



Clingendael

Netherlands Institute of International Relations

Trade Diplomacy in EU–Asia Relations

Time for a Rethink

Maike Okano-Heijmans

Clingendael report



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Executive Summary

The aim of this Clingendael Report is to provide insight into the state of affairs of the European Union's trade diplomacy, with a particular focus on East Asia and on the consequences of trade talks among countries in the Asia-Pacific region for the EU and for European governments. Competitive multilateralism in Asia-Pacific trade diplomacy is assessed for its impact on the geostrategic position of the EU and its member states, followed by an analysis of the effectiveness of EU trade diplomacy in Asia. The focus is not so much on the economic benefits that trade agreements may provide, but rather on the role that politics, security, stability and norm-setting take in the rationale behind negotiations. Surprisingly few attempts have been made so far to analyse this complex subject comprehensively from a European perspective.

The EU's trade diplomacy stands out for its formal, rather legalistic approach to linking economics and politics. This strategy is founded on the so-called '2009 Common Approach', which holds that a predefined set of political clauses must be included in political agreements with third countries, while also essentially reducing free-trade agreements to a subset of such political agreements. This political straitjacket limits the EU's ability to engage in a more flexible, strategic approach that is needed in the context of Asian competitive multilateralism.

The most important trade deals currently being negotiated in the Asia-Pacific region are the Trans-Pacific Partnership (TPP), the Regional Comprehensive Economic Partnership (RCEP), the China-Japan-South Korea Trilateral (CJK) and the ASEAN Economic Community (AEC). European countries are not involved in any one of these negotiations. The EU did conclude a landmark trade agreement with Korea in 2011 and is currently negotiating a major deal with Japan. Furthermore, Europe is negotiating political and economic deals with China and individual countries in South-East Asia, as well as a Transatlantic Trade and Investment Partnership (TTIP) with the United States.

The EU abandoned its region-to-region approach in the trade field in 2007, following a failed attempt to engage in negotiations with ASEAN as a whole. Claims by EU officials that the bilateral track will, in the end, pave the road for a regional deal appear to miss one important point: both the EU's focus on bilateral deals and its detachment from (inter)regional trade diplomacy do not resonate well with its stated foreign policy aim of contributing to greater cooperation and integration in South-East Asia.

Europe's policy for governing trade relations and its strategy on trade diplomacy date back to a simpler era. Without a radical rethink, the EU risks being sidelined from major geopolitical currents and thereby losing both economic and foreign policy opportunities to improve living standards and stability at home and away. Considering the economic and strategic importance of the Asia-Pacific and the proliferation of trade diplomacy in this region, the EU and its member states are well advised to rethink the short- and medium-term strategic consequences of their present-day trade diplomacy. The '2009 Common Approach' is nearing its 'best by' date and the EU can hardly afford to forego participation in trade diplomacy at the regional level any longer.

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Abbreviations

ADB	Asian Development Bank
AEC	ASEAN Economic Community
AFTA	ASEAN Free-Trade Agreement
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of South-East Asian Nations
ASEM	Asia-Europe Meeting
BIT	Bilateral Investment Treaty
CEPEA	Comprehensive Economic Partnership of East Asia
CJK	China-Japan-Korea ('Trilateral')
COREPER	Committee of the Permanent Representatives (EU)
CT	Counter-Terrorism
DG Relex	Directorate-General for External Relations (EU)
DG Trade	Directorate-General for Trade (EU)
EAFTA	East Asian Free-Trade Agreement
EAP	Europe-Asia Partnership
EC	European Commission
EEA	European Economic Area
EEAS	European External Action Service
EEC	European Economic Community
EPA	Economic Partnership Agreement
EU	European Union
EUCU	European Union Customs Union
EUMS	European Union Member States
FDI	Foreign Direct Investment
FTA	Free-Trade Agreement
FTAAP	Free-Trade Area of the Asia-Pacific
FwA	Framework Agreements
GATT	General Agreement on Tariffs and Trade
GPA	Government Procurement Agreement
HR	Human Rights
ICC	International Criminal Court
IPR	Intellectual Property Rights
JAEPA	Japan-Australia Economic Partnership Agreement
JETRO	Japan External Trade Organization
KORUS (FTA)	FTA between the United States and the Republic of Korea (South Korea)
MTA	MicroTrend Analysis
NAFTA	North American Free-Trade Agreement
NTB	Non-Tariff Barrier
OECD	Organization for Economic Cooperation and Development
PCA	Partnership and Cooperation Agreements
RCEP	Regional Comprehensive Economic Partnership
RoO	Rules of Origin
SALW	Small Arms and Light Weapons
SOE	State-Owned Enterprise
SPA	Strategic Partnership Agreements
TEP	Trans-Eurasian Partnership

TPP	Trans-Pacific Partnership Agreement
TTIP	Transatlantic Trade and Investment Treaty
WMD	Weapons of Mass Destruction
WTO	World Trade Organization

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1. Introduction*

Globalization and shifting power balances are creating new incentives for governments all over the world to rethink the balance of national interests. Trade diplomacy is thereby quickly becoming a popular policy instrument. As illustrated by the signing of the EU–Ukraine Association Agreement – which includes the Deep and Comprehensive Free-Trade Area – within a few weeks after Russia’s annexation of the Crimea in March 2014, as well as by the emphasis on the standard-setting significance of the Transatlantic Trade and Investment Treaty talks, trade diplomacy is about more than just trade. It is concerned with economic issues but – and increasingly so – also with political, legal and geostrategic matters – hence, the concept of trade *diplomacy*, rather than trade *policy*.

How does the EU fare in the ‘great game’ of trade diplomacy in relation to East Asia? Is Europe ready to respond to the US ‘pivot to Asia’, where the key component is the envisioned Trans-Pacific trade deal? While still preaching the fundamental importance of the World Trade Organization (WTO) in the international trade system, the EU in the new millennium joined the bandwagon of bilateral and regional trade negotiations. From 2006, the European Commission (EC) moved towards an active phase of negotiating free-trade agreements (FTAs) on behalf of the 28 EU member states. The EU–South Korea trade agreement that entered into force in July 2011 constituted a major achievement, and the world’s largest trading block stepped up its effort thereafter. Today, Brussels is spending much time and effort to negotiate two massive deals with the world’s first and third biggest economies – that is, with the United States and Japan. It is also negotiating economic and political agreements with several South-East Asian countries individually, as well as with China, India and several counterparts in other regions.¹ Yet is there a bigger strategic design by which trade diplomacy will contribute to the EU’s foreign policy goals in East Asia, which include the promotion of stability and regional cooperation in the region?

Trade negotiations within and across continents – in particular, the Asia–Pacific and Asia–Europe – cannot be seen as separate from one another. The many and sometimes overlapping agreements that are being negotiated within Asia and in the Asia–Pacific region also impact on the EU’s trade diplomacy, including with Asian countries. Yet there is scant research assessing the geopolitics of these trade agreements from a European perspective. Similarly, few studies exist that consider EU trade diplomacy with Asia in their broader context – that is, in relation to ongoing (inter)regional negotiations on trade agreements in the Asia–Pacific from which the EU is excluded.

Against the context of the geo-politicization of trade negotiations and the growing importance of the economically vibrant Asian region, this study seeks answers to the question of how the EU fares in its trade diplomacy with countries in East Asia and how trade

* The author gratefully acknowledges the valuable research assistance provided by Jikkie Verlare during the course of her affiliation with the Clingendael Institute from February–July 2014. She also would like to thank Jochem Rietveld for his help with preparing the figures and tables, as well as several colleagues for useful comments to earlier drafts of this report.

1 Outside Asia, the EU is negotiating with southern Mediterranean countries, Mercosur, the Gulf Cooperation Council, and African, Caribbean and Pacific Countries. A deal with Canada was finalized in August 2014.

negotiations in that region affect European countries. In doing so, it seeks to contribute to the EU's positioning in the game of competitive multilateralism that is becoming increasingly hard to evade.

MicroTrend Analysis

Clingendael's MicroTrend Analysis (MTA) is used as a practical framework to analyse EU–Asia trade diplomacy. The MTA framework identifies emerging trends and assesses their potential to become broader trends, as well as their impact on likely future trends over the next five to ten years.²

The following microtrend, identified recently by EU–Asia experts,³ is at the heart of the research and analysis of this report:

- ✓ Drawing on its economic weight, Europe is increasingly positioning itself as a non-traditional security actor in East Asia, as well as making a positive contribution to stabilizing interdependence in the region, mainly through the Association of South-East Asian Nations (ASEAN).

This trend is assessed here with a focus on trade diplomacy. This in turn brings us to a second microtrend, which is specifically concerned with EU trade diplomacy and foreign policy towards Asia:

- ✓ Having abandoned the region-to-region approach after a failed attempt to negotiate an EU–ASEAN trade deal back in 2007, the EU is now reinvigorating its regional approach to Asian economic cooperation.

In order to weigh the importance and the future potential of these microtrends, this study begins with an overview of the principal goals and characteristics of the EU's foreign trade policies. It then briefly discusses the various trade agreements that are currently being negotiated between Asian countries, in the Asia–Pacific, and between the EU and Asian countries. The focus is on the geostrategic dimension of these deals and on the ways in which the multiple negotiations impact upon one another, for example by including and excluding (groups of) countries and by propagating different aspirations on specific sectors and norm-setting. This is followed by an assessment of Europe's trade diplomacy towards Asia. The analysis weighs the potentialities and the pitfalls of EU strategy and tactics, both in terms of internal organization and in the context of the strategy's stated aims to benefit from and contribute to prosperity and stability in the region. A key finding is that the formal linkage between politics and economics, as per the so-called '2009 Common Approach', makes for a political straitjacket that is approaching its 'best by' date. As the goals and instruments of Europe's trade diplomacy remain elusive, however, the EU and its member states are hard-pressed to redefine their strategy. The report concludes with an overview of the policy implications for the EU and for the Dutch government in particular.

2 The MicroTrend Analysis consists of four steps: (1) Identify and define a microtrend (presented in this introduction); (2) Analyse the microtrend in an international political–strategic context (mainly done in chapters two and three); (3) Critically assess the microtrend's potential to become a broader trend (chapter four); and (4) Gauge the relevance for a specific stakeholder or group of stakeholders (chapter five).

3 See, for example, Yeo, 2014; and Okano-Heijmans and van der Putten, 2014.

2. EU Trade Diplomacy Framework

For many years a guardian of multilateralism, the European Union has in recent years joined the bandwagon of bilateral and regional trade negotiations. It has thereby entered a new phase, following two earlier periods in which it transformed from a 'defensive neo-mercantilist General Agreement on Tariffs and Trade (GATT) player' into a 'proactive, post-modern trade liberalizer'⁴ following the creation of the WTO in 1994. EU trade diplomacy is challenged, however, by incoherence among member states – which have sometimes had diverging stakes in policy guidance and implementation – as well as by its protectionist tendencies, especially regarding agricultural products. Differences between the EU – among others – and developing countries were indeed a major cause of the initial failure of the multilateral Doha Development Round of the WTO.

The often ambiguous economic pay-offs of agreements, combined with the economic and political costs incurred at times at home, are evidence that there is more to trade negotiations than economic calculations such as trade liberalization, preferential market access and trade diversion. Talks on bilateral and (inter)regional trade agreements have come to involve issues of norm-setting, rivalry for influence, strengthening of partnerships and resource allocation. The failure of the multilateral negotiations in the WTO only contributed to this trend. Moreover, notwithstanding growing calls on the G20 to take up a role in reinvigorating the global trade regime,⁵ the politicization of trade is unlikely to change in the years ahead.

Trade is thus not just about trade. There are many other motives for governments to engage in trade diplomacy, spanning the economic, political and legal fields. The European Commission acknowledges this when it states that trade is about more than boosting growth and jobs in Europe – and that it also concerns the environment, human rights and labour rights.⁶ This broader context is not explicated in further detail, however. Neither is a comprehensive take on trade diplomacy obvious in practice. For example, while worries about its vulnerability to China spur Japan to deepen trade ties with others, Europe until recently appeared less concerned about the dependence of more than a few EU countries on Russian natural resources.⁷

The EU's comprehensive approach on trade diplomacy thus appears to have little flesh to its bones. As elaborated in this chapter, the focus in negotiating trade agreements is on high-standard, deep agreements that deliver substantial economic benefits. These trade agreements are subsequently reduced to a subset of political agreements, which are based on a predefined wish list that leaves little room for diplomatic manoeuvring. While this makes economic sense and may be taking the moral high ground, this inflexible approach hardly contributes to the EU's foreign policy goals in East Asia. Moreover, it overlooks the competitive multilateralism in the Asia-Pacific region, with European officials apparently operating under the assumption that they are working in a vacuum.

4 Mortensen, 2009, p. 89.

5 Pangestu and Nellor, 2014.

6 See European Commission, 2013a, p. 1; European Commission, 2014a, p. 14.

7 For a discussion of how resource security increasingly features in trade diplomacy in the Asia-Pacific region, see Wilson, 2012.

State of Affairs

The oldest expression of European regional economic cooperation is, of course, the EU itself – originally the European Economic Community (EEC) – which was established in 1958 and currently comprises 28 member states. A principal task of the EU is the EU Customs Union (EUCU), which also includes Andorra, Monaco, San Marino and Turkey.⁸ Separately, there is the European Economic Area (EEA), which was established in 1994 and currently comprises 27 of the 28 EU member states, plus Norway, Iceland and Liechtenstein.⁹

Figure 1. Bilateral Trade Agreements of the European Union: State of Play



Source: European Commission, 2014a, p. 23.

