, and explore the EU's three FTAs with Asian countries, i.e. South Korea, Singapore and Vietnam with respect to references to corporate social responsibility and sustainable development. Our main finding is the gradual evolution of the EU's FTAs towards including more explicit clauses on environmental and labour issues. This conforms to the idea of multilateralizing regionalism, i.e. that issues may be first agreed in bilateral or regional FTAs and then gradually transferred to the multilateral level. Despite not incurring direct impacts on firms, this may serve as an institutional push for countries to address the need for responsible business in national legislation.

1. Introduction

This chapter discusses the impact of free trade agreements (FTA) on responsible business in Asian emerging economies. The topic is timely because of the accelerated pace at which FTAs are negotiated, signed and enforced, and because they are becoming more comprehensive, yet their contents have raised concern among consumers and the larger civil society alike. Between 2011 and 2018, trade agreements have been concluded particularly in

East and Southeast Asia, which is the case also for bilateral FTAs of the European Union (EU) (Ahnliid 2012; Alvstam et al. 2017; Lindberg and Alvstam 2012a and 2012b). The EU has signed an FTA with South Korea, concluded negotiations with Singapore and Vietnam, concluded an agreement in principle with Japan, and is negotiating with several others in the region. The EU's agreements with Asian countries are so-called "new generation" FTAs, being wider and deeper than those before, and are also adhering to the idea of sustainable development and responsible business.ⁱⁱⁱ

The existing literature is relatively scarce on the question of FTAs and responsible business, which evidently is because of the mere recent nature of the topic. Some of the recent research, however, has opened the debate. Heron (2011) discusses the unequal dynamics of North-South trade negotiations and how the development needs of the Caribbean states are met in their negotiations with the EU. Lechner (2016) investigates preferential trade agreements across the world and the variation in how non-trade issues, such as human rights, labour standards and environmental protection, are included, and finds that strict provisions are explained by either import pressure from the partner country or large differences in wage levels (ibid., 865). In comparison, Tschopp and Hamilton (2012) propose a Corporate Social Responsibility (CSR) reporting in free trade agreements that would add mechanisms of transparency and accountability addressing the social and environmental concerns that come with FTAs. Further, Cuyvers (2014) examines the case of the EU's FTAs with Asian countries and makes a comparative legal analysis on the sustainable development clauses in the EU-Singapore FTA which could provide a basis for the EU's possible negotiations with the Association of Southeast Asian Nations (ASEAN)^{iv} in the future.

Yet the existing literature seems not to consider the potential implications of 'responsible business' in FTAs on businesses. Therefore, we aim to address the regulation of trade regarding a research problem: *How do free trade agreements affect the responsibility of*

business in Asian emerging economies? Responsible business, or corporate social responsibility (CSR) is understood as the social obligations and impacts of business in society (Crane and Matten 2007). It is usually considered as a corporate-driven code of conduct - not only due to stakeholder pressure, but because it is institutionalized at corporate level in strategic CSR actions and practices (Bondy et al. 2012). However, the role of states in CSR is increasingly drawing research interest as well (Gjølberg 2010), which is important especially considering the institutional voids in emerging economies where CSR is not as widely practiced as in developed economies (Su et al. 2016). The lack of institutions promoting CSR may result in firms engaging in unethical conduct when they are dependent on locally available resources (Oinas and Kettunen 2017). In contrast, multilateral and regional state institutions – such as the new FTAs – contain provisions for responsible business that emphasize the role of states (e.g., Wagner 2017).

It is this sphere of FTAs at different levels that we explore, i.e., the interplay between bilateral and multilateral trade agreements in addressing the idea of responsible business. Based on an analysis of the EU's three bilateral FTAs with Asian countries, we argue that while the FTAs are non-binding on the issue of responsible business, they mediate forces that push towards more strict rules on sustainability. By doing so, we respond to recent calls for inquiry into trade agreements that are changing the institutional frameworks governing global business (Meyer and Peng 2016). The significance of the research is in that FTAs may be changing the rules of foreign trade and may act as incentives for ethical business.

