



The ASEAN-EU Free Trade Agreement: Implications for Democracy Promotion in the ASEAN Region

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Abstract

The Association of South East Asian Nations (ASEAN) member states are currently negotiating individual Partnership Cooperation Agreements (PCAs) with the European Union (EU) with the aim of later achieving an EU-ASEAN Free Trade Agreement (FTA). This paper examines whether the proposed FTA will promote democracy building. Its observations are indicative but could form the basis for further analysis and discussion, as well as for a guide for planned consultations with ASEAN stakeholders. The findings also reflect on the larger issue of whether, under the guise of trade liberalization initiatives, the EU is effective at driving democracy globally.

A closer look at the approach taken so far by the EU indicates a weak structure and an indeterminate basis for establishing an effective and mutually acceptable framework from the point of view of democracy promotion. The EU appears only interested in the trade component, that is, the FTA. Other aspects, such as democracy, the rule of law and cooperation, seem to be secondary and merely to provide an element of comprehensiveness to the negotiations.

Elements of a cooperation agreement that would lead to the realization of commonly held democratic aspirations are likely to be well received. Ironically, concerned parties and stakeholders are usually neglected once the negotiating process begins. This violates the democratic principles of participation and transparency.

A wide-ranging consultation process with stakeholders is essential, as well as full disclosure of the texts being negotiated. The EU wants to conclude the negotiations within two years of their launch. This target seems too ambitious if the goal is indeed to have a meaningful FTA, which necessarily implies that all the stakeholders are consulted.

Summary of Recommendations

A fast-track and sweeping approach that includes democracy elements as conditionalities for trade does not seem feasible in the ASEAN context. Although more administratively

tedious, the individual country approach is perhaps still the most effective way of ensuring that democratic objectives are achieved. A cooperation agreement that is ambitious in scope, covering trade cooperation and enhanced democracy promotion, might be more achievable and gain more results in terms of democratic objectives if concluded individually.

Democratic principles such as participation and engagement, inclusivity, transparency, accountability, access and recourse to law, economic entitlement and governance need to be thoroughly integrated into all areas of cooperation and into all relevant institutions.

The ASEAN-level agreement could emphasize the trade component, but must also be sufficiently clear about its relationship to the individual cooperation agreements. A dispute settlement mechanism should be set up for the trade component, and members should decide whether this is binding.

ASEAN could still push for an amendment to be introduced in the form of a proviso setting out the definitive relationship between the individual PCAs and the eventual regional FTA. This would not only clarify an outstanding structural issue and plug a loophole, but, even more important from the perspective of democracy promotion, it also speaks to the principles of transparency.

1. Introduction

The European Union (EU) has identified the Association of Southeast Asian Nations (ASEAN) region as a priority for further engagement as part of its recently adopted strategy on trade, which aims to aggressively pursue the lowering of barriers to its exports. A proposed Free Trade Agreement (FTA) with this region will belong to the new generation of competitiveness-driven bilateral trade agreements that aim to go beyond the market opening that can be achieved by the World Trade Organization (WTO). The EU also intends this FTA to address the deadlock in the negotiations at the WTO on the Singapore Issues.¹

Box 1. Partnership Cooperation Agreements

A PCA is a general document that covers a wider range of relations between the EU and a certain country. It sets the framework for cooperation, and also makes specific commitments. The language is aspirational rather than defining specific targets. There are standard clauses referring to human rights, counterterrorism and counterproliferation. PCAs are not uniform across EU partners, as each PCA is

designed to take account of issues and priorities which may vary, as well as other relevant factors such as the level of economic development. Finally, the agreement concludes with some institutional aspects, including the linkage with regional cooperation agreements, if any, mediation and consultation mechanisms and trade avoidance procedures.

¹ The Singapore Issues are four issues introduced to the WTO Agenda at the December 1996 Ministerial Conference in Singapore: trade and investment, trade and competition policy, transparency in government procurement and trade facilitation.