As illustrated in Figure 1, as of December 2013, the EU has trade agreements in place with some 50 partners and has finished negotiating ten trade agreements that have yet to enter into force. Official talks are currently ongoing on fourteen trade deals, including several broader trade and development agreements and two on investment alone, with China and Myanmar. Finally, the EU is considering opening preferential negotiations with several countries.¹⁰ Asian countries have a prominent role herein, accounting for eight of the fourteen counterparts in ongoing talks and being home to what is boasted to be the EU's most ambitious trade deal ever, namely that with South Korea.

8 No customs are levied on goods travelling within the customs union and members of this union impose a common external tariff on all goods entering the union. This latter point is what sets the EUCU apart from an FTA and it is also the reason why the EU negotiates as a single entity in international trade deals.

9 The EEA essentially allows these three countries to participate in the EU's internal market without being EU members (European Commission, 2013b). Croatia, which joined the EU in 2013, provisionally applies the agreement pending its ratification by all EEA countries. At the time of writing, Croatia is still in the process of joining other trade agreements that the EU has signed with third countries, but for the sake of simplicity this point is not repeated in the discussion.

10 Updated from European Commission, 2013b.

Exclusive EU Competence

External trade policy has always been a core, exclusive competence of the EU. It is undertaken by the European Commission (EC, or Commission) under the strict oversight of the EU member states. The EU competence for trade in services and intellectual property rights (IPR) grew through successive treaty modifications, while competence for foreign direct investment (FDI) only relatively recently, through the 2009 Lisbon Treaty.

To enter into negotiations for any specific trade deal, the Commission needs a mandate from the EU member states. Unique to EU trade diplomacy, thus, is the fact that formal negotiations with outside partners are preceded by an internal scoping exercise that provides the Commission with a negotiating directive. This directive legitimizes the Commission's position towards the EU member states and defines the scope of the Commission's remit. In the case of Transatlantic Trade and Investment Treaty (TTIP), for example, this resulted in the exclusion of audio-visual services from the EU's mandate, as strongly pushed for by France.

Further complicating matters, in certain cases the member states give to the Commission a second mandate to negotiate on their behalf on issues that do not fall under its exclusive (trade) competence but are included in a specific trade deal. Criminal sanctions for intellectual property rights and certain service elements in the transport sector are examples of this. Visa issues also require a special mandate, as not all member states participate in the common visa policy. For their part, issues related to culture and other services require unanimity in member states' voting. When such elements are included in a trade deal – which is more often than not the case – trade agreements are 'mixed' – that is, signed by both the EU and its member states. Furthermore, in certain cases when the Commission is not given a mandate to negotiate on these issues on behalf of its member states, the rotating Presidency of the Council of the EU (co-)negotiates on their behalf – reducing the continuity of the EU negotiating team to a mere six months. This situation clearly adds to the challenge of maintaining consistency in talks and building relationships of trust with counterparts, and limits the potential of the EU to leverage the political dimension of trade diplomacy.

While the extra layer of EU policy-making between Brussels and the member states is one challenge, internal EU politics is another. After all, to say that the European Commission undertakes trade diplomacy is not to say that it acts as a unitary actor. Similar to any one country, several directorates-general (at the country level: ministries) have a stake in the negotiation of trade agreements and political agreements. Importantly, the EU chief negotiator for trade agreements comes from the Directorate-General for Trade (DG Trade), whereas the chief negotiator of political agreements comes from the European External Action Service (EEAS).¹¹

In an attempt to overcome the unnatural separation of economics and politics, some countries have sought to enhance coordination between ministries. In doing so, they seek to ensure thereby that non-economic issues are also considered in trade diplomacy. For example, in the United States, the Office of the Trade Representative – as part of the Executive Office – has a direct link to the President and the Cabinet. Japan appoints a representative from the foreign ministry as the chief negotiator of trade negotiations, while

11 Prior to the establishment of the EEAS in 2010, this role was held by the Directorate-General for External Relations (DG Relex).

in Norway the foreign ministry handles multilateral trade issues and the ministry of trade takes care of bilateral negotiations.¹² For its part, the EU – with its inherently more layered structure – has not (yet) institutionalized the linkage between economic and political dimensions of trade diplomacy, nor does it have an institutionalized strategic dialogue between directorates-general in Brussels. Coordination is limited to informal meetings, especially between DG Trade and the EEAS.

Further adding to Europe's fragmented economic statecraft is the fact that the European Parliament has also been making its voice increasingly heard in recent years. The European Parliament is employing its extended powers, as defined in the Lisbon Treaty, which grants it power to block the ratification of trade agreements. Additionally, individual member states – consciously and not – apply a brake on a more strategic trade diplomacy by pursuing parallel trade policies in an effort to obtain competitive advantages. Germany is regarded as especially prone to adopting a nationally inspired trade and investment promotion strategy, notably *vis-à-vis* China, and also the Netherlands, Denmark, France, Spain and Poland stand out.¹³ While trade and investment promotion is formally separate from trade diplomacy, the two can obviously reinforce or undermine one another.

Policy Context

Before taking a closer look at the practice of EU trade policy towards Asian countries, several key policy documents of the EU's policies on trade more generally will be discussed. These documents show several trends and characteristics of EU trade diplomacy: (1) a shift away from 'multilateralism only' towards a more bilateral approach; (2) a growing recognition of trade policy as an instrument to promote growth at home; and (3) evolving thinking on the rather formal way in which the EU attempts to link political and economic issues in agreements with third countries.

The EU's strategic shift from exclusive multilateralism to multi-layered trade diplomacy is embodied in its strategy document *Global Europe: Competing in the World*, which was published in 2006.¹⁴ This document essentially lifted the moratorium on launching new FTAs that former WTO Director-General Pascal Lamy had informally imposed during his term as Trade Commissioner of the European Union (1999–2004).¹⁵ Importantly, this communication by the European Commission explicates the EU's new strategy of bilateralism and regionalism on the trade front. By tabling the possibility to use political agreements as a lever to enter into trade negotiations, it also testifies to the EU's willingness to employ its market power when this is to its advantage. The new strategy document emphasizes at length that the EU is not turning away from multilateralism: FTAs are to build on the WTO's and other international rules by going further and faster in promoting openness and integration. What is more, FTAs are regarded as an instrument to address key issues that remain outside the WTO at this time, including investment, public procurement, competition, other regulatory issues and IPR enforcement. In doing so, it is a stated EU priority to ensure that any new FTAs, including those of the EU, serve as a stepping stone, not a stumbling block, for multilateral liberalization and the WTO trading system.¹⁶

12 Melchior, Lind and Lie, 2013, p. 63.

13 Youngs and Springford, 2013, pp. 40–41.

14 European Commission, 2006a.

15 Woolcock, 2007, p. 2.

16 European Commission, 2006a, pp. 10 and 12.

Against a background of continuing economic and financial hardship in the majority of European countries, the Commission in 2010 and 2013 followed up with more detailed trade strategy documents that explicate the role of trade policy to secure prosperity within the Union. The EU thus began to seek economic recovery through large-scale free-trade negotiations, especially with the United States and Japan.¹⁷ In 2010, EU Trade Commissioner Karel De Gucht adopted a new trade strategy entitled *Trade, Growth and World Affairs*, singling out a few countries as potential FTA partners, including India, Singapore and other ASEAN Countries.¹⁸ Also in 2010, the Commission detailed its strategy on investment, for which it had received a negotiating mandate from the Lisbon Treaty.¹⁹ Following its failure to have investment included in WTO and Organization for Economic Cooperation and Development (OECD) negotiations, the EU embarked on the bilateral path. Negotiations either aim for a stand-alone investment agreement, or investment may be included as one chapter of a broader FTA.

The 2013 communication by the Commission titled *Trade: A Key Source of Growth and Jobs for the EU* elucidates the role of trade policy within the Commission's comprehensive strategy to return to growth and job creation in Europe.²⁰ The bilateral trade agenda is said to aim at securing markets abroad and at reform at home through ambitious trade deals with countries throughout the world and in the European neighbourhood. The Commission attempts to do this by tackling regulatory issues, especially with the United States and Japan; by striking the right balance between ambition and reality on the ground; and by stepping up the implementation of trade agreements and the enforcement of the EU's rights under current trade rules. The majority of deals that are discussed in some detail in the 2013 paper – apparently because of their importance to the European economy – are with countries in East Asia: South Korea (concluded), Japan, China, ASEAN and India. As stated in the opening paragraph of this Commission communication, it 'does not cover the full universe of trade relations', but rather focuses on the contribution that deepening relationships between the EU and its key trading partners can make to boosting growth and jobs in Europe. As such, '[i]t does not deal with the other aims of EU trade policy, such as fostering development in poorer countries and projecting EU values in the world'. As EU officials themselves admit, however, these 'other' policies are scattered among various documents, and thereby hardly emerge as a comprehensive, thought-out strategy.

Linking Politics and Economics

A key characteristic of EU trade diplomacy that distinguishes it from other countries and regions is the formal, legalistic way in which economics and politics are linked. That is to say, the EU commonly requires that third countries sign a political agreement as a prerequisite to a free-trade agreement. As one official in Brussels put it: 'there is no standard format, text or order by which the EU negotiates PCAs and FTAs with third countries – there is, however, one recipe for principles'.²¹ Initially, FTA negotiations were to be preceded by talks on a political agreement. As these tend to last for years, however, and include cumbersome negotiation

17 Zhang *et al.*, 2014.

18 European Commission, 2010b.

19 European Commission, 2010a.

20 European Commission, 2013a.

21 Interview with a DG Trade official, May 2014.

and ratification processes on both sides, today the EU pursues talks on trade agreements and political agreements in parallel.²²

The names of these political agreements differ, but they are usually called Partnership and Cooperation Agreements (PCAs), Framework Agreements (FWAs), or Strategic Partnership Agreements (SPAs). Political agreements are presented by the EU as a vehicle for developing broad-based and mutually beneficial cooperation in fields such as non-proliferation, security, energy, maritime transport, air services, science and technology. In essence, they constitute a formal way by which the EU tries to use the attraction of access to its big market – sometimes referred to as ‘market power’ – as economic leverage to gain political concessions, including commitments to human rights and international law.

This European trade diplomacy strategy is known among policy-makers in Brussels as the ‘2009 Common Approach’, after a Committee of the Permanent Representatives’ (COREPER) note that was adopted in 2009. This policy came about at the request of the EU member states and is explicitly described in two decisions that were adopted – although never formally communicated to the public – by the Committee of the Permanent Representatives in 2007 and in 2009.²³ The COREPER note of 18 April 2007 details the foundations of this approach as follows:

Negotiations on Free-Trade Agreements [...] shall lead to agreements with a clear legal and institutional linkage to the existing or future Partnership and Cooperation Agreements or updated Framework Agreements. Such legal and institutional linkage would entail, inter alia, [sic] the Free-Trade Agreement could be totally or partially suspended if the conditions for such suspension under the Partnership and Cooperation Agreement or updated Framework Agreement apply, and that there would be a coherent institutional framework for the administration of the agreements.²⁴

A COREPER document of 29 May 2009, titled ‘Common Approach on Political Clauses’, further clarifies this policy by addressing several points that are of relevance in the implementation of this strategy. First, it states that political clauses must be included in all political agreements (that is, the PCAs). The following five categories of clauses are identified: human rights, democracy and the rule of law clause (HR); the non-proliferation of weapons of mass destruction clause (WMD); the counter-terrorism clause (CT); the International Criminal Court clause (ICC); and the small arms and light weapons clause (SALW). Second, FTAs must be linked to PCAs.

Moreover, it was stated that in cases when ‘serious difficulties’ arise at the time of negotiations, the Council must consider what course of action should be taken. This appears to give the EU – at the instruction of its member states – a *carte blanche* to make exceptions when it deems necessary. In its free-trade agreements with the United States, for example, the EU does not (yet) call for the negotiation of a political pact.

22 Khandekar, 2014.

23 Interviews and email correspondence with current and former officials of DG Trade and the EEAS, Brussels, May–June 2014.

24 COREPER Note 8598/07. Email correspondence with a former DG Trade official, May 2014.

Fourth, the question of whether the human rights clause should be taken up in an FTA or in another agreement ‘should be decided on a case-by-case basis in the light of the EU’s political objectives and the requirements of the negotiating process. Other political clauses should not be included in this kind of agreement’. In practice, the HR clause is normally included in the PCA, although the agreement with Peru is an exception in the sense that this clause has been included in the economic agreement.²⁵

With regard to the political clauses and their use, several points are worthy of further attention. First, a distinction is made between so-called ‘essential elements’ and ‘non-essential elements’. Essential elements are the HR clause and part of the WMD clause, while the CT clause, the ICC clause and the SALW clause constitute non-essential elements.²⁶ Following early precedents, the HR clause has been systematically included in third-country agreements since the Council’s request to do so in 1991. Agreements on the other political clauses were adopted by the Council at varying times in the 2000s. The Council adopted standard texts from which negotiators of a particular agreement may deviate – albeit to various extents. Inclusion of the ICC clause has proved to be particularly challenging in a number of negotiations – including with the Philippines – because third countries are generally reluctant to subscribe to any commitments in this regard.

The HR clause stands out for its particular significance. It is based on universal values and has been included in agreements covering more than 120 countries. The EU itself holds that third countries generally share the importance attributed to human rights, democracy and the rule of law. That being the case, several developed countries – including Japan, Canada and Singapore – have objected to the fact that the EU wishes to complement this clause by a suspension mechanism providing for the possibility to suspend the agreement or parts thereof, including without prior consultation in cases of special urgency. While the suspension mechanism, from the EU’s standpoint, offers clarity and legal certainty about the right to suspend and the procedure to be followed, it is regarded as discriminating and patronizing by more than a few counterparts.