2. Conceptual and empirical approach

The theoretical approach to our research problem is the idea of *multilateralizing regionalism* (Baldwin 2006; Baldwin and Low 2009; Baldwin and Thornton 2008) that refers to a process

of transferring regionally agreed issues to the multilateral level. The issue of corporate responsibility in international trade agreements is deeply embedded in the contemporary discourse on whether globalization as a process gives more or less deterministically rise to increasing inequalities between countries, as well as to a development where individuals are left behind. In this context, the question is whether multinational firms should take a wider responsibility to mitigate the negative effects of globalization. The majority of scholars who have warned against the risks that globalization may lead to increasing inequalities are not biased against globalization as such, but urge that trade and investment liberalization and increasing international interdependence have to be coupled with policies aimed at reducing poverty gaps, within as well as between countries (e.g. Alvaredo et al. 2017; Collier 2007; Krugman 2012; Milanovic 2016; Rodrik 2018; Stiglitz 2018). There is also a growing literature within the field of international business that aims at more directly addressing these issues (e.g. Cuervo-Cazurra et al. 2017; Judge et al. 2014; Kobrin 2017; Meyer 2017). One possible starting-point could be that the multilateral level, i.e. the World Trade Organization (WTO) framework should be the most appropriate platform for carrying out common rules and standards that increasingly have been incorporated in regional trade agreements. Such an endeavour can be seen as a part of the wider theories on multilateralizing regionalism.

This discussion originally emerged as a response to the proliferation of regional trade agreements, the ‘spaghetti bowl’ of FTAs (Bhagwati 2008). In multilateralizing regionalism, the process of regional FTAs is seen as a starting-point for the so-called WTO-Plus agreements that aim to reach further than what has been the ambition in the stalled multilateral Doha Development Agenda talks. The question then is how to transfer the regionally agreed issues to the WTO level. One way to do this is a step-by-step approach as suggested by Lindberg and Alvstam (2012a), by gradually harmonizing bilateral/regional agreements that would allow for coordinating the issues multilaterally. This is because of the

profound change in global commerce from ‘trade-in-goods’ to ‘trade-in-tasks’, i.e., the notable increase of global trade in intermediate goods and services (Baldwin and Robert-Nicoud 2014). Provisions on these issues are also included in the new comprehensive FTAs of the ‘21st century regionalism’ (Baldwin 2014) that have become quite complex and deep compared to traditional FTAs that only addressed merchandise trade.

Therefore, multilateralizing the new FTAs is extremely challenging because of their depth, and harmonizing should be done on an issue to issue basis (ibid.). In this process, the Asian countries could be central because of the growing number of FTAs in the region (Baldwin and Thornton 2008). Thus, a bilateral or interregional FTA can serve as a stepping-stone rather than a stumbling block towards a broader and more comprehensive economic partnership agreement, comprising ethical codes of conduct regarding e.g. labour conditions, environmental standards and regulations, the United Nations (UN) Sustainable Development Goals, intellectual property rights and anti-corruption provisions (UNCTAD 2014; Schwieder 2016).

Countries differ as to their institutional frameworks, and the process towards stronger governance structures securing sustainable development can be supported by an *institutional push*, understood as authorities initiating formal rules to regulate the business environment (Peng 2003; Puffer and McCarthy 2007). Especially in the case where there is no ‘pull’ from the civil society to advance CSR locally, bilateral FTAs have a potential to serve as a ‘push’ for developing countries – in particular, to adopt rules on working conditions and the protection of the environment in national legislation. This is plausible, as not all Southeast Asian states have ratified International Labour Organization (ILO) conventions such as those on the abolition of forced labour or the freedom of association (Cuyvers 2014, 437).