As an aspect of its external governance, the EU exports its view of legitimate democratic governance to ‘third countries’ and thus acts as an external promoter of democracy. The EU employs a range of instruments to carry out this policy of what is called ‘democracy mainstreaming’ (Jünemann 2007). Trade and investment cooperation can be regarded as one of these instruments. Entering into Partnership Cooperation Agreements (PCAs) achieves the EU’s parallel objectives of furthering its economic interests and democracy promotion. Just how effective the democracy aspects of this type of engagement are, however, is still very much open to debate.

This paper examines the case of ASEAN. Its member states are currently negotiating individual PCAs with the EU with the aim of later achieving an EU-ASEAN FTA. The paper examines whether the proposed FTA will promote democracy building. Its observations are indicative but could form the basis for further analysis and discussion, as well as a guide for planned consultations with ASEAN stakeholders. The findings reflect on the larger issue of whether, under the guise of trade liberalization initiatives, the EU is effective at driving democracy globally.

2. The European Union’s External Relations and Democracy Building

As a general concept, ‘democracy promotion’ encompasses all the measures designed to facilitate democratic development. In the context of EU development cooperation, the term is sometimes referred to, along with the rule of law, human rights, civil society development and public administration, as a component of ‘governance’. Several factors have influenced the significant development of EU policies on democracy promotion that have occurred since the 1990s. These include the end of the Cold War and the re-establishment and consolidation of democracy in Central and Eastern Europe, and the successful EU enlargement processes, which brought new waves of expertise and experience on democratic transitions to the EU. The embedding of democracy and the democratic process in third countries is considered to hold the best, albeit not a guaranteed, prospect for their adoption of policies on issues of particular concern to the EU, such as the fight against transnational crime, illegal immigration and trafficking; environmental protection; sustainable and competitive energy supplies; and an open global trading system (Council of the European Union 2006).

The promotion of human rights and democracy has become a well integrated element of EU external relations policy, and there are multiple references to it at various institutional levels. The Nice Treaty extended the objective of promoting human rights and fundamental freedoms from development cooperation to all forms of cooperation with third countries, including *trade and association agreements*. Since 1991, human rights and democracy elements have been introduced into the Council Regulations that govern the array of cooperation agreements that the EU retains or enters into (Council of the European Union 2006).

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Numerous European Commission Communications on development cooperation, either of a general nature or region- and country-specific, have incorporated discussion of the political dimension. For instance, Commission proposals for reviews of regional development cooperation agreements invariably involve an upgrading of the human rights and democracy dimension, as is evident in the case of both Latin American and Mediterranean countries (See Annex 1, Table 1). A significant element of policy implementation has been the inclusion since 1992 of human rights and democracy clauses as essential elements in agreements with third countries. These have been standardized since May 1995. Such clauses are essentially a conditionality mechanism, enabling the suspension of an agreement in the event of perceived violations of human rights and democratic principles.²

Promoting Democracy in Third Countries

Three types of instrument have been adopted by the EU for promoting democracy: (a) 'political dialogues', which use persuasion and learning strategies (e.g. negotiations, meetings, discussions); (b) political conditionality clauses inserted into agreements, which try to manipulate cost-benefit calculations through incentive structures (positive and negative conditionalities);³ and (c) capacity-building programmes for institutionalizing democracy, human rights and the rule of law (Borzel and Risse 2004).

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A comparison of cooperation agreements entered into or being negotiated shows the varying approaches and the instruments adopted by the EU with its partners across regions (See Annex I, Tables I and II). Political dialogue and

new areas of cooperation *other than trade* are emphasized in the case of relations between the EU and the Andean Community, and the EU and the Central American Republics. The Cotonou Agreement, concluded in 2000 to replace the Lomé Convention, governs relations with the African, Caribbean and Pacific (ACP) countries. This agreement is global, comprehensive and covers the whole range of development cooperation, trade and political dialogue.

Box 2.