The low effectiveness of this clause raises the question of whether the EU – in insisting on the inclusion of an HR clause – is not in fact losing valuable goodwill while gaining little. While some negotiating partners have difficulties with the so-called ‘essential elements’, for others it raises issues in terms of legal certainty and the message that it gives, especially among like-minded countries. The fact that little is gained is shown by the reality that the suspension mechanism has been applied on very few occasions. It has been invoked in the Cotonou Agreement of the EU with developing countries from Africa, the Caribbean and the Pacific in more than nineteen cases,²⁷ resulting in the partial or total suspension of aid and complemented, in some cases, by other measures, such as the refusal of visas to high-level government officials or the freezing of assets. The mechanism has, however, never been invoked in agreements with other third countries or as a basis to suspend trade concessions. Thus, when unrelated to development assistance, this ‘paper tiger’ does not seem to deliver much in real terms, while the geopolitical costs may be substantial.

25 In the case of South Korea, for example, human rights and the suspension mechanism are mentioned in the Framework Agreement under Article 1(1) and Article 45(4) and the Joint Declaration on Articles 45 and 46.

26 Email correspondence with a former DG Trade official, May 2014.

27 Article 96 of the Cotonou Agreement provides for the possibility to suspend certain benefits with or without prior consultation in cases of special urgency, as an appropriate measure of last resort.

What's for the Future?

Clearly, the COREPER notes of 2007 and 2009 create the political framework of the EU's trade diplomacy. These notes have never been publicized in full, however, and there is no single statement through which the Commission communicates the geopolitical dimensions of its trade diplomacy to the public. Pieces of the puzzle about what constitutes the broader EU agenda thus need to be sought in a variety of publicly available documents. The 2010 communication *Trade, Growth and World Affairs*, for example, explicitly mentions the use of trade diplomacy to spread European values. This subject is also addressed in the action plan on human rights, democracy and external relations, which includes a trade component.²⁸ Specifically, it states that the launch and conclusion of trade and/or investment agreements are to be linked to the human rights situation in third countries, while human rights dialogues are to be reinforced with FTA partners. Separately, the potential benefits of trade to (sustainable) development and poverty reduction are elaborated in the document *Trade, Growth and Development*, which was published in 2012.²⁹ Importantly, however, both communications largely address the EU's relations with the least developed countries, rather than with the more developed economies in the Asia–Pacific region. This leaves a significant gap in the EU's strategic thinking that negatively impacts on its relations with those countries, in the sense that it results in dispersed and sometimes contradictory policies.

In sum, a review of EU policies and practices calls into question the effectiveness of Europe's current legalistic and scattered approach to trade diplomacy. On the one hand, what stands out is the resistance of more than a few EU negotiating partners to the political clauses, combined with their low application rate. On the other hand, official communications published by the EU address the non-economic aspects of its trade diplomacy in a rather incoherent and incomplete way. The expectations for successful political leveraging by the EU by means of its trade diplomacy are thus not very high at the outset.

The EU and its Member States: Whither Trade Diplomacy?

The above paragraphs illustrate the European Union's inherent difficulty in engaging in comprehensive trade diplomacy. This is a challenge on three fronts: institutionally; politically; and strategically. Institutionally, the EU is on the one hand no different from any single country, which also needs to coordinate between competing ministries and other domestic interests. More particularly for the EU, however, is the fact that the institutional challenge also plays out at a second layer, by way of pressure from individual member states that may defend narrow, sectoral economic and commercial interests. The member states can do so by limiting or delaying the Commission's negotiating mandate, as well as by means of a proactive national trade and investment promotion policy. The fact that Brussels needs a negotiating mandate – and on certain occasions, two mandates – from its member states before entering into negotiations with third countries is understandable against the context of the attribution of competence and perceived European democratic deficit. This extra layer in EU trade diplomacy puts a brake on the EU's capacity to engage in a more strategic trade diplomacy, however. More generally, the institutional set-up of the EU – with competence on FTA-related matters attributed to different actors – is a clear example of fragmented statecraft putting limits on strategic negotiations.

28 European Commission, 2012b. In particular, see IV.11 in the table annexed to this Action Plan.

29 European Commission, 2012a.

A further challenge to EU trade diplomacy concerns the rather formal and legalistic way in which the EU tries to link political agreements with trade agreements, which is generally not understood – nor much appreciated – by third parties. When compared to other actors, this straightforward attempt to leverage economic muscle for political purposes by negotiating broad framework agreements for bilateral relations stands out as a unique characteristic of EU trade diplomacy. The challenge of upholding this principle is largely political, as it was EU member states themselves that created this framework in which the European Commission is to undertake negotiations. While the choice so far has been to follow the COREPER decision – which is in itself not legally binding – it is increasingly doubtful whether this approach will be sustained in the coming years.

Zooming in on Asia, a final factor compromising a more strategic EU trade diplomacy is the point that while Europe's trade interests in its relationship with Asian countries are fairly well defined, its broader geostrategic and political interests remain rather elusive. The fact that Europe's trade diplomacy outside of the WTO is primarily a strategy by default explains why the EU was a relative latecomer in this field – outside of its own borders and neighbourhood, that is – as well as why Brussels still appears to be in an early phase of strategizing and implementing a comprehensive approach. Related to this, in-depth discussion among European officials, observers and scholars about trade diplomacy beyond the economic sphere is scant. This contrasts markedly with the Asia–Pacific environment, where paramount attention is given to the geopolitics of trade negotiations.³⁰

In order to understand the positions of Asian countries, the state of play of trade negotiations in the region, and how these are important for Europe, the next chapter will present a concise overview of the – rapidly changing – state of play for trade diplomacy in the Asia–Pacific region.

30 For an excellent academic book that contains many references to the rich academic literature, see Solís, Stallings and Katada, 2009; for more policy-oriented views, see for example the websites of the Asian Development Bank (ADB, Manila), the Institute of South-East Asian Studies (ISEAS, Singapore), the Council of Foreign Relations (Washington, DC) and the Research Institute of Economy, Trade and Industry (RIETI, Japan).

3. Trade Diplomacy and Competitive Multilateralism in East Asia

East Asia has been a latecomer in the global FTA arena. While the European Union expanded its membership from the 1970s and the United States initiated negotiations towards the establishment of the North American Free-Trade Agreement (NAFTA) in the 1980s, it took until the late 1990s for most East Asian countries gradually to abandon their multilateral-only position. Ever since, trade agreements in the region have proliferated. Governments in North-East Asia – China, Japan, South Korea and even Taiwan³¹ – as well as in South-East Asia – individually and united in ASEAN – followed the wider global trend, wherein trade policy shifted from non-discriminatory unilateral liberalization backed up by WTO commitments to preferential (that is, discriminatory) liberalization through FTAs.³² This has resulted in a dramatic increase in the number of FTAs in East Asia, with 67 in effect, 63 under negotiation and 41 proposed, as of March 2013.³³

A variety of economic and political motivations explain the proliferation of FTAs in the Asian region, particularly in the new millennium. Similar to the situation in Europe, this includes a general disenchantment with the WTO caused by the stalled Doha Round. Unique to Asia, however, are the scare of the Asian crisis in the late 1990s, prompting countries to work more closely together; the aspiration to export the so-called ‘ASEAN Way’ and ASEAN economic cooperation to other parts of Asia;³⁴ the wish to emulate (partly) the apparent success of European and North American regional integration and economic cooperation; a fear of being excluded from preferential deals and the resulting domino effect of FTAs that has been observed in the region; and, last but not least, geopolitical and foreign-policy considerations.

The vast importance attached to non-economic considerations is illustrated by the prominent role that is given to foreign ministers in negotiating trade deals, as well as their colleagues from the trade or commerce ministries.³⁵ FTAs – besides facilitating cross-border trade and investment – are clearly seen as potent symbols of closer engagement between partners. In this capacity, they fulfil a role that is almost similar to that of a security alliance, wherein economic diplomacy functions as a ‘bridge-builder’, linking South-East Asia with North-East and South Asia and other continents.³⁶ It is therefore no coincidence that the United States in 2011 made the Trans-Pacific Partnership Agreement (TPP) a key component of

31 While Taiwan remains largely excluded from regional trade talks because of its political status, it has successfully concluded trade deals with, among others, Singapore and Japan. As a member of the Asia-Pacific Economic Cooperation (APEC), it is also a prospective member of the Free-Trade Area of the Asia-Pacific (FTAAP).

32 Sally, 2013, p. 321.

33 ADB, 2013.

34 The ‘ASEAN Way’ emphasizes sovereignty, non-intervention, consensus, inclusion and informality. See, for example, Goh, 2011.

35 Sally, 2013.

36 Das, 2014b.

its rebalancing policy towards Asia. This trade deal, which is to provide participating Asia–Pacific countries with better access to the United States, while at the same time serving as a counterbalance to an increasingly strong China, is obviously not without consequences for European politics and economics.

The task of economically integrating the Asian region will most certainly not be easy, as aspects of political, economic, and rule- and standard-setting competition work to undermine regional integration in East Asia, albeit in varying ways and to different degrees. Both the European Union and the United States have concluded and are negotiating bilateral FTAs with North-East Asian countries such as Japan, South Korea and China, as well as with individual ASEAN member states. These bilateral and cross-regional networks work to the detriment of coherent regional trade agreements, as both powers promote different types of FTAs.³⁷ Additionally, the rivalry for influence between China and Japan, as well as tensions in the South China Sea, negatively impact upon regional coherence and convergence.

This section takes a closer look at the regional and interregional projects that are currently being negotiated within East Asia, as well as the motivations of the big powers – Japan, China and ASEAN – to throw their support behind one or the other. The role of the United States is also discussed here, as well as in a final paragraph on the transatlantic trade negotiations.

The Noodle Bowl

With its enthusiastic pursuit of FTAs, East Asia now faces a problem that is often referred to as the ‘noodle bowl’.³⁸ This metaphor refers to the existence of many overlapping bilateral trade agreements, meaning that one product is often subject to different tariffs, tariff-reduction trajectories, as well as rules of origin (RoOs) for receiving preferences. This disordered situation increases transaction costs for companies that do business in the region and many actors have emphasized the need to work towards an integrated regional FTA.³⁹ As a result, mega-regionalism has become a major feature of trade strategies in the Asia–Pacific.

Whether these efforts on multi-country agreements will help economic integration efforts or whether they will simply add another noodle strand to the bowl remains questionable. It is therefore important to consider these agreements for what they are: instruments not just of relevance in the economic sense, but – and at times more importantly – also tools of geostrategic importance.

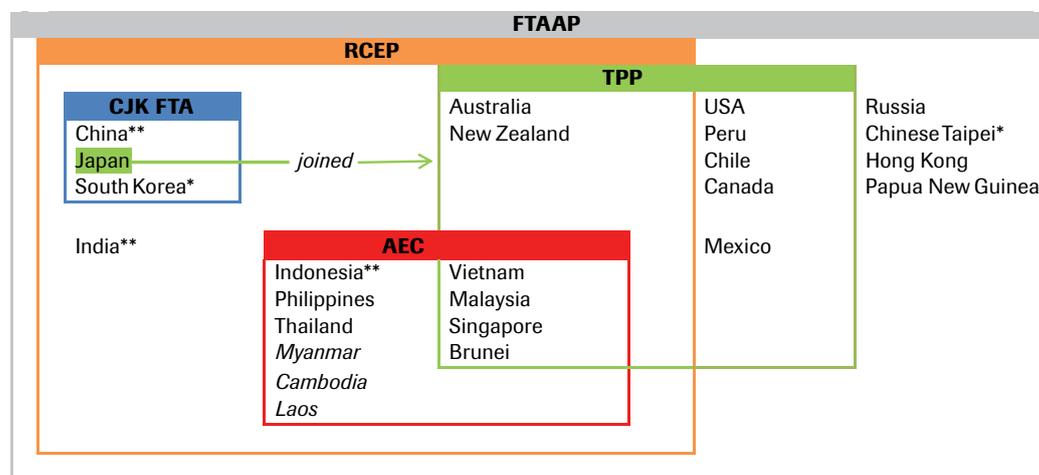
The three most prominent agreements that are currently being negotiated in the Asia–Pacific region are the Trans Pacific Partnership (TPP), the Regional Comprehensive Economic Partnership (RCEP) and the China–Japan–Korea Trilateral FTA (CJK). Also of relevance are the ASEAN Economic Community (AEC) – essentially constituting an important building block for the RCEP – and the Free-Trade Area of the Asia–Pacific (FTAAP) – the broader and long-time envisioned economic agreement among countries of the Asia–Pacific region organized in the Asia–Pacific Economic Cooperation (APEC). As illustrated in Figure 2, all countries in the Asia–Pacific region take part in two or more of these trade talks. The diverging overlap between the various talks obviously adds to the challenge of concluding any one of the deals.

37 See various chapters in Solís, Stallings and Katada, 2009. This is elaborated upon in the following sections.

38 This is the Asian version of Jagdish Bhagwati’s ‘spaghetti bowl’, first cited in Bhagwati, 1995.

39 Das, 2014b.

Figure 2. Regional Trade Agreements in East Asia and Asia-Pacific: Ongoing Negotiations



(*) Formally expressed interest in joining the TPP (as of May 2014).

(**) Possibly interested in joining the TPP (as of May 2014).

(Italics) Myanmar, Cambodia and Laos are not members of APEC and would thus not be part of an FTAAP.

Source: author's compilation.