Sustainable development, then, is a broader concept than responsible business. It is often defined as “development that meets the needs of the present without compromising

the ability of future generations to meet their own needs”, following the UN World Commission of Environment and Development statement from 1987 (UN 2018a). The aim of sustainable development is to achieve in a balanced manner economic development, social development and environmental protection (ibid.), with a goal of socially inclusive and environmentally sustainable economic growth (e.g., Sachs 2015, 3). These have been formulated into the *2030 Agenda for Sustainable Development* adopted in 2015 that includes 17 Sustainable Development Goals (SDGs) addressing, e.g., poverty, health, urbanization, and responsible consumption and production. The UN (2018b) notes that trade liberalization can have both positive and negative effect on sustainable development: growing trade induces economic growth but not necessarily without cost to the ecosystem. Developing countries should be integrated into the multilateral trading system while at the same time ensuring that this contributes to sustainable development. So far, the SDGs provide the most coherent sustainable development framework to develop business models with positive societal contributions (van Tulder and van Zanten 2018, 1).

Empirically, we explore the adoption of CSR in the EU’s agreements by operationalizing the broad research problem into two questions: 1) How is the issue of sustainable development treated in international trade negotiations? 2) How are the measures for corporate social responsibility filed in the EU’s three FTAs with Asian countries? Based on these, we debate the expected implications for businesses. The questions are addressed by investigating the three agreements: the EU-Korea FTA that has been in force since 2011, the EU-Singapore FTA concluded in 2014, and the EU-Vietnam FTA concluded in 2015, the two latter not yet ratified or brought in operation.

The empirical analysis is based on FTA texts and reports, as well as personal interviews with trade policy officials.^v Interviews deal with the motives, agendas and contested issues of the negotiations, the role of businesses and the main challenges. The

agreement texts are analyzed applying a content analysis of key words to find out how responsible business and sustainable development are treated. References to international conventions and negotiations are sought to reveal the dynamics between the multilateral and bilateral/regional levels. These help us understand the possible complexities and different viewpoints and how the issue is presented in the final agreement texts.

3. The origins of ‘sustainable development’ in international trade negotiations

The notion of sustainable development has its origins in the international debate on environmental protection from the 1960s when environmental consciousness started to gain prominence among both researchers and the civil society. One of the earliest international meetings to discuss the challenge of maintaining sustainability together with economic growth and development was in the UN Conference on the Human Environment in 1972 in Stockholm (Sachs 2015, 4). The term ‘sustainable’ appeared the same year in the Club of Rome report *Limits to growth* that presented an idea of a world system that would be sustainable and capable of satisfying the basic material needs of the people. The concept of ‘sustainable development’ was introduced in 1980 in the *World Conservation Strategy* published by World Conservation Union (Reid 1995, xiii). It was discussed in the UN World Commission on Environment and Development led by Brundtland, and its report *Our Common Future* in 1987. Then, the United Nations Conference on Environment and Development organized in Rio de Janeiro in 1992 aimed at agreeing on sustainable development including both economic and social development. It resulted in an agreement on climate change, which later led to the Kyoto Protocol, a commitment to reduce greenhouse gas emissions.

At the same time, developed countries brought the topic of sustainable development into the negotiations to establish the WTO in the early 1990s. It received

opposition from developing countries that were concerned about possible protectionism and the supposed need for openness and dialogue with the civil society. The issue was discussed with minor results (IISD 1996, 8). Then, the first WTO ministerial meeting was held in Singapore in 1996, but developing countries rejected the idea again due to it being ‘hidden protectionism’ and that developed countries had a comparative advantage here. It was noted that in questions related to labour issues, the ILO had the apparent competence. The developed countries tried to keep up the idea of sustainable development in the WTO Seattle meeting in 1999, but again, developing countries opposed this categorically.^{vi}

However, the situation has changed during the last two decades. Developing countries no longer view the issue as a direct threat to competitive advantage, as there are no sanctions on ‘misconduct’. One of the first agreements to include references to sustainable development is the EU-CARIFORUM^{vii} Economic Partnership Agreement from 2008.^{viii} Also the Canada-Peru FTA from 2009 contains references to CSR in several chapters and is accompanied by side agreements on environment and labour cooperation (Wagner 2017, 202). The statements of sustainable development are becoming more common, which opens the potential for possibly harmonizing the issue into a multilateral agreement later.