Under Cotonou, an Economic Partnership Agreement (EPA) replaces the trade provisions of the Lomé Convention. However, EPAs are not restricted to trade provisions – democracy and governance issues were made part of the trade agreement. Political conditionality was introduced in the revised Lomé IV (the last agreement before Cotonou), which provided for

either partial or full suspension of the agreement if one of the essential elements of the Convention was breached in the areas of democracy, human rights and the rule of law. Through this conditionality, an EPA links democracy and governance issues to the trade provisions.

² The 2000 EU Annual Report on Human Rights mentions the insertion of such clauses in agreements with 'more than 120 countries', although 77 of these are covered by the Lomé (now Cotonou) Convention. The report does not mention, however, that a human rights and democracy clause remains outstanding in the agreement with ASEAN (Crawford 2002)

³ Positive conditionality entails the promise of a benefit in return for the fulfilment of a predetermined condition, and is most frequently used in the delivery of economic assistance, as well as in the context of EU accession. Negative conditionality involves the infliction of a punishment, most notably diplomatic and economic sanctions, in the event of the violation of a specified obligation (Tocci 2008).

With the Gulf Cooperation Council (GCC), the focus goes no further than economic and technical cooperation. With the Mediterranean partners, the emphasis is on advancing democracy and political dialogue. The EU also takes a variable approach to bilateral cooperation agreements. For example, with South Korea the emphasis is on economic, technological and industrial cooperation as well as trade facilitation, and democratic principles and human rights are mentioned as an essential part of the PCA. With Chile, a previous cooperation agreement was superseded in 2005 by an Association Agreement, which is ambitious in scope, covering trade cooperation and political dialogue. The comprehensive agreement includes a Free Trade Agreement that also covers services and new areas (the Singapore Issues) as well as binding dispute settlement procedures. Annex I Table II provides several other examples.

The link between the various agreements (PCAs, FTAs) concluded or being negotiated by the EU and the partner region or country, except in the case of the ACP, cannot easily be ascertained. From the above profile, it becomes clear that the EU seems to want to establish a link between an FTA and any existing or still to be negotiated PCA with individual countries, although it is not clear how they will support, complement or reinforce each other. In previous cases (EU-Mexico, EU-Chile, EU-ACP, EU-Andean Community, EU-Central America), the EU first negotiated an overall Association Agreement with provisions on political, economic and development cooperation, including confirmation of respect for democracy, human rights and the rule of law. The FTA negotiations then follow as part of the implementation of the overall agreement and are linked to the essential principles stated there

The EU's negotiating approach with ASEAN does not seem to follow the pattern pursued with partners elsewhere. Political dialogue is largely high-level diplomacy carried out in the Asia-Europe Meetings (ASEM) and the regional forums of ASEAN. The Trans-regional EU-ASEAN Trade Initiative (TREATI), the framework for dialogue and cooperation agreed in 2000, only covered trade. If both parties agree that the proposed FTA will be limited to trade provisions, it will in effect merely be an extension of TREATI. It will not be a cooperation agreement covering a range of areas in the mould of other PCAs that evolved to become FTAs.

In sum, the link between the trade dimension and political dialogue, which is the language used in these agreements to indicate democracy promotion, is conspicuously absent from EU agreements with third countries, except for the Cotonou Agreement. No single provision appears that effectively ties trade aspects to the democratic principles that are supposed to underlie these cooperation agreements.

The above observations are consistent with findings in the academic literature that there are big differences in the EU's choice of instruments for democracy promotion and in the degree of implementation of these instruments. The choice of strategy and instrument by the EU is dictated primarily by its interdependencies with the third country (Jünemann 2007). The general trends identified by Borzel and Risse

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(2004) present an accurate picture of the EU's global priorities:

- (a) the more bilateral relations between a third state and at least one of the EU member states exist, the less support there is for negative political instruments (Africa);
- (b) the more important the security paradigm is within the relationship with a third state, especially the neighbourhood, the more the EU tries to insist on its catalogue of values and tends to use negative instruments (Mediterranean partners,⁴ Africa and, as a contrary case, Latin America);
- (c) the higher the economic potential of a country in relation to the EU and the more alternative opportunities exist for this country, the more reluctant the EU will be to choose 'negative' instruments (Asia, as confirmed by the contrastingly high profile of democracy promotion in the poor and weak Myanmar, and the low profile EU approach in the economically and politically powerful China and Russia);
- (d) The more insecure a country, the more the EU will choose positive political instruments and avoid any action that might destabilize the third country (Afghanistan).