The great economic weight that the TPP carries – especially after Japan formally joined the negotiations in 2013 – renders it an important undertaking for all of the actors in the region.⁴⁰ The TPP is conspicuous mostly for its aim to set new standards in new fields, as well as for the fact that China is not a negotiating partner. The other, rivalling regional trade agreement that is being negotiated is the ASEAN-led RCEP. It aims to integrate ASEAN's existing FTAs with China, Japan and South Korea into one. Both the TPP and RCEP now aim to conclude their negotiations in 2015, causing much speculation about potential geopolitical consequences if one or the other 'wins the race'. Separately, the three North-East Asian countries are also negotiating a trilateral free-trade agreement among them: the CJK. These talks have been plagued by political tensions among the three partners, but are continuing nevertheless – albeit with no specified intended date of finalization.

Vehicles for Regional Economic Integration

Trans-Pacific Partnership (TPP)

The TPP used to be known as 'P4' and consisted solely of New Zealand, Chile, Singapore and Brunei. Launched in 2005 and originally supposed to come into effect in 2006, the four countries intended to promote free-trade movement, expand their economic and trade relations, and increase the overall economic development of each member through these means. When the United States came on board in 2009, however, P4 rapidly transformed into a high-standard, broad-based regional agreement aiming to push no less than a 'gold standard' among its members. Vietnam, Peru and Australia joined closely on the heels of the United States, followed by Malaysia in 2010, and Canada and Mexico in 2012. In July 2013, Japan became the

40 See, for example, Zhang, 2014 and Zhang *et al.*, 2014.

latest addition to the group, thereby greatly expanding the economic potential of the agreement.

The TPP strives to create a modern, comprehensive template that can guide future FTA negotiations as well as consolidate existing agreements.⁴¹ Its framework includes articles on the environment, transparency, labour and intellectual property, and is supposed to break open Asian markets for US firms. From the US perspective, the TPP is a way to maintain its comparative advantage in trade and investment in the Asia–Pacific region by propagating US interests in advancing ‘WTO plus’ and ‘WTO extra’ issues.⁴² The TPP thereby enables the United States to promote its own template of economic rules and norms, which ideally will set the tone not just for the Asia–Pacific region, but also for other regional agreements. There can indeed be little doubt that the TPP competes with China’s template, which is less demanding.⁴³

Far from being a purely economic undertaking, the TPP is often understood as the economic, and most important, pillar of the United States’ pivot or rebalancing to Asia.⁴⁴ This is exemplary of US trade diplomacy more generally, in that it involves both the strategic and mercantilist perspective. Realizing that the rise of China would become the biggest strategic challenge for the United States in the twenty-first century, both economically and militarily,⁴⁵ the United States has been using FTAs as part of a trade strategy aimed at engaging small partner countries in ‘competitive liberalization’. The strategic objectives of trade diplomacy include the promotion of freedom and fight against poverty – thereby tackling (one of) the root causes of extremism and terrorism⁴⁶ – and the furthering of domestic reform elsewhere, as well as gaining a foothold in East Asia. In practice, this means that in order to gain access to the vast US market, FTA-negotiating partners must demonstrate willingness to meet conditions beyond reciprocal liberalization. As an example of this, consider US President Barack Obama’s emphasis on the potential role of the TPP in Japan’s revitalization and reform.

Japanese Prime Minister Shinzo Abe responded to Obama by emphasizing the other side of the coin, speaking of the TPP ‘creating a zone of strategic importance’ and essentially promising Japan’s willingness to pay the price to buy US favours to achieve that end.⁴⁷ It was indeed a mix of domestic and international, and economic and strategic reasons that had indeed spurred then-Prime Minister Naoto Kan to signal Japan’s interest in the TPP in the first place. The all-important US–Japan relationship featured highly, as the ever-growing Chinese economic centrality in East Asia is a worry to Japan.⁴⁸ Second, by shifting to the TPP, Japan aimed to energize Japan’s stagnant FTA strategy by obtaining negotiating leverage, viewing the TPP as a potential step towards Asia–Pacific economic integration. Finally, the Japanese

41 Petri, Plummer and Fan, 2011.

42 ‘WTO plus’ issues are commitments building on those already agreed to at the multilateral level; while ‘WTO extra’ issues concern commitments dealing with issues going beyond the current WTO mandate altogether, such as labour standards.

43 Kerr, 2013.

44 Das, 2014b.

45 Van Ham, 2014, p. 12.

46 Van Ham, 2014, p. 12.

47 Drysdale, 2014.

48 Japan’s more welcoming attitude to the United States and Russia at the East Asia Summit should also be seen as part of this strategy; Zhang, 2014.

government hoped that a focus on the TPP might serve as ‘shock therapy’ for Japan’s recessionary economy.

Perhaps the biggest question hanging over the TPP is whether China will join the talks. Although the Chinese government long remained wary of the project, considering the deal as part of a containment strategy aimed against China,⁴⁹ increasingly more policy advisers in Beijing are now urging the government to apply to join the negotiations. The Chinese Communist Party is becoming aware that many of the TPP’s sticky issues – such as reform of state-owned enterprises (SOEs), environmental and labour standards, protection of intellectual property rights and liberalization of services trade – resonate well with its domestic reform agenda.⁵⁰ The surprise announcement in May 2013 by China’s Ministry of Commerce that China might consider joining the TPP talks ‘on the basis of equality and mutual benefit’ is also seen to be motivated by Japan’s decision to join the TPP, which seriously undermined China’s confidence in the TPP’s stagnation.⁵¹ Joining the TPP would not be easy in the short term, however, as the intellectual property and investment protection requirements – among others – pose formidable barriers.

In January 2014, however, US trade representative Michael Froman stated that while the United States was open to other countries joining the TPP, China could not be an early starter. Instead, the initial focus of Sino–US economic relations should be on the negotiation of a bilateral investment treaty. That being the case, China’s position as the second largest trading economy of the Asia–Pacific and the (growing) importance of the Sino–US trade relations make it very difficult for the United States to lead any type of trans-Pacific integration without the cooperation of China.⁵² More than economic reasoning, the TPP is thus a matter of strategic sequencing and an attempt at leadership.

Regional Comprehensive Economic Partnership (RCEP)

East Asian regional integration was long caught in a deadlock between two competing proposals for a region-wide FTA. China, on the one hand, propagated an East Asian Free-Trade Agreement (EAFTA), which centred on the ASEAN+3 grouping.⁵³ Japan, fearing too much Chinese influence in such a small setting, argued that an ‘expanded’ Comprehensive Economic Partnership of East Asia (CEPEA), including the three additional members Australia, India and New Zealand, was a better concept to lead regional integration forward. While the individual ASEAN countries hesitated to throw their support fully behind either proposal in fear of possible repercussions, ASEAN’s main concern was to remain the central hub of East Asian FTA development. For the time being, it found that an ASEAN+1 FTA best served that goal.⁵⁴ The competition between China and Japan made it easier for ASEAN to maintain its centrality in the regional integration process. However, Japan’s signalling of interest in joining the TPP negotiations in late 2010 worried China, prompting it to suggest a China–Japan joint proposal for a blueprint on East Asian integration.⁵⁵

49 Kerr, 2013.

50 Huang, 2014; and Hong, 2014.

51 Bowles, 2014, p. 1.

52 Bowles, 2014, p. 1.

53 ASEAN+3 consists of the ten countries of ASEAN, plus China, Japan and South Korea.

54 By 2010, ASEAN had concluded ten such deals.

55 Solís and Katada, 2014.

This blueprint became the ‘Initiative on Speeding up the Establishment of an East Asia Free-Trade Area and Comprehensive Economic Partnership in East Asia’, which was launched in August 2011. ASEAN moved swiftly in order to protect its position and in November 2012 launched the idea of RCEP (ASEAN+6). The goal of this ‘region-wide’ FTA is not to replace existing ASEAN FTAs, but to coordinate and improve them.⁵⁶ The guiding principles of RCEP took their final form during the ASEAN Economic Ministers Meeting of August 2012 and clearly reflect ASEAN’s aim to instil the initiative with its preferred negotiating principles.

RCEP is cast as a modern, comprehensive, high-quality and mutually beneficial FTA aiming to maintain consistency with WTO rules while promoting greater regional economic integration as well as eliminating tariff and non-tariff barriers.⁵⁷ It is meant to help maintain ASEAN’s competitiveness *vis-à-vis* the other big powers that are active in the region and at the same time serves as a tool to extract more concessions from the United States, which is not a partner.⁵⁸ At the same time, however, RCEP will include provisions for special and differential treatment catering to the different development levels of its members.⁵⁹ RCEP’s more ‘Asian’ approach of gradual liberalization thereby offers an attractive alternative for the TPP, especially for those less-developed East Asian countries that would have considerable difficulty in complying with its high standards. On the other hand, it also means that the TPP is vastly more ambitious, especially on terrains such as intellectual property, government procurement, labour and the environment.⁶⁰

RCEP thus provides ASEAN with a new platform on which to sustain and promote its ‘centrality’ and take East Asian cooperation to a new level. It is also an effective way to bypass the paralysing effect of the China–Japan deadlock which for a long time hindered regional integration.⁶¹ At the same time, ASEAN’s leaders worry that if the TPP were to be concluded ahead of RCEP, the United States might come to set the norms for future Asian regional integration, with no room for exceptions on tariff eliminations for less-developed countries. Another concern is the breakdown in cohesiveness that might occur if some ASEAN members join the TPP while others do not.

China also prefers RCEP as the East Asian regional framework. The challenges posed by the TPP led the Chinese government to develop closer ties with ASEAN, support ASEAN centrality, and promote RCEP. Other than presenting China with a way to counterbalance some of the geostrategic and economic strategic US interests that are associated with the TPP, RCEP offers access to markets in Japan, India and Australia – countries with which China’s own attempts at bilateral FTAs have not borne fruit.⁶²

China–Japan–Korea Trilateral FTA (CJK)

The promotion of trilateral economic cooperation linking China, Japan and South Korea is more than a decade old. In 1999, governments of the three neighbouring countries decided to hold yearly trilateral summits next to the already existing ASEAN+3 summits. In the early

56 Kerr, 2013.

57 Das, 2014b.

58 Solís and Katada, 2014; and Godement, 2013.

59 Solís and Katada, 2014, p. 134; Das, 2014a, especially p. 29.

60 See for example, the blog *Indian Punchline*, especially <http://blogs.rediff.com/mkbhadrakumar/2014/04/10/china-takes-a-leap-forward-to-tpp/>.

61 Das, 2014b

62 Devadson, 2014, p. 475.

years, this summit was no more than an informal meeting of the three partners. The period 2002–2009, however, served as a warm-up for trilateral FTA talks, as the countries conducted several unofficial studies on the pros and cons of such an initiative. The CJK FTA truly kicked off in 2009, when then Prime Minister Yukio Hatoyama of Japan proposed the start of an official feasibility study.⁶³ Talks on a potential CJK FTA continued, despite a slowdown because of political tensions – mainly between Japan and the two other countries – and unsolved territorial disputes.

Around 2011, the CJK FTA negotiations appeared to be floundering, just as TPP negotiations intensified, thus drawing Japan closer to the United States.⁶⁴ This prompted China to take the initiative once again by proposing to complete the FTA feasibility study one year ahead of schedule, in 2011 instead of 2012. In May 2012, China, Japan and South Korea signed a landmark investment agreement, the first legal framework in the economic field for the three countries. The first round of FTA talks followed the next year, in March 2013. The fourth round of negotiations took place in Seoul one year later in March 2014, without any major breakthroughs being reported.

A key reason for China to speed up the process of the CJK Trilateral – and RCEP, for that matter – is to prevent the TPP from becoming the main driver of economic integration in the region. Attempting to curb US economic and geostrategic influence in the Asia–Pacific region, China’s strategy has been to promote FTA initiatives of its own preference.⁶⁵ To China, the CJK FTA signifies a step towards the construction of a China-centred regional economic integration model, following the signing of agreements with its major trading partners in the region. At the same time, advancing formalized economic integration between China and its neighbours also minimizes the impact of the economic slowdown in the United States and Europe.

South Korea, for its part, has never been quite as convinced of the so-called Trilateral’s merits. Worried about a potential imbalance of economic benefits from tariff liberalization and fearing possible negative consequences for the recently enacted US–South Korea FTA (KORUS),⁶⁶ the South Korean government was rather hoping to conclude a bilateral China–Korea FTA first. Its willingness to engage in trilateral talks is mainly driven by a desire to gain access to China’s vast domestic market,⁶⁷ against a backdrop of Chinese preference for a CJK trilateral over a bilateral trade deal. Although South Korea feels uneasy about its deepening trade deficit and technology dependence on Japan, joining the trilateral forestalls the potential impact of a China–Japan FTA.

For the Japanese government, the announcement that South Korea and China were moving ahead with their bilateral FTA was an unpleasant tidings, as Japan’s TPP bid seemed to stumble in 2012.⁶⁸ By joining the CJK Trilateral FTA, Tokyo is thus hedging against a China–Korea deal that would impose huge economic costs. Japanese companies already regard

63 Madhur, 2013.

64 Zhang, 2014.

65 Madhur, 2013.

66 The United States and the Republic of Korea signed the United States–South Korea Free-Trade Agreement (KORUS FTA) on 30 June 2007.

67 Chiang, 2013.

68 The Japan External Trade Organization (JETRO) estimated that a China–Korea agreement, if concluded before the trilateral FTA, could cost Japan somewhere around US\$ 5.3 billion.

KORUS as a hindrance for their products in the American market and in this light the TPP is seen as an alternative to a Japan-US FTA.⁶⁹ Seen in this perspective, Japan is thus playing at two tables, viewing both the TPP and the CJK Trilateral FTA as essential for Japanese trade.