4. The EU’s three FTAs in Asia: towards corporate social responsibility

The EU has been one of the parties using the institutional push in striving to advance the sustainable development agenda in different international settings (see, e.g. European Commission 2017). The difficulties in negotiating the issue globally led it to take a unilateral approach: the EU decided to give tariff preferences through its Generalized Scheme of Preferences (GSP) to developing countries that implement international labour conventions and environmental agreements (e.g., Cuyvers 2014).

The EU regards sustainable development as being central to its current FTAs.

Where do the ideas of sustainable development derive from, and what is the role of businesses? Largely, the pressure comes from outside of the business sphere: the labour unions and the civil society are active in lobbying on the norms of the working life and bringing them in the EU's agenda. The role of businesses is small – apart from firms in cleantech or related industries that may see business opportunities in sustainable development, there is relatively little interest and a “cautious approach” towards the issue among firms.^{ix}

4.1. Corporate social responsibility in the FTA texts

The EU's agreements with Korea, Singapore and Vietnam are relatively similar when it comes to how the issues on sustainable development and CSR are dealt with. All three include references to international conventions. The structure of the ‘Chapter on trade and sustainable development’ is almost the same in all cases. The agreements differ slightly in exact wordings, reflecting the formulations that each negotiating party has been ready to accept. Some of the similarities on sustainable development issues include, for example, the right of each party to establish its own levels of environmental and labour protection; a commitment to respect the fundamental rights at work;^x and facilitating trade in environmental goods and services (renewable energy, energy efficient and eco-labelled goods). There are no sanctions in case the CSR measures are not met. Yet there are some differences as to the details and concrete examples on sustainable development and CSR in the three FTAs, as shown next.

a) The EU-Korea FTA

Of the three FTAs, this is the vaguest in its statements on sustainability. It has the shortest text in Chapter 13 on Trade and sustainable development, and also the least detailed as to concrete examples and fields in which it is to be implemented. It disregards many of the issues that are

included in either or both of the two other agreements. For example, ‘sustainable fishing practices’ is not mentioned as in the two other agreements and ‘greenhouse gas’ is not referred to, contrary to the agreement with Singapore. Further, ‘biological diversity’ does not appear in the Chapter on sustainability, but on Intellectual Property.

The relative briefness of the text on sustainable development can be explained by its novelty at the time of the negotiations in 2007-2010. This is especially so regarding the Korean side; the issue was new for Asian countries.^{xi} Yet at the time, this was the EU’s most comprehensive FTA in which many new issues were negotiated.^{xii} Thus, the agreement can be seen as a first example of a new scope for the EU’s bilateral FTAs.

‘Corporate social responsibility’ is briefly mentioned in the Article on trade favouring sustainable development, which states that the parties strive to promote fair and ethical trade as well as trade in goods involving CSR. There are markedly fewer notes on ‘labour’ compared to the Singapore FTA. The reason might be Korea’s internal difficulties with labour issues, as the relations between the state and labour unions have become rather inflamed in Korea.^{xiii} In the possible negotiations for amendments to the FTA, the EU wants to draw attention to the imports of products from South Korean factories located in North Korea because of problems with worker rights in the factories.^{xiv}

b) The EU-Singapore FTA

This FTA, and its Chapter 13 on Trade and sustainable development, has more numerous notes and concrete examples of the different spheres regarding the environment, compared to the one with Korea. The Singapore FTA refers to, for example, trade in timber and timber products, sustainably managed forests, trade in fish products (in a separate Article) and the need to reduce greenhouse gas emissions. In fact, this agreement was named the first ‘Green FTA’, and the text was drafted without much difficulty (Cuyvers 2014, 440). The agreement

refers to the efforts to promote CSR practices “which are adopted on a voluntary basis” and as agreed in several international fora. Labour issues are mentioned more frequently than in the two other FTAs.