How Effective is the European Union's Approach?

Despite the rise of the contemporary phenomena of democracy promotion from outside, there is agreement that internal actors and activities are key to democratization, and that the contribution of external actors, while frequently not insignificant, remains marginal (Crawford 2004). The prevailing view is that the EU's strategy for democracy promotion is incoherent and inconsistent, and there is a serious gap between rhetoric and action.

Using a country-specific case to illustrate this gap between rhetoric and reality, Crawford (2004) notes that in Ghana, despite the continued emphasis in the Cotonou Agreement on such issues, the level of assistance is low and there is a lack of funding commitments from the EU. Governance assistance is ranked only ninth out of 10 sectors assisted. This lack of priority is attributed to the politics of democracy promotion. Basing his argument on Olsen (2003), Crawford posits that the reason for inconsistent implementation is that the policy is really oriented to fulfilling other less evident and self-interested objectives. Public statements and high-profile declarations of the pursuit of democracy ideals worldwide enhance the EU's international moral profile and

status, while, internally, it serves to promote the 'self-perception of the EU acting in a coordinated manner', thus deepening the integration process. In both instances, symbolic purposes are served rather than actual democracy support. Another explanation is that the particular form of liberal democracy being promoted emphasizes the liberal over the democratic component. This argument refers to the perceived relationship between

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⁴ It can also be said that security and stability issues have subordinated democracy promotion in the Mediterranean region.

economic and political liberalization, where democracy and good governance are considered more as means to encourage economic liberalization and the continued dominance of neoliberalism rather than ends in themselves (Abrahamsen 2001, and Barya, 1993, cited by Crawford).

Aid, assistance and economic cooperation are, according to EU policymakers, 'rewards' for democratic reform. This suggests a preference for a cooperative rather than a coercive approach. Most EU governments set governance criteria as a conditionality of aid. While some instances of 'democratic' reward have been identified, the principle has not been carried out in a consistent way. Some of the most generous increases in aid have recently gone to authoritarian or semi-autocratic regimes, and some EU member states have even resisted the establishment of firmer democracy-related criteria for aid allocations. In Asia, this can be observed in the case of China, Cambodia and Vietnam. The EU's policy of rewarding modest political reforms as a stage towards full democratization is clearly not working. There is no evidence to suggest that such marginal steps lead to greater momentum for genuine democratization (Youngs, 2008). A study by Duc and Lavalée (2005) finds that the Euro-Med Agreements have improved governance in the Mediterranean countries but not respect for democratic principles. These results confirm the widely held belief that the democratic provisions included in European Trade Agreements are ineffective, even though they have positive consequences for the quality of institutions in the third countries, especially the judicial system. However, researchers believe that the effects on governance differ, depending on the type of agreement concluded – Partnership, Cooperation, Association or Accession.

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The EU's Political Conditionalities and ASEAN

At first, political conditionality was only required for EU accession candidates. The Lomé IV Agreement of 1990 introduced political conditionality into the EU's agreements with the ACP countries (see Annex II). Since the Maastricht Treaty entered into force in 1992, positive political conditionality has become mandatory in all formal agreements between the EU and third countries. All association agreements with Mediterranean and Central and South American states contain similarly worded conditionality clauses. By contrast, conditionality is conspicuously absent from the various bilateral partnership and cooperation agreements with the Newly Independent States of the former Soviet Union, and from the bilateral agreements with selected Asian countries.