ASEAN Economic Community (AEC)

In the early 1990s, ASEAN leaders established the ASEAN Free Trade Area (AFTA), now including all ten ASEAN member states. ASEAN's 'Vision 2020' details three new pillars of regional integration, comprising a Security Community, a Socio-Cultural Community and – most relevant for the purposes of this report – an ASEAN Economic Community (AEC).⁷⁰ The AEC is to add the regulation on people – including services and manpower – to AFTA's agreement on trade in goods. Aiming to protect ASEAN centrality in the face of the rapid proliferation of FTAs between ASEAN and its partner countries, in 2007 the AEC's original deadline of 2020 was advanced to 2015.

Not every nation can be an economic battleship, and ASEAN and its member states are keeping a close eye on the movements of the United States, Japan and specifically China when contemplating their own strategy. The establishment of an AEC would certainly strengthen their role and position as a trade-negotiating actor, which can in turn be expected to contribute to stronger FTAs. Consistent with the AEC, ASEAN has been aiming to function as a hub for regional FTAs in Asia by pursuing '+1 FTAs' with China, South Korea, Japan, India and Australia-New Zealand.⁷¹ Many of ASEAN's FTAs aim to be completed by 2015, or earlier, and if the ASEAN market is not fully integrated by the time its FTAs come into effect, its position as an integration hub is in danger. Additionally, ASEAN's sustained competitiveness *vis-à-vis* key competitors such as China and India has become a cause for worry.

While ASEAN strives to present a united front within the region in order to maintain influence and centrality, diverging views on economic and strategic concerns and benefits in relation to third countries result in different strategies among South-East Asian countries, however.⁷² This is illustrated by the diverging perceptions of China that are held by ASEAN members. As detailed in Table 1, Brunei, Cambodia, Malaysia, Myanmar and Singapore expect to be able to reap economic benefits – such as attracting FDI and exporting more products – from the deepening relations between China and ASEAN. Other South-East Asian countries, such as Vietnam, the Philippines, Indonesia, Thailand and Laos, are more worried about the decrease in FDI, accompanied by a growing trade deficit. Moreover, and largely resulting from territorial disputes in the region, Vietnam, the Philippines and Indonesia have a relatively high threat perception. This, combined with the negative economic expectation, leads these three countries to engage in soft balancing behaviour. Singapore, Malaysia, Thailand and Laos are more likely to try their hand at hedging against China, while Myanmar, Cambodia and Brunei are most optimistic about their relationship with their giant neighbour. For those countries, bandwagoning with China is an opportune strategy.⁷³

69 Chiang, 2013.

70 ASEAN, 1997.

71 Das, 2014a.

72 Chen and Yang, 2013.

73 Chen and Yang, 2013.

Table 1. South-East Asian Countries' Perceptions of China (ASEAN–China FTA)

	High threat	Low threat
Negative economic expectation	Vietnam, Philippines, Indonesia	Thailand, Laos
Positive economic expectation	Singapore, Malaysia	Myanmar, Cambodia, Brunei

Source: *Chen and Yang, 2013.*

Seen in this perspective, ASEAN as a group is thus even more challenged than the EU when it comes to practising a comprehensive trade diplomacy. Differences in the level of development among its member states are much greater – ranging from rich and developed Singapore to lesser-developed states like Cambodia, Laos and Myanmar. In addition, the economic and geostrategic outlook of the countries is extremely diverse. ASEAN's negotiations with external partners are therefore challenged to grow beyond the lowest common denominator. As a result, many of ASEAN's FTAs are therefore considered 'weak' and 'trade light' and have done little in the way of promoting regional economic integration or integration with the broader Asian or global economy.⁷⁴

Free Trade Area of the Asia–Pacific (FTAAP)

The 21 member states of APEC⁷⁵ announced in 2006 that they were looking into the possibility of founding a Free-Trade Area of the Asia–Pacific (FTAAP). Regional economic integration is regarded as a critical prerequisite for achieving trade and investment liberalization and facilitation among member countries.⁷⁶ Since 2006, APEC members have discussed the full range of issues that are relevant to the eventual establishment of an FTAAP and envision it as a comprehensive FTA, building on regional undertakings – specifically the ASEAN+3, ASEAN+6 (RCEP) and TPP frameworks. When commenting on TPP negotiations between Japan and the United States, the chairman of Japan's big business federation Keidanren, Hiromasa Yonekura, stated his belief that 'The TPP will be a milestone for building the FTAAP no later than 2020. The TPP as well as the RCEP and the Japan–China–Republic of Korea FTA will form the FTAAP'.⁷⁷ While this is a clear and commendable vision for untangling the noodle bowl, it is unlikely that the three major regional frameworks are easily integrated, if and when they are established.

Geostrategic Manoeuvring and Regional Integration

Clearly, competitive pressure has been a major trigger of FTA proliferation in recent times. Rivalry between various competing agreements pushes countries to speed up negotiations and upgrade their scope.⁷⁸ As the contours of the region's 'mega-FTAs' are drawn out, competitive multilateralism may turn towards a calmer phase. While regional competition has in a sense narrowed down to RCEP talks between the ASEAN+6, the TPP talks are the primary vehicle for intraregional negotiation. At the same time, the current situation of China participating in the RCEP but not in the TPP, and the United States in the TPP but not in the RCEP,

74 Sally, 2013.

75 The member economies of APEC are the countries participating in the TPP and RCEP negotiations, excluding Myanmar, Cambodia and Laos, as well as Taiwan, Hong Kong, Papua New Guinea and Russia.

76 APEC, 2010.

77 Keidanren, 2014.

78 Park, 2013, p. 31.

indicates that the contest for supremacy between these two major powers is also taking place in the trade area.⁷⁹

This, in turn, raises the question of whether trade diplomacy's contribution to cooperation and integration in the region is, in the end, positive or negative. As Solís, Stallings and Katada argue, the vast number of cross-regional trade arrangements confirm the contradiction between FTAs and regional cooperation projects in the Asia–Pacific. More specifically, three aspects of competition – namely, economic, political and legal or standard-setting – result in regional fragmentation or even disintegration. Importantly, while competition in the economic realm tends to trigger FTA activism among small countries, political and legal competition has dominated FTA initiatives among large states.⁸⁰

Take, for example, Japan's attempt at standard-setting through the Japan–Australia Economic Partnership Agreement (JAPEA), which was concluded in April 2014.⁸¹ The big push factor for Japan herein was the TPP and the ongoing negotiations with the United States on agricultural market access.⁸² The concessions offered to Australia were designed to act as an alternative 'model' for dealing with what Japan insists are five 'holy' farm commodities – namely rice, wheat, beef and pork, dairy products and sugar – which it has also nominated as exemptions from tariff abolition in the TPP. A typical example of the dynamic domino effect of regional trade and investment, the agreement reached with Australia forces the United States to either accept some version of the Japan model of agricultural market opening or face the prospect of a TPP without Japan – a possibility that US trade representative Mike Froman has rejected, as this would render the TPP hardly worthwhile economically, diplomatically, or strategically. For its part, Japan can advance its trade diplomacy in the East Asian region in at least two other ways: through the RCEP and the CJK Trilateral FTA, neither of which pose as great a threat to its protected agricultural sector, as these are more accepting of the principle of exemptions. JAPEA also supports Japan's use of trade diplomacy to complement its diplomatic and security strategy *vis-à-vis* its giant neighbour China.⁸³

Back to trade diplomacy's impact on regional integration, Devadson argues that while the TPP may play out as an attempt to deconstruct East Asian cooperation and reconstruct trans-Pacific cooperation, the growing China–Japan interactions suggest that there is still the potential for the creation of a powerful Asian trading bloc.⁸⁴ Others emphasize that RCEP and TPP are not necessarily mutually exclusive – although one can wonder whether a hypothetical integration of the agreements will proceed as naturally as some envision. RCEP is much less ambitious than the TPP, which covers additional issues such as intellectual property rights, labour, financial services, technical barriers and environmental protection that do not feature

79 Hong, 2014, p. 10.

80 Complementing this 'size effect' are domestic political factors such as bottom-up versus top-down decision-making, the influence of veto players, and the role of institutions. See, for example, Stallings and Katada, 2009, pp. 246–247.

81 Standard-setting emanates from the rivalry between multilateral and regional/bilateral rule-making, which 'raises the possibility that a new rule or standard adopted and disseminated by several FTAs will later on be incorporated more widely at the multilateral level'; Nakagawa, 2009, p. 79. This is also the essence of what Terada calls the 'domino effect', wherein the benefits of an FTA to one country generally disadvantage third countries that are not included in the agreement. Third parties are thereby pressured to engage in seeking FTAs of their own. See Terada, 2014.

82 George Mulgan, 2014.

83 George Mulgan, 2014.

84 Devadson, 2014, p. 475.

on RCEP's agenda.⁸⁵ In other words, if a country is unable to deal with RCEP issues, it is very unlikely that it could meet TPP's standards. Most developing countries involved in RCEP fall into this latter category, while others, such as Japan, Singapore, Australia and New Zealand, may be able to join RCEP and TPP more or less concurrently. RCEP and TPP could be complementary agreements, but countries would first have to fulfil the liberalization and harmonization requirements of RCEP, were they to have any footing to discuss the broader issues negotiated within the TPP. However, it is unlikely that the United States would favour such an integration model for the Asia–Pacific region.

Both the United States and the European Union engage in bilateral FTAs with countries in North–East Asia – Japan, China and South Korea – and even with individual ASEAN member states. These bilateral networks also work to the detriment of coherent regional trade arrangements in these sub-regions, as different types of FTAs are promoted. Partners from outside the region are not the only forces with negative effects, however. Also the rivalry for influence between China and Japan has had negative consequences on regional coherence and convergence. Thus, in different ways and to varying degrees, aspects of economic and political competition – as well as competitive pressures in rule- and standard-setting – all undermine regional integration, at least in part.⁸⁶

The Other Side of the Coin: Transatlanticism and TTIP

In late 2011, the EU and the United States started discussing the feasibility of a Transatlantic Trade and Investment Treaty (TTIP), formal negotiations to which started in February 2013. What sets the TPP apart from the TTIP is the fact that the TPP will set the regulatory rules for the production base of the global supply chain, while the latter is an agreement between two major developed entities that, together, constitute the world's largest market. This is not to say that interests are aligned, however. The TTIP also involves an element of EU–US competition, in the sense that it offers US policy-makers and American firms a unique opportunity to affect and influence the EU's main source of power: its regulatory authority.⁸⁷

Most observers, however, emphasize the fact that the TTIP, like the TPP, aims to develop a 'new generation of global trade rules'. This concerns diverse fields, ranging from energy, subsidies and competition, intellectual property rights, public procurement, raw materials and SOEs to environmental and labour standards. While the United States and the EU diverge in their prioritization of these issues – with the United States primarily interested in SOEs, currency and competition, and the EU mostly concerned with energy and competition – the two sides share concerns about Chinese policies and conduct on these fronts. Furthermore, there is the joint anxiety that standard-setting power could be increasingly lost to China.⁸⁸ These higher and more explicit political stakes, as compared to any other deal that the EU is negotiating, may explain why the EU has not yet called for a parallel political agreement, as it normally does. Such a political deal would not be easy to negotiate and might better be foregone – even if trade talks with the United States have been taking place since July 2013.

85 Madhur, 2013.

86 See various chapters in Solís, Stallings and Katada, 2009.

87 Van Ham, 2014, p. 9.

88 Deutsch, 2013, p. 16.

(Then) EU Trade Commissioner Karel De Gucht stated it very clearly when he said that ‘The EU–US combined weight in the global economy means that many who wish to sell into our markets will have an interest in moving towards whatever rules we can achieve’.⁸⁹ For their part, some Chinese observers have noted that it may be wishful thinking that China would easily accept the outcomes reached by the EU and the United States at the negotiation table.⁹⁰ They argue that to allow the multilateral system to continue to prosper, China and other emerging economies cannot be bypassed or marginalized.

89 De Gucht, 2013.

90 Zhang *et al.*, 2014, p. 550.

4. Trade Negotiations in EU–Asia Relations

The EU has major direct economic interests at stake in Asia. The EU's trade with East Asia accounted for almost 28 per cent of its total trade in 2012. This is significantly greater than transatlantic trade, which stood at almost 23 per cent. China is the EU's second largest trading partner – at almost 14 per cent of total trade, just a fraction behind the United States and with figures growing – and represents the EU's largest bilateral trade deficit. ASEAN and Japan, respectively, account for 5.2 per cent and 3.8 per cent of the EU's global trade.⁹¹

Compared to other major countries and regions, Europe stands out for its large economic capabilities. As detailed in Table 2, the EU member states combined form the largest economy in the world and, on average, have one of the highest living standards, combined with the lowest inequality of wealth. This 'market power' makes the EU an important economic actor in the world – including in Asia. Brussels is challenged, however, when it comes to the conversion of economic capabilities into political influence, as the EU complements but does not replace the 28 member states in foreign policy.

Table 2. Economic Capabilities of Countries and Regions

	EU	China	Japan	ASEAN	United States	Netherlands
Geographic size	4,325,675 km ² (104 x NL)	9,596,961 km ² (231 x NL)	377,829 km ² (9 x NL)	4,435,617 km ² (107 x NL)	9,826,675 km ² (237 x NL)	41,526 km ²
Population	492.9 million	1.35 billion	127.1 million	616.6 million	318.9 million	16.9 million
GDP (2013)	US\$ 17,372 bln --- (would be) no. 1	US\$ 9,240 bln --- no. 2	US\$ 4,902 bln --- no. 3	US\$ 2,311 bln ^(*) --- (would be) no. 7	US\$ 16,800 bln --- no. 1	US\$ 800 bln --- no. 18
GDP per capita (2012)	US\$ 31,571 --- (would be) no. 30	US\$ 6,093 --- no. 92	US\$ 46,548 --- no. 15	US\$ 3,748 --- (would be) no. 112	US\$ 51,755 --- no. 13	US\$ 45,961 --- no. 16
Balance of Payments** (2011)	US\$ 32.7 bln	US\$ 136.1 bln	US\$ 119.1 bln	US\$ 95.981 bln	US\$ -457.729 bln	US\$ 78.8 bln
Gini-coefficient	0.304 (2009)	0.474 (2012)	0.376 (2008)	0.357–0.476 (2006) ^(***)	0.450 (2007)	0.309 (2007)

(^{*}) ASEAN figure for GDP from 2012 (latest available).