The Singapore FTA has its origins in the failure of the EU’s inter-regional negotiations with ASEAN in 2007-2009 and was thus a ‘second-best’ option for the EU to open talks with individual member countries beginning with Singapore.^{xv} The EU’s overall aim is to reach mutually compatible agreements with all ASEAN countries, which is important for businesses.^{xvi} One of the main problems in the negotiations is the opening of public procurement markets because that is where “local tycoons and ministers make money” in all countries except Singapore.^{xvii}

c) The EU-Vietnam FTA

This FTA has the longest text in Chapter 13 on Trade and sustainable development. A main novelty, which is not found in the two other FTAs, are the new separate Articles on sustainable development issues with relatively long statements and clarifications:

- Article 5: climate change
- Article 6: biological diversity
- Article 7: sustainable forest management and trade in forest products
- Article 8: sustainable management of living marine resources and aquaculture products

Also, corporate social responsibility is noted, similar to the Singapore FTA. Promotion of CSR is stated to include the exchange of information and best practices, education and training, and technical advice. The paragraph on CSR is the longest of the three agreements. In addition, CSR is listed as one of the fields of cooperation. Therefore, this agreement shows progress in the EU’s objective to include provisions on sustainable development in its

comprehensive bilateral FTAs. It is the EU's third FTA in Asia,^{xviii} which has potentially made it possible for the EU side to learn from the two previous negotiations. According to an observer, it was interesting how quickly the FTA was negotiated, Vietnam being “aggressive” in pushing to clear the questions in the FTA negotiations.^{xix}

4.2. Implications for businesses

We come up with three observations that are relevant for businesses: first, the EU's three Asian FTAs show an evolution towards more detailed references to sustainable development and CSR. Second, the topics are presented in relatively general terms, however, mostly referring to existing international conventions on environmental and labour issues. Third, there are no sanctions on the possible ignorance of the provisions by the parties. This makes the FTAs observant of the complex issues, but relatively powerless in executing any endorsements in case of misconduct.

For businesses, the implications are indirect, and might be visible in the long run through institutional changes in partner countries. Firms are guided by regulations at multiple scales (local, national and international), and the rules and practices affecting business conduct may be locality-specific and change slowly. Also the European Commission (2017) notes that the provisions on sustainable development are still unfamiliar for many of the EU's trade partners and thus challenging to implement. Institutional structures and monitoring practices are only being put into place; for example, the dispute settlement mechanism has not yet been used.

However, companies take part in the formulation of FTAs through industry associations lobbying for their interests in the preparation of FTAs.^{xx} Businesses also have a role in the monitoring of the implementation of FTAs. In the EU, this is organized through advisory groups, such as the Employers' Group of the European Economic and Social

Committee that includes entrepreneurs and entrepreneur associations from industry, commerce, services and agriculture (EESC 2018). These provide arenas for interactions in trade policy where states and multinational firms may push for more transparent and consistent responsible trade practices that have a bearing on corporate decision-making.

5. Conclusion

References to sustainable development and responsible business have been gradually included in FTAs in the 2000s. We find an evolution in the EU's FTAs towards more explicit and detailed notions of sustainable development and CSR. The EU's first Asian FTA, with Korea, has relatively brief and vague clauses on sustainable development, whereas the second one with Singapore was more detailed, and the third with Vietnam is the broadest and most explicit on both sustainable development and CSR. However, the implications to businesses are only indirect. This is because the EU's FTAs are not legally binding and therefore do not lead to sanctions in cases of misconduct. There are no direct consequences, such as extra tariff duties if labour or environmental provisions are not met. Instead of sanctioning, the EU has chosen a route of negotiating in case of possible disputes with trade partners on responsible business.