The EU has been less effective at pursuing political conditionality in Asia. The cooperation agreement between the EU and ASEAN signed in 1980 does not contain any provisions on democracy and human rights. The EU's Asian Strategy, adopted in 1994, sought to intensify political dialogue with Asian countries but issues of human rights and democracy have been largely prohibited on the agendas of the Asia-Europe Meetings (ASEM), established in 1996, and the talks in the ASEAN regional forum (ARF). Bilateral cooperation agreements with India (1994), Sri Lanka (1995), Nepal (1997), Cambodia (1997), Vietnam (1997), Bangladesh (2000) and Pakistan (2001)

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contain democracy and human rights clauses. In contrast, China, South Korea, Laos, the Philippines and Malaysia refused to have political conditionality included in their sectoral trade agreements with the EU (Börzel and Risse 2004).

Negotiating an EU-ASEAN FTA

In 2003, before any moves towards FTA negotiations, TREATI was put in place as a framework for dialogue and regulatory cooperation. Under TREATI, the priority areas for cooperation were closely linked to ASEAN's own moves towards closer economic integration: sanitation standards, agriculture and fisheries, industrial production standards and technical barriers to trade. It also covers closer cooperation on investment. In November 2006, the Council of the European Union announced its support for the launch of FTA negotiations with ASEAN. In April 2007, as part of the European Commission's Global Europe strategy, it was given a mandate by EU member states to negotiate an FTA with ASEAN. These negotiations were launched in May 2007.

Box 3. The 2007 EU-ASEAN Negotiating Directive⁵

The main features of the negotiating directive for an FTA with ASEAN are:

1. A comprehensive FTA aiming to improve market access for goods and services, covering substantially all trade; far-reaching liberalization of services and investment; a strong focus on the overall regulatory environment, with special emphasis on non-trade barriers; consultation and mediation; binding provisions on regulatory transparency in areas relevant for mutual trade and investment, including standards and conformity assessment, sanitary and phytosanitary rules, intellectual property rights including enforcement, trade facilitation

and customs, public procurement, and trade and competition, including state aid. Headings are also included on trade and sustainable development, proposed social and environmental clauses, and trade in environmental goods and services.

2. The FTA will contain only trade provisions applicable between the parties. Other issues will be regulated under the existing cooperation agreements or in the non-trade provisions of future PCAs with the countries concerned. The legal relationship between the free trade provisions and the PCAs or other cooperation agreements will be decided before their conclusion.

From the point of view of the EU, ASEAN sets high tariff barriers on many EU exports and has huge market potential, thus making it an ideal FTA partner. According to an EU-commissioned study, an FTA is expected to increase ASEAN exports by 14 per cent, with the growth coming significantly from Vietnam (35 per cent), Cambodia (11 per cent) and Laos and Myanmar (15 per cent).⁵ From the perspective of the EU, services will expand under any scenario. Sectoral effects will differ across ASEAN members, with some sectors increasing output (mainly textiles, leather and electronic equipment), while other sectors suffer (mainly motor vehicles, gas, and machinery and equipment). One of the biggest areas of gains would be business services – a key reason why the EU is so keen on trade in services (European Commission 2008). The EU is ASEAN's

⁵ In a scenario where all ASEAN members are parties to the FTA.

second-largest trading partner, accounting for 11.7 percent of ASEAN trade. On the other hand, ASEAN is the EU's fifth-largest trading partner.

The Approach to the Negotiations on a FTA

The negotiations between the EU and ASEAN were approached with two key issues in mind: the issue of Myanmar, and the highly unequal levels of economic development in the ASEAN countries, which could pose major difficulties for attaining market commitments that would be equally beneficial and acceptable to all ASEAN member states.