(^{**}) Balance of Payments is the sum of net exports of goods and services, net primary income, and net secondary income (World Bank).

(^{***}) Gini-coefficient: ASEAN figures represent a range, with Indonesia on the low end and Singapore on the high end.

Source: World Bank (all country and EU figures); and ASEAN Statistics (ASEAN figures).

91 Council of the European Union, 2012, p. 3, with all figures from Eurostat.

The general consensus among observers and policy-makers is that the EU's influence in Asia should primarily come from the economic field – and not, for example, from an expanded security role. That is to say, the EU should leverage its economic weight to create 'stabilizing interdependence' in Asia.⁹² Investing in existing bilateral and interregional partnerships and multilateral forums in Asia are important ways in which the EU can attempt to do this. Seen from this perspective, the EU's active pursuit of trade agreements with Asian counterparts may be a useful step – with a regional approach being much preferred over a bilateral approach.

The question is, however, whether the EU's current approach to trade diplomacy is geared to serving not just trade but also foreign policy purposes. While the review in chapter 2 of the EU's trade diplomacy framework leaves much to be desired on this front, the final answer to this question also requires a better knowledge of the EU's foreign policy towards East Asia and the current state of affairs in its trade negotiations with Asian partners.

Europe's Asia Policy

A variety of official EU documents reveal that the EU attaches significant importance to the Asian region, especially in the field of trade. Vast attention is given to the key country that Europe has to deal with in the world: China. Trade and investment at both the bilateral level and in the WTO feature often in the 'EU–China 2020 Strategic Agenda for Cooperation', which was launched at the end of 2013. Back in 2006, the year when the EU also published its first trade strategy *Global Europe*, it communicated two documents addressing EU–China relations, titled *EU–China Trade and Investment: Competition and Partnership* and *EU–China: Closer Partners, Growing Responsibilities*.⁹³

When introducing the trade and investment paper on China in 2006, (then) European Commissioner for Trade Peter Mandelson emphasized that Europe cannot and does not separate the trade dimension from the political and social dimensions of its relationship with China. He added that Europe is not looking for a twenty-first-century silk road, but aims for 'a broad partnership of principles and values with China as it implements the reforms to sustain the growth of its economy and a plural, civil society'.⁹⁴ How the EU is to link in practice the economic and political fields remains open for question, however. Furthermore, the straightforward, formalistic link between politics and economics is unlikely to impress China, which has shown itself increasingly willing to use its own large economic muscles for political purposes when this is deemed to be in its interests.⁹⁵ The EU–China textile dispute of 2005 confronted the EU for the first time with China's commercial power play and the massive build-up of its exporting capabilities, while also exposing the tensions among European consumers, producers, importers and retailers that accompany such an incident.⁹⁶ In hindsight, this incident was a precursor to more tense trade relations with China – as illustrated by the footwear anti-dumping case in 2006 and the solar-panel dispute in 2012–2013.

Moving beyond China, the EU member states in 2012 for the first time published a policy paper that is singularly devoted to Asian affairs. This document, titled 'Guidelines on the EU's

92 Yeo, 2014.

93 European Commission, 2006b and 2006c.

94 Mandelson, 2006.

95 See also Das, 2014b, p. 11.

96 Zhang *et al.*, 2014, p. 529.

Foreign and Security Policy in East Asia’, spends roughly three of its twenty pages discussing economic issues of trade, investment and trade diplomacy. Noting that major powers in the region – Japan, China and ASEAN – are stepping up their trade-diplomacy efforts, the document adds that trade agreements concluded among East Asian countries ‘could also significantly impact on EU interests’.⁹⁷ How the EU is to respond to this proliferation of trade diplomacy in Asia remains somewhat ambiguous, however. For example, the strategy document makes no direct link between trade diplomacy on the one hand, and the seven challenges and opportunities of the EU’s foreign and security policy in East Asia that it identifies.⁹⁸ This is surprising, as trade diplomacy directly contributes to the stated goal of strengthening bilateral trade and investment flows, supported by improved market access and investment conditions. More indirectly, trade negotiations also link to five of the six remaining areas that are identified as EU interests in East Asia, namely: the preservation of peace and strengthening of international security; the promotion of a rule-based international system; the development and consolidation of democracy, the rule of law, and respect for human rights and fundamental freedoms; the promotion of regional integration; and the promotion of cooperative and sustainable policies to meet global challenges. Considering the comprehensiveness of trade diplomacy today, it is a lost opportunity that the interrelationship between trade diplomacy and these broader issues remains elusive.

The 2012 document does recognize that the EU needs a more developed, coherent and focused common foreign and security policy in East Asia in order to secure and advance the EU interests. When looking for policy suggestions, however, one merely finds reference to the need for ‘ensuring a level playing field’ by ‘further expanding its network of bilateral FTAs with individual countries in the region’. Europe’s interests towards China are addressed in some detail, but, also here, more specific policy guidance is not readily found. Rather, the document begins and ends on the general note that ‘Europe has a major interest in encouraging China to take a broader view of its global interests and responsibilities, notably in the political, economic, commercial and monetary fields, as well as to play a constructive role appropriate to that of a global power in the promotion of effective multilateralism and the resolution of international and regional issues’.

In conclusion, it can be said that the publication of the EU’s first strategy document on East Asia was a welcome start and a promising sign. The EU would do well, however, to detail its own interests in EU–Asia trade diplomacy, and to flesh out the inter-linkages between various policy fields – notably trade diplomacy and foreign policy – both in strategy and in practice.

The Netherlands

Taking the case of the Netherlands as an example reveals that – also at the EU member state-level – little time is spent on strategizing Asia policy and trade diplomacy comprehensively. A recent policy advice addressing the question of how to respond to the rise of Asia, which was published in December 2013, largely focused on China and security matters, while the trade dimension was little discussed.⁹⁹ The response of the Dutch Cabinet to this report discusses the TTIP at some length – which in itself does not, of course, concern the Asian

97 Council of the European Union, 2012, p. 4.

98 Council of the European Union, 2012, pp. 2–3. The only area to which trade diplomacy has nothing to add is the promotion of non-proliferation of weapons of mass destruction.

99 Advisory Council on International Relations, 2013.

region – while the TPP is only mentioned in passing, and RCEP and the AEC are not mentioned at all. Other than the TTIP, ongoing negotiations with China in specific economic fields, as well as the prospect of a free-trade agreement, are singled out for attention. Rather surprisingly for anyone familiar with Brussels politics, the Dutch Cabinet explicitly denies that there is any disagreement among EU member states in these negotiations with China.¹⁰⁰

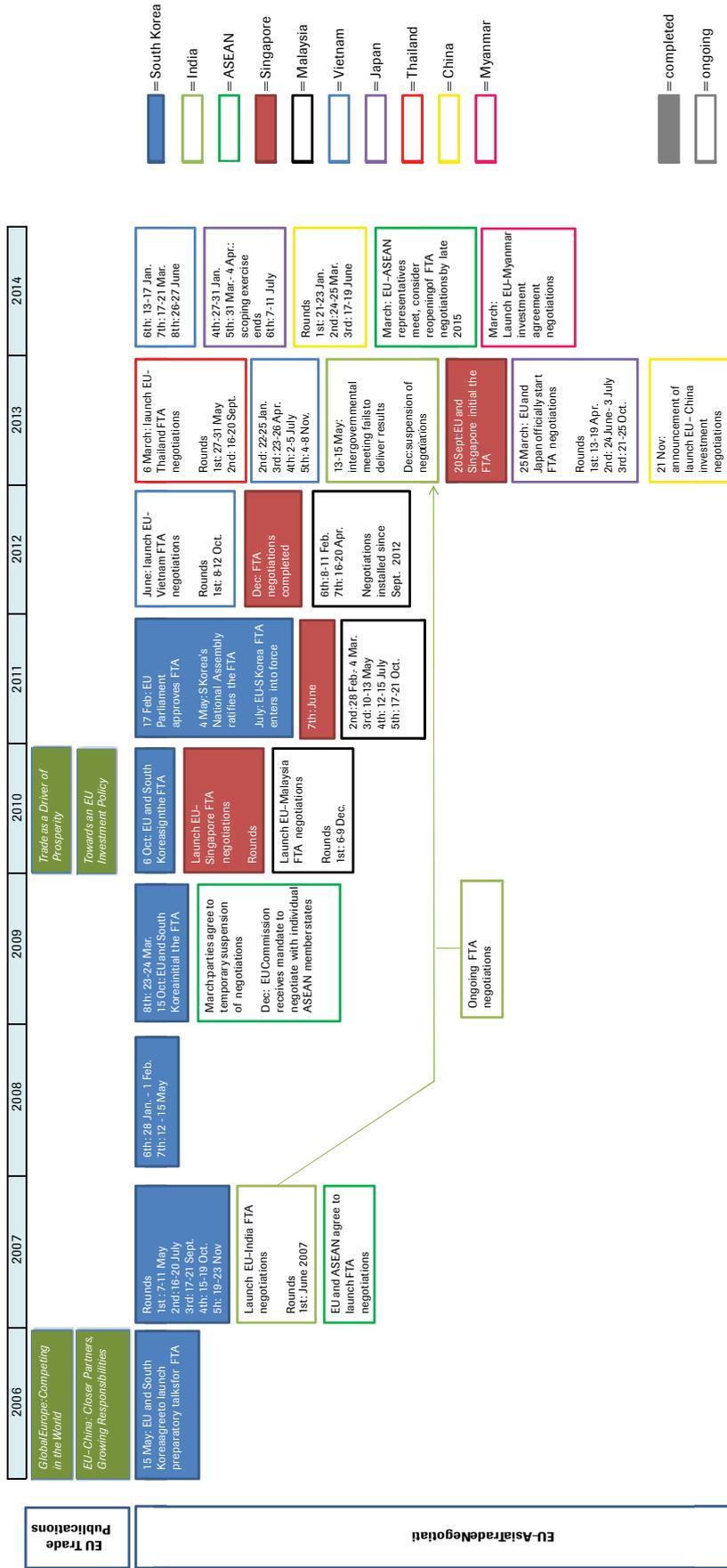
There can be little doubt that China is for all European member states the most important country in Asia. The TTIP is also of relevance in this regard, not least because of its standard-setting ambitions that also aim to influence relations with Asian countries indirectly. Taken together, however, the excessive focus on China and the in-depth discussion of EU–US trade talks – combined with the fact that few words are spent on inter-Asian trade diplomacy – are bound to raise eyebrows in a report that addresses the broad question of how to respond to the rise of Asia. It may be telling of the rather narrow, direct approach towards the East Asian region, as well as of the ‘transatlantic reflex’ in Dutch and European policy even as it concerns Asia.

Current State of Affairs

Moving from the larger policy framework of the EU’s trade and foreign policy towards East Asia to actual trade talks, what immediately stands out is the fact that Asian countries account for the large majority of negotiation counterparts. In North-East Asia, the EU has already concluded a trade deal with South Korea and is negotiating an Economic Partnership Agreement (EPA) and investment agreement with Japan and China, respectively. Talks on political agreements are ongoing. Also in South-East Asia, the emphasis is on a bilateral approach, although the region-to-region approach – which was abandoned several years ago – is recently slowly being revived. Formal bilateral negotiations in the economic field are ongoing with India, Singapore, Malaysia, Vietnam, Thailand and even Myanmar, while political agreements are under way with several more countries. Figures 3 and 4 illustrate this schematically.

100 Ministry of Foreign Affairs of the Netherlands, 2014, pp. 6–7.

Figure 3. EU-Asia Trade Negotiations (2006–July 2014)



Sources: Official websites of the European Union, official websites of various ministries of foreign affairs, and diverse media articles.

The EU and North-East Asia

Europe's trade negotiations with North-East Asian countries are extremely varied. While an FTA with South Korea is already in effect, negotiations are ongoing with Japan towards an EPA and with China towards a Bilateral Investment Treaty (BIT). Although Taipei has repeatedly expressed its desire to launch talks on a trade deal, political sensitivity towards China – among other things – has until now kept the European Union from embarking on this path.

After more than four years of negotiation, the EU–**South Korea** FTA was signed in 2010 and came into effect the following year. This 'deep integration' trade agreement is the EU's strongest and most important outside Europe, and its first in Asia.¹⁰¹ By giving a clear advantage to Korean firms, this deal also impacts significantly on the EU's relations with other countries in the region that wish to gain similar benefits for their companies. As close competitors in the high-tech and automobile sectors, this is particularly the case for Japan.

Disappointed by three decades of unsuccessful talks on regulatory reform and pressurized by several of its member states, the EU for several years kept **Japan** at a distance. Japan is generally regarded as having done little to address European concerns about non-tariff barriers (NTBs) to its market, and several European industries – including the automobile sector – fear the competition of Japanese companies in their own markets. In April 2013, the EU and Japan launched negotiations for a free-trade agreement and a strategic partnership agreement, covering political dialogue, cooperation on regional issues and global challenges, and sectoral cooperation. This marked the beginning of a year-long, unprecedented 'scoping exercise', demanded by the EU as a means to assess progress on the Japanese side on lifting NTBs that protect a number of its markets, such as the automobile, railway, medicine and food sectors. Talks entered a second phase after Japan and EU leaders met in Brussels in May 2014, pledging to continue bilateral free-trade talks and promote greater cooperation on security issues. Japanese Prime Minister Shinzo Abe expressed his hope that an agreement could be reached by the end of 2015.