Our findings indicate, first, that the EU has been successful in reaching the objective of including sustainable development in its FTAs, having been among the leading proponents of the issue internationally. However, the EU is left with solving the problem of 'mixed agreements' within its own decision-making structure, as the issues of labour and environmental protection are partly under the national EU states and not the EU common trade policy. Second, Asian emerging economies are gradually accepting the clauses of sustainable development in bilateral FTAs, and thus, the agreements may serve as an *institutional push* to introduce formal rules and regulations (cf. Peng 2003; Puffer and

McCarthy 2007) on labour and environment. Third, this increases the possibility of reaching a broader understanding on the issue in future multilateral trade negotiations, conforming to the idea of *multilateralizing regionalism* (Baldwin 2006; 2014). However, trade liberalization needs to be complemented with policies addressing poverty in developing countries (Alvaredo et al. 2017; Milanovic 2016; Rodrik 2018; Stiglitz 2018) in order to achieve the core idea of sustainable development.

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Interviews

Interview A, with an official at the Finnish Ministry for Foreign Affairs, Helsinki, 19 April 2017.

Interview B, with an official at the Finnish Ministry for Foreign Affairs, Helsinki, 3 May 2017.

Interview C, with an official at the Finnish Embassy in Seoul, 27 June 2016.

Interview D, with an official at the EU Delegation in Korea, Seoul, 27 June 2016.

Interview E, with a representative of the EU Chamber of Commerce in Malaysia, Kuala Lumpur, 14 December 2015.

Interview F, with an official at the Finnish Embassy in Seoul, 27 June 2016.

ⁱ Turku School of Economics, University of Turku, Finland. E-mail: erja.kettunen-matilainen@utu.fi

ⁱⁱ School of Business, Economics and Law, University of Gothenburg, Sweden.

ⁱⁱⁱ The agreements, such as the EU-Korea FTA, cover also non-tariff barriers, aim to open trade in services and investments and include provisions in competition policy, government procurement, intellectual property rights (IPR), and transparency in regulation and sustainable development (DG Trade 2018a).

^{iv} Member countries: Indonesia, Malaysia, the Philippines, Singapore, Thailand, Vietnam, Cambodia, Laos, Myanmar, and Brunei.

^v Interviews were conducted with six persons: an official of the EU Delegation in Korea, Seoul; two officials of the Finnish Ministry of Foreign Affairs, Department of External Economic Relations, Helsinki; a representative of the EU Chamber of Commerce in Malaysia, Kuala Lumpur; and two officials of the Finnish Embassy in Korea, Seoul; all took place between Dec 2015 and May 2017.

^{vi} Interview A.

^{vii} CARIFORUM is the Caribbean subgroup within the African, Caribbean and Pacific (ACP) group.

^{viii} The agreement can be found at: <http://ec.europa.eu/trade/policy/countries-and-regions/regions/caribbean/>

^{ix} Interview A.

^x The freedom of association and the right to collective bargaining; the elimination of forced labour; the abolition of child labour; and the elimination of discrimination in employment.

^{xi} Interview B.

^{xii} This was the EU's first ever FTA with an Asian country. Negotiations were launched in 2007 and the FTA signed in October 2010, ratified in May 2011 and provisionally applied in July 2011. The agreement fully entered into force in December 2015.

^{xiii} Interview C; Interview A.

^{xiv} Interview D.

^{xv} The EU-Singapore negotiations were launched in March 2010 and completed in October 2014. The agreement has been approved by the European Commission and needs to be agreed upon by the Council and the European Parliament before it can be put fully in force (DG Trade 2018b).

^{xvi} Interview B.

^{xvii} Interview E.

^{xviii} The negotiations were launched in June 2012 and concluded in December 2015. The agreement text was published in February 2016, now being under legal review after which it needs to be ratified by the European Parliament (DG Trade 2018c).

^{xix} Interview E.

^{xx} Interview F.