The European Commission therefore proposed not to negotiate a new overall Association Agreement with ASEAN but to go straight into FTA negotiations. In the meantime, PCAs would be completed individually with seven ASEAN member states: Thailand, Singapore, Indonesia, Malaysia, the Philippines, Brunei and Vietnam – or EU-ASEAN minus three.⁶ According to the then EU Trade Commissioner, Peter Mandelson, this two-step, flexible and fast-track approach would allow the regional framework to be maintained and at the same time be beneficial to those ASEAN member states anxious to conclude an agreement quickly. The EU would continue its relations with Cambodia and Laos through its Everything But Arms (EBA) agreement.⁷ The Commission proposed completing the negotiations within two years.

3. Free Trade and Democracy Promotion in East Asia

What is the likelihood that the EU's approach to ASEAN will be successful in supporting its objective of promoting democracy in the region? Brief insights from the relevant literature on the attitudes of ASEAN's leaders and public opinion, as well as on ASEAN experience of democracy and market liberalization provide a preliminary view of the likely success of the process.

Confucian traditions of respect for authority, deference and seniority seem to be inconsistent with democratic principles and to conflict with classic Western models of democratic political culture. At the same time, it is argued that many of these same cultural traits may be more compatible with the marketization of East Asian economies.

ASEAN Perspectives on Democracy and Liberalization

The economic tigers of East Asia have, over a substantial period, pursued a course of economic reform and modernization while consciously resisting political reforms. The path of economic and political change in East Asia has apparently been at odds with global trends. Dalton and Ong (2002) quote various studies that support this. Vietnam's efforts at economic reform, as is frequently pointed out, are separate from reforms to the political system, supporting the argument that 'Asian values' lead to a different developmental pattern. Confucian traditions of respect for authority, deference and seniority seem to be inconsistent with democratic principles and to conflict with classic Western models of democratic political culture. At the same time, it is argued that many of these same cultural traits may be more compatible with the marketization of East Asian economies. Acceptance of authority is consistent with the capitalist economic model of the firm. Close family and community ties provide alternative models of

⁶ The three countries are Laos, Cambodia and Myanmar, <http://www.twinside.org>.

⁷ EU-ASEAN Congressional Briefing Paper.

economic financing and ‘corporate networking’ in East Asia. In short, there appears to be less tension between Confucian values and the marketization process in East Asia, which may explain why markets are being embraced even in nations without much democratization.

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Dalton and Ong (2002) examine whether the popular and cultural foundations to support democratization and market economics broadly exist in the Pacific Rim region (their study is of Vietnam, Indonesia and the Philippines), and whether values in one area relate to those in the other. They quote previous findings supporting political culture theory, in which citizen orientations towards political and economic

systems, such as those in Japan and South Korea, stimulate and reinforce democratic processes. They believe that similar citizen orientations will characterize developments in Vietnam and other countries in South East Asia. By comparing data from the World Values Survey from various years, they found that non-democratic governing principles tend to be more acceptable in nations that scored lower on conventional measures of democratic development (e.g. only half of Filipinos are critical of army rule, and it is strongly endorsed in Indonesia). However, democratic aspirations were found to be remarkably high in several nations that lack a democratic government. For instance, support for democracy is relatively high in Vietnam, which is a non-democratic state. In terms of democratic values, the patterns in the survey, which are also verified by other

comparative surveys, reveal that the majority of the public support democracy, indicating that democratic aspirations have become widespread, although the full meaning of democracy is limited.

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The above discussion underlines the positive attitudes to democracy among public opinion in the ASEAN member states. Elements of a cooperation agreement that would lead to the realization of commonly held democratic aspirations are likely to be well received. Ironically, these concerned parties and stakeholders are the ones usually neglected once the negotiating process begins. This violates the democratic principles of participation and transparency. A wide-ranging consultation process with stakeholders is essential, as well as full disclosure of the texts being negotiated.⁸

Elements of a cooperation agreement that would lead to the realization of commonly held democratic aspirations are likely to be well received.

4. A Preliminary Assessment of the Negotiations

A closer look at the approach taken so far by the EU towards negotiating an EU-ASEAN FTA indicates a weak structure and an indeterminate basis for establishing an effective and mutually acceptable framework from the point of view of democracy promotion.