Economic talks between the EU and **China** are currently limited to the field of investment, procurement and intellectual property rights. More than anything, the aim is for greater coherence by bringing together the 27 BITs of EU member states with China. Clearly, however, trade is the more substantial issue. As China has become an essential pillar of European companies' strategies and the EU has been China's biggest trading partners for several years, both sides stand to gain from the opening of markets. Nevertheless, trade relations between these major economic powers have not yet matured, and there is inherent tension between China's state capitalism and Europe's desire to promote openness and respect for international trade rules.¹⁰²

For both political and economic reasons, therefore, the EU maintains that an investment treaty be concluded with China before talks on an FTA move further, even though the idea of an FTA feasibility study with Europe was floated openly by (then) Chinese Premier Wen Jiabao at the 2012 EU–China Summit. Only recently did the new Chinese President Xi Jinping succeed in obtaining a promise from the EU on this front.¹⁰³ The fact that the EU gives priority to the

101 Sally, 2013, p. 344.

102 European Commission, 2013a, p. 8.

103 *EurActiv*, 1 April 2014.

United States as an FTA partner stirred up a major debate in China about the TTIP and its potential implications on the country.¹⁰⁴

The EU and South-East and South Asia

The EU's trade diplomacy in South-East Asia dates back to May 2007, when it first proposed negotiations on a trade agreement with **ASEAN** countries. Trade talks moved slowly, however, before coming to a halt in 2009. The low level of ambition of a few ASEAN countries – which the EU feared would result in an 'FTA light' – and political issues related largely to Myanmar prompted the EU to suspend negotiations indefinitely.¹⁰⁵

The failure of the region-to-region approach paved the way for bilateral talks between the EU and several individual ASEAN member states. European officials emphasize that these bilateral agreements serve as stepping stones to an overarching region-to-region agreement between the EU and ASEAN. While some question whether this is realistically feasible in the first place, it is clear that more than five years of talks have delivered very little up to now – in the economic and in the strategic sense. Furthermore, a pitfall of the bilateral approach – which appears to be little recognized in Brussels – has been that it also creates competitive tension among ASEAN countries. The EU has been criticized for undermining ASEAN unity,¹⁰⁶ which runs counter to EU ambitions to foster regional integration in South-East Asia.

Among ASEAN members, **Singapore** was the first to enter into negotiation with the EU after EU–ASEAN talks failed. A high-quality trade agreement – that is, one that brings significant economic benefits – was signed in 2013, although talks on investment rules – which started later – are still being finalized. Negotiations with **Malaysia** have been taking place since 2010, but progress is reportedly slow. Talks with **Vietnam** and **Thailand** were launched in 2012 and 2013, respectively. Negotiations with these countries also confront political difficulties. With Vietnam, the politicization has its origins in Europe, the challenge being the granting of approval from the European Parliament. The European Parliament, together with several non-governmental organizations, requested in April 2014 that a safeguard clause on human rights be included in the FTA.¹⁰⁷ Separately, talks with Thailand are impeded by domestic political turmoil in Thailand.

While the EU is reportedly open to the launch of trade negotiations with **Indonesia**, this country has not yet proposed talks. **Brunei**, on the other hand, has shown an interest but is kept at a distance by the EU itself. As the pressure has been building on the limited number of staff at DG Trade,¹⁰⁸ the EU is choosing its partners carefully. It is interesting in this context that negotiations on an investment agreement have been launched with **Myanmar**, which has recently opened up the country and its economy. Trade talks with other less-developed ASEAN members **Cambodia** and **Laos** have not materialized so far.

104 Zhang *et al.*, 2014, p. 529. It is argued that the cost imposed by the TTIP trade diversion on China is much more substantial than the potential benefits of the TTIP's trade creation.

105 Interviews with officials at DG Trade, Brussels, and at the Dutch MFA, March–May 2014.

106 Khandekar, 2014, p. 11.

107 *Agence Europe*, Brussels, 25 April 2014.

108 DG Trade staff are not only involved in the trade negotiations but also in the implementation of agreements. The EU–Korea FTA is a compelling case, showing that the implementation and amendments of agreements may be even more work than their negotiation.

While the difficulty of negotiating region-to-region agreements – not just with ASEAN but also with Mercosur in Latin America – has made such arrangements less popular within the EU for several years, the more recent trend appears to be back to the regional level.¹⁰⁹ That is to say, the EU is investing once again in EU–ASEAN relations, apparently spurred by a recognition of the growing strategic importance of the East Asian region. Amid growing competition among China, the United States, Japan and Australia, a strong ASEAN can be expected to have a positive effect, both economically and in terms of stability.¹¹⁰

An early sign of this encouraging return to the regional level was the new meeting format to reinforce the EU–ASEAN partnership, which was adopted in 2012 by means of the 2013–2017 action plan. The aim is to take cooperation to the next level in terms of peace and security, economic and commercial matters and in the sociocultural field. This resulted in February 2014 in a first meeting between the 38 permanent representatives of the EU and ASEAN.¹¹¹ Slowly but steadily, the region-to-region dialogue is thus being reinforced – albeit with a focus on ASEAN and not (yet) on the broader East Asian or Asia–Pacific region. Prospects for quick gains should not be held high, however, with ASEAN unity and drive to negotiate with the EU leaving much to be desired. Privately, European officials who are involved comment that they appear to talk with ten member states – rather than ASEAN as a whole – and that the EU may be more interested in strengthening ASEAN and regional integration than South-East Asian countries themselves.

In South Asia, the EU and **India** established a strategic partnership in 2004. Much similar to the EU–Japan partnership, however, the two sides have failed to agree on a narrowed down and manageable set of strategic priorities.¹¹² While the conclusion of an FTA could restore confidence in the relationship, trade talks that started in 2007 continue to prove difficult, as India refuses to be held in thrall by the EU. While EU solutions in some cases require India to change laws and regulations,¹¹³ India furthermore rejects any place for human rights and environmental issues in a trade deal, despite having endorsed conventions covering these issues at an international level.

The Politics of Trade

For Asian countries, as for other third countries, political agreements are to be pursued in parallel with trade negotiations with the European Union. The current state of these talks is illustrated in Figure 4. Negotiations with countries in South-East Asia generally last two or more years, depending on the sensitivities of certain themes that may require longer in-depth dialogue with any particular country.

In 2009, the EU concluded its first PCA in Asia with **Indonesia**. When entering into force five years later in May 2014, this agreement replaced the EU–ASEAN cooperation agreement from 1980 in the management of bilateral relations. In late 2013, after seven years of negotiations, **Thailand** became the fifth ASEAN country to finalize a PCA with the EU. By then, agreements had also been reached – although not ratified – with **Singapore**, the **Philippines** and **Vietnam**. For Vietnam, the political agreement is important as a sign of

109 Interviews with officials at DG Trade and the EEAS, Brussels, May–June 2014.

110 Interview with an EEAS official, Brussels, 19 May 2014.

111 *Bulletin quotidien Europe*, 3 February 2014.

112 Khandekar, 2011, p. 1.

113 European Commission, 2013a, p. 9.

rapprochement with the EU and with an eye towards diversification of their political relationships. The Philippines' deal stands out, as the government of the Philippines stated early on that it expected problems in negotiating a PCA, as the agreement would require it to join the ICC. In the end, the PCA was initialled for signing in Brussels in 2010 after the Philippines agreed to a clause recognizing that 'the most heinous crimes of international concern must not go unpunished'. This constituted a softening of the previous clause, which sought commitment from the Philippines to ratify the Rome Statute of the ICC.

Negotiations on political agreements with **Malaysia** and **Brunei** have been under way since 2010 and 2012, respectively. The only three ASEAN members that have not initiated PCA talks with the EU are **Laos**, **Cambodia** and **Myanmar**. Currently, bilateral relations with Cambodia are governed by an EU–Cambodia Framework Cooperation Agreement that entered into force in 1999, while EC–Laos cooperation is based on the EC–Lao People's Democratic Republic Cooperation Agreement from 1997. In order to welcome and encourage the reform process in Myanmar, the EU in 2012 suspended and in April 2013 lifted restrictive measures imposed on Myanmar's government – except the arms embargo. Subsequently, the Council of the EU in July 2013 adopted a Decision that currently frames relations with Myanmar.

The EU's negotiations with developed countries in North-East Asia – **South Korea** and **Japan** – have shown a slightly different picture from South-East Asia. On the sidelines of the FTA negotiations with South Korea, a Framework Agreement was agreed upon and is currently in the final process of ratification. The South Koreans were reportedly quite willing to yield on the political clauses in order to facilitate a quick trade agreement.¹¹⁴

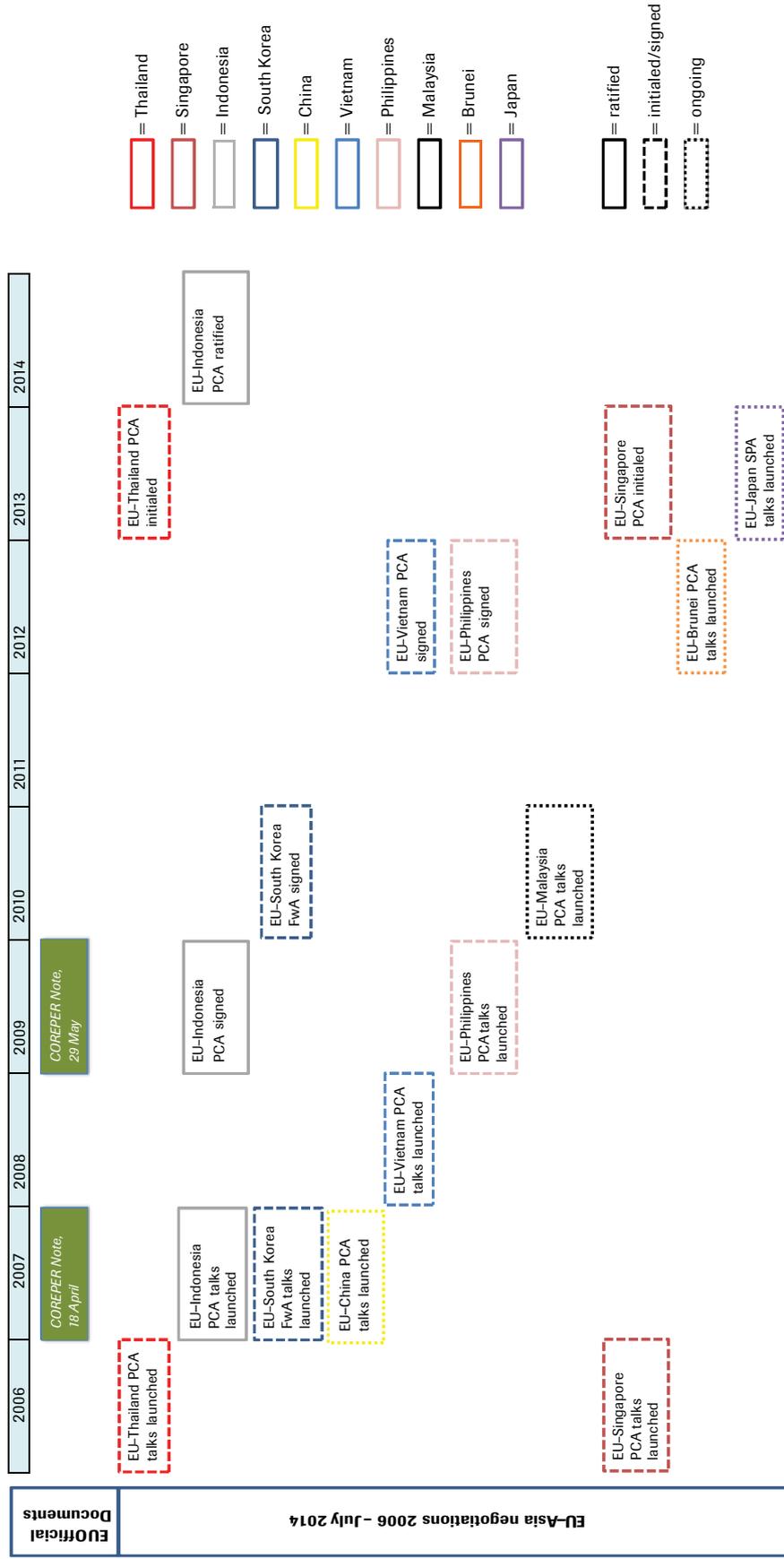
By contrast, the Japanese from the outset expressed their displeasure at the fact that the EU is insisting on a binding political agreement, to be signed in parallel with the EPA. The Japanese government has objected to the EU's wish to include a human rights clause, and, more specifically, to the fact that the EU wishes to apply this policy to a member of the Group of Seven major industrial nations. For its part, the EU explains its approach by expressing its belief that having Japan accept the human rights clause would make it easier to push for the clause in its future free-trade agreement talks with **China**.¹¹⁵ Negotiations with China on a PCA started in 2007.

In South Asia, **India** refuses to negotiate an EU PCA, rejecting clauses covering human rights and non-proliferation as Western moral preaching. While trade remains the primary focus in bilateral relations, even FTA negotiations have not produced substantial results.

114 Interviews with EU officials in Brussels, March–June 2014.

115 *The Japan Times*, 2014.

Figure 4. EU-Asia Political Agreement Negotiations (2006–July 2014)



Sources: Official websites of the European Union, official websites of various ministries of foreign affairs, and diverse media articles.

Asia's Response to European Legalism

A closer look at the Framework Agreement between the EU and the Republic of Korea gives valuable insight into the political side of the EU's trade strategy. This 64-page-long agreement comprises 53 articles, and is largely dedicated to outlining the areas where the signatory parties will undertake to intensify their political dialogue, to boost their economic relations, and to develop their cooperation and dialogue. As many as 40 areas of common interest are identified.

The Framework Agreement resembles the 'Joint Action Plan for EU–Japan Cooperation' of 2001, which called for the intensification of EU–Japan cooperation in more than 100 areas, ranging from joint peacekeeping and security cooperation to strengthened economic cooperation and increased academic and cultural exchanges. This Action Plan covered so many of the key issues facing today's globalized world that it was criticized for being little more than a 'shopping list' of unresolved international issues.¹¹⁶ Much the same can be said for the EU–South Korea FwA. Indeed, the lack of a clearly defined agenda for action stands out as a pitfall of the EU's political agreements more broadly.

The key question is whether the formal, legalistic attempts to wield influence over (potential) trade-agreement partners yields the desired results – that is, whether it is an effective way of going about trade diplomacy. In other words, do negotiating partners agree that a political agreement is a valuable 'legal umbrella for future cooperation' that 'enhances [the other country] becoming a privileged partner for Europe', as the EU itself insists? Of relevance in this context is the extensive literature on EU conditionality more broadly, which generally reports only very mixed results.¹¹⁷ An analysis by Schimmelfennig and Scholtz of democracy promotion in the EU's neighbourhood, for example, shows robust and strong effects of EU political conditionality if the EU offers the prospect for membership in return for political reform. Importantly, however, EU incentives such as partnership and cooperation are found to be unreliable in promoting democratic change, without the offer of membership.

If the end results are mixed at best, then what about the process? Do these sometimes reportedly 'painful' talks spur change in other countries along the way? Various officials do indeed emphasize the importance of the process of these talks – creating a regular, institutionalized platform for dialogue and thereby enhancing opportunities for both sides to raise issues of concern. For example, the process has proven to be a way by which the EU could explicate the ICC accession process, which some monarchies in Asia deemed impossible. Also, it increased awareness of the clause on consular protection for EU citizens, a subject that was subsequently raised within ASEAN as an example to follow.¹¹⁸ While there is thus a certain added value to the process of PCA negotiations, the question remains whether the – political and financial – costs outweigh the benefits and whether there are not better ways to achieve the same objectives. The significant ill feeling that this approach stirs with more than a few counterparts, as described earlier, is something that should set Europeans thinking about whether this is indeed the best way to wield their soft power.

116 Berkovsky, 2007, p. 10.

117 See, for example, Schimmelfennig and Scholtz, 2008.

118 Interview with an EEAS official, 12 June 2014.

Change on the Horizon?

Whereas European countries have commercial objectives and enhanced cost-effectiveness in mind when discussing trade, trade diplomacy is much more political in the Asian context. The EU thereby overlooks the fact that trade agreements play a key role in the competition for influence in East Asia. While Europe's practice to forego so-called 'FTA lights' – that is, trade deals yielding low economic benefits – when negotiating bilateral or regional trade agreements¹¹⁹ may thus be to take the moral high ground, it clearly frustrates a more comprehensive, strategic take on trade diplomacy. Even with China, considerations beyond the economic sphere are not readily found in documents on the EU's trade diplomacy towards China, or when speaking with officials in Brussels. This rather fragmented approach is surprising, as the EU does recognize the high stakes that are involved in its relationship with East Asia. The only trade negotiations where the larger geopolitical context is factored in to a more significant degree are the transatlantic talks, where global rule-setting and the issue of Ukraine and energy exports to Europe are high on the agenda.

The mismatch between the EU policy of *ex ante* regulation and 'conditionality' on the one hand and the Asia–Pacific countries' strategic take on the issue does appear to be increasingly recognized by various parties in Brussels. As allegations of setting double standards – towards the United States and all other countries – can be expected to gain sway, EU officials in Brussels note that the 'best by' date of the '2009 Common Approach' is approaching. It is, however, up to member states, or the European Commission as the negotiator, to initiate change in the COREPER guidelines.

119 Okano-Heijmans, 2011, p. 18.

5. Conclusion

This Clingendael Report's assessment of the EU's trade diplomacy and the EU's interests in Asia, and of the ongoing trade negotiations between countries of the Asia-Pacific region, enables a comprehensive analysis of the EU's practice in general, as well as of the specific microtrends that were introduced in the first chapter.

Trade Diplomacy Aims: Convergence or Divergence?

When assessing EU trade diplomacy in Asia, two things stand out. First, there is a general unwillingness – and inability – to discuss agreements that do not deliver high yields economically, combined with a refusal to negotiate deals that do not appear to deliver easy 'political gain'.¹²⁰ That is to say, potential trade deals are largely assessed for their economic benefits, while geopolitical considerations beyond the clauses of the '2009 Common Approach' seem almost an afterthought. The fact that the EU negotiates trade deals with individual Asian countries is one important illustration of this. It is out of step, however, with Asia's own trends towards 'mega-FTAs' that build political as well as economic ties between countries. While a steady expansion of the EU-Japan EPA to include more Asian countries after the bilateral deal has been signed could constitute a similar move towards a more regional approach, there are no signs that the EU is considering anything of this sort.

This brings us to a second key characteristic of EU trade diplomacy, partly following from the first point, which is that the EU is not involved in any regional trade deal in Asia or in the Asia-Pacific region. The failure of the EU-ASEAN talks has led to downplaying region-to-region talks with (any group of) Asian countries. While renewed investment is being made in EU-ASEAN dialogue since the beginning of 2014, the EU remains an outsider to any of the existing East Asian or Asia-Pacific initiatives, and at the same time has no such initiative of its own. While this lessens the EU's relative importance as an actor in the region, it also obscures the chance for a broader EU-ASEM [Asia-Europe Meeting] FTA that also includes Japan, China and South Korea. Moreover, it means that the EU remains detached from all of the (inter)regional agreements that are currently being negotiated, such as RCEP, TPP or the CJK Trilateral. It is surprising that this point is hardly a matter of discussion in Brussels, especially when seen in contrast with the vast efforts that are being placed in obtaining membership of the East Asia Summit.¹²¹

A more geopolitical take on trade diplomacy would justify European alignment with one (or more) of the regional deals, which have a major impact on relations with these countries. Alternatively, if the EU prefers to maintain neutrality towards existing groupings, it could come up with a proposal of its own. With the proliferation of trade diplomacy in the Asia-Pacific region, relationships between Asian countries are becoming as important as US military guarantees in ensuring that Asia's simmering conflicts do not erupt into violence.¹²²

120 The delay in starting negotiations with Myanmar is one example of this, as are the troublesome political negotiations with India.

121 Interview with EEAS official, May 2014.

122 Godement, 2013, p. 1.

Assessment of the Microtrends

What does all of the above imply for the three microtrends that were introduced in the first chapter?

The first identified trend reads as follows:

- ✓ Drawing on its economic weight, Europe is increasingly positioning itself as an actor in East Asian non-traditional security and is also on its way to playing a positive contribution to stabilizing interdependence in the region, mainly through ASEAN.

This trend has been identified in consideration of the non-traditional security field, where the EU is seen as no longer being afraid to criticize Asians power when it perceives their actions as harmful to East Asia's regional stability, while not taking sides with Japan against China or vice versa.¹²³ Such an increasingly more strategic take on Asia is less obvious, however, in the field of trade, where the '2009 Common Approach' characterized by *ex ante* regulation and conditionality is still the norm. Europe's ability 'to help unleash Asia's economic potential and [to] further integrate Asian economies into a global network that would underpin the region's stability, while at the same time benefiting European economies as Asian investments there grow' is thus not – or not yet – played out through trade diplomacy.¹²⁴ That is to say, while the EU is increasingly making its voice heard in Asia, it is not yet making full use of its economic potential in the field of trade diplomacy. As evidenced by the second, more specific, micro-trend, however, small steps do appear to have been made in this direction.

Focusing more specifically on trade and foreign policy in Asia, the second trend was:

- ✓ Having abandoned the region-to-region approach after a failed attempt to negotiate an EU–ASEAN trade deal back in 2007, the EU is now reinvigorating its regional approach to Asian economic cooperation.

Although formal negotiations with ASEAN on a trade deal and a revised political framework have yet to be reinvigorated, the region-to-region approach appears to be gaining in popularity again. Meetings are taking place on issues of mutual interest – such as connectivity – and the EU is enhancing its visibility in the region.

In reframing its policy, the EU would do well to revise its rather idealistic, old-fashioned approach of defining the non-economic goals of its trade diplomacy primarily by way of influencing others – for example, in the fields of human rights and non-proliferation of WMD. It is high time to consider what the EU itself has to gain from a more flexible and comprehensive EU–Asia trade diplomacy. After all, the EU is not operating in a vacuum and its influential power over countries in the Asia–Pacific region hardly suffices to justify its current practice of imposing on others a predetermined political straitjacket. The formal linkage between politics and economics, as envisioned in the so-called '2009 Common Approach', thereby fails to address the broad range of interests of the EU and its member states in the region. This also means that the EU and its member states are hard-pressed to redefine their strategy. Explicating the goals and instruments of the EU's trade diplomacy in terms of 'self' rather than

123 Okano-Heijmans and Van der Putten, 2014.

124 Yeo, 2014.

‘other’ is one important step in this, while a more flexible approach to interlinking politics and economic should be another.

Policy Implications

If the EU is to engage in a more flexible and strategic trade diplomacy and if it is indeed the case that the ‘2009 Common Approach’ is approaching its ‘best by’ date, then what are the options? Considering the economic reality that East Asian trade and investment networks are globally linked with Europe and the United States, the extension of regional trade agreements to external economies is a necessary step to take.¹²⁵ This is one – economic – reason why the EU should consider joining RCEP negotiations and why it has been argued that RCEP should be more flexible to allow the EU’s participation.

Others emphasize that an ambitious TTIP is an essential tool to give the so-called ‘Transatlantic West’ new strategic purpose and will strengthen the collective US–EU bargaining position with emerging trading partners and blocs around the world.¹²⁶ While this is undeniably true, the EU should be careful about merely riding the coattails of the United States. In order to become an independent strategic actor in East Asia, the EU should develop a more comprehensive trade diplomacy strategy with an eye to geopolitical as much as economic gains. Importantly, this would also strengthen the EU’s bargaining position towards the United States in the TTIP and in Asian affairs more broadly.

One way in which to do this would be to create a value proposition of its own to match the US-backed TPP, which may be labelled a Trans-Eurasian Partnership (TEP) or a Europe–Asia Partnership (EAP).¹²⁷ Such an agreement should promote European norms and focus on investment issues, and may be appealing to countries in Asia when considering Europe’s greater openness to foreign investment and services in comparison with other regions. At the same time, this would help European countries to gain greater access to companies and capital markets throughout Asia.

Noted political economist Richard Rosecrance takes a slightly different track when arguing that the EU–US free-trade bloc should eventually include Japan, thereby aiming to create a credible overbalance of power that the international political system needs in order to deter war with China. Obviously, the two-pronged approach wherein the United States has – in both cases – the upper hand strengthens Washington’s position not just towards China but also in relation to Japan and the EU. Clearly, such a Western gravity machine, encompassing more than half of gross world product, would be too large for China to balance against, and would thereby accelerate China’s dependence on and integration into a particular international system wherein a Western agglomeration of power is the dominant actor.¹²⁸

Yet another way in which Europe could increase its relevance is to respond to Chinese calls for a more encompassing trade and investment deal with China. This makes economic sense, considering the scale of EU–China trade and its implications for other Asian suppliers. Although the economic benefits for China may be less apparent, as it already has largely

125 Park, 2013, p. 31

126 Van Ham, 2014, p. 6.

127 Godement, 2013, p. 1.

128 Rosecrance, 2013.

unfettered access to Europe’s markets under current rules, it is the strategic value of such an arrangement that is attractive to China. After all, the prospects for successful outcomes of the Transatlantic and the Trans-Pacific agreements, as well as the exemplary function that it might have on the United States, are of interest to Beijing.

Whichever way it chooses, there can be little doubt that the EU should better reinforce its trade diplomacy to match the Asian context. Region-wide FTAs are paramount, not just for economic but largely for strategic reasons. Moreover, as Asia appears as the new battleground for expanded region-wide agreements, Europe should be prepared to take the field.¹²⁹ As *The Economist* put it with reference to the two decades-long failure of the WTO: ‘Don’t let the best be the enemy of the good’.¹³⁰ The ‘2009 Common Approach’ was devised for a simpler era, when it was still possible for European countries to impose on others their norms on trade and geopolitical interests – a time that is now rapidly becoming history, as a greater and increasingly diverse group of countries is strengthening its voice and influence in global politics and economics.

Revising the ‘2009 Common Approach’ with the aim of enhancing flexibility and creating the diplomatic room for manoeuvre that is required in the complex game of linking politics and economics is a step in the right direction. The EU and its member states should seize the momentum to expand awareness of trade diplomacy’s larger context, and to consider its consequences for policymaking and policy implementation. The strategic use of the EU’s competence on investment – which was transferred from member states to the EU with the Lisbon Treaty – can add to the strength of the EU’s negotiating power, as well as its position as a relative outsider to the Asia–Pacific region’s most pressing security challenges.

129 Godement, 2013, pp. 9–10.

130 *The Economist*, 2014, p. 10.

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