Structural Issues

The so-called flexible approach – where PCAs with selected ASEAN countries are

⁸ We could not obtain a copy of a PCA that is under negotiation for purposes of this paper, thus highlighting this issue.

completed first, and later an FTA is negotiated with the entire ASEAN, or more likely ASEAN minus 3 – is something new. The model of negotiating individual PCAs first to ‘support’ a subsequent regional FTA has never been tried by the EU before. According to the Negotiating Directive, the link between these two ‘levels’ of negotiations will be decided by the parties ‘prior to its conclusion.’ To determine the relationship, and thus the legitimacy, of the two treaties only at the end of the process is antithetical, not to mention odd. It leads to uncertainty and a low level of confidence in the negotiating parties that is likely to translate into vague and meaningless commitments. Moreover, an ‘open’ provision like this opens the way for various interpretations towards the end of the process that are easily subject to political manipulation.

This far into the negotiations, ASEAN could still push for an amendment to be introduced in the form of a proviso setting out the definitive relationship between the individual PCAs and the eventual regional FTA. This would not only clarify an outstanding structural issue and plug a loophole, but even more important from the perspective of democracy promotion, it also speaks to the principles of transparency.

There seems to be a disconnect between what a standard PCA contains and what the FTA is supposed to cover.⁹ The PCA, according to the EU, is a general document, an overall framework, couched in aspirational and diplomatic language, without definite targets or commitments. It includes political dialogue, trade and cooperation. On the other hand, the FTA will be a free trade agreement that covers trade in goods, services, and other trade-related issues that ASEAN agrees to include. Looking at its ‘content’, the PCA seems to be a standalone agreement that has no connection to any trade commitment that will be required in the negotiations for the FTA. This raises two related and crucial issues.

First, the FTA is not going to be the cumulative result of individual trade commitments or obligations entered into with the EU because no such commitments will be made in the first place. Where the EU negotiates individual FTAs and then works towards an ‘umbrella’ FTA, there is the problem of the asymmetry arising from the possibly different concessions extracted by the EU, where harmonizing concessions will be a politically difficult, if not impossible, undertaking.

Second, ASEAN in its integration process has not reached the level of commitment among member states on those issues that the EU wants to be included and to receive commitments on (the Singapore and other trade-related issues), which means that an FTA with the EU will either take this into account and only include commitments in areas already liberalized regionally, or force ASEAN to expand commitments to new areas and new levels, thus either bypassing or outrightly supplanting the existing internal arrangement.

The EU wants to conclude negotiations within two years of their launch. This target seems too ambitious if the goal is indeed to have a meaningful FTA, which necessarily implies that all the stakeholders are consulted.

The above procedural issues seem to highlight the fact that, at the moment, the EU is only interested in the trade component, that is, the FTA. Other aspects, such as democracy,

⁹ A draft PCA with any ASEAN member state was not available to us, so we looked at PCAs with other countries, such as the Republic of Korea, Chile or Bangladesh.

The procedural issues seem to highlight the fact that, at the moment, the EU is only interested in the trade component, that is, the FTA. Other aspects, such as democracy, the rule of law and cooperation, seem to be secondary and merely to provide an element of comprehensiveness to the negotiations.

the rule of law and cooperation, seem to be secondary and merely to provide an element of comprehensiveness to the negotiations. The PCAs could be seen to be giving the EU room for manoeuvre in the future, a framework that may be used to enter into other binding agreements with individual countries separate from or even over and above the commitments these countries have already entered into through the regional FTA. It seems reasonable to assume that, from the EU side, this two-step approach is one way to get around the possible up front resistance from ASEAN to

comprehensive coverage, in the light of ASEAN's wariness about the inclusion of the EU's plan to include 'deeper' free trade issues.

Substantive Issues

Is the PCA approach the right one to adopt? Would a carrot and stick approach work for ASEAN? Judging from PCAs with other countries, ASEAN PCAs are likely to contain only preambular statements about democracy, good governance and the rule of law. Areas of cooperation will also include political dialogue and other measures relevant to democracy promotion, but only at a very general level and at the margins. Such diplomatic language and general statements can only influence reality on the ground if specific commitments resulting in concrete actions are also specified. On the basis of the present structure of the negotiations, the carrot and stick approach cannot work because, in all dimensions, there is a discontinuity between the two levels of negotiations. In any case, the EU would perhaps be more hesitant to use this approach as it stands to lose more

in the event of a failure to conclude an FTA than it stands to gain through services liberalization, and thus forcing the introduction of negative political conditionalities could only be self-defeating for the EU in trade terms. Moreover, an FTA excluding Laos, Cambodia, and Myanmar (EU-ASEAN minus three) renders superfluous conditionalities aimed at moving governance towards democratic means, as these are largely needed in these same countries.

ASEAN PCAs are likely to contain only preambular statements about democracy, good governance and the rule of law. Areas of cooperation will also include political dialogue and other measures relevant to democracy promotion, but only at a very general level and at the margins. Such diplomatic language and general statements can only influence reality on the ground if specific commitments resulting in concrete actions are also specified.

The ASEAN Charter is explicit in its declaration of support for democratic aspirations and respect for human rights. The Charter lends ASEAN legitimacy, and there is now greater accountability to ASEAN public opinion with regard to delivering on democracy promotion objectives. In any future agreement with ASEAN, the democracy provisions of the Charter should serve not just as principles, but as the legal basis for relevant initiatives, including those for institutional improvements in democratic governance.

The ASEAN Charter is explicit in its declaration of support for democratic aspirations and respect for human rights. In any future agreement with ASEAN, the democracy provisions of the Charter should serve not just as principles, but as the legal basis for relevant initiatives, including those for institutional improvements in democratic governance.

Moreover, a stronger and more sustained partnership between international non-government organizations (NGOs) that deals with democracy promotion and good governance, especially between EU-based NGOs and those based in the ASEAN region, would contribute significantly to increasing awareness among ASEAN citizens and

generate much-needed public discourse on holding accountable ASEAN leaders on their commitment to democracy, as well as helping to institutionalize and strengthen domestic democratic institutions.

5. Conclusions

The FTA negotiating process is fraught with procedural and substantive difficulties. A fast-track and sweeping approach that includes democracy elements as conditionalities for trade does not seem feasible in the ASEAN context. The regional path is too rocky and too uneven, and to force the issue could only result in an ineffectual agreement in which the provisions merely pay lip service to democracy building. Although more administratively tedious, the individual country approach is perhaps still the most effective way of ensuring that democratic objectives are respected and carried out. There might be merit in looking closely at the approach adopted with Chile, and doing the same in ASEAN, not as a grouping, but only by individual country. A cooperation agreement that is ambitious in scope, covering trade cooperation and enhanced democracy promotion – an element lacking in the EU-Chile agreement, might be more achievable and gain more results in terms of democratic objectives if concluded individually.

Democratic principles such as participation and engagement, inclusivity, transparency, accountability, access and recourse to law, economic entitlement and governance need to be thoroughly integrated into all areas of cooperation and into all relevant institutions. Negotiating strong, individual comprehensive cooperation agreements may have two distinct advantages: both parties, the EU and the partner ASEAN country, may extract better concessions from a bilateral rather than a regional deal, as commitments and obligations can more easily be obtained; and, in terms of the democracy promotion aspect, instruments for adoption can be designed in ways that are more responsive to domestic needs – and the introduction of conditionalities may even be more acceptable than in the bigger group. The latter gains even more significance if the EU seeks to increase the relevance of its role as an external promoter of democracy by adapting instruments to local conditions and to local requirements.

This has implications for furthering democratic objectives in individual ASEAN countries, which, even if they are not on the face of it undemocratic, are to varying degrees poor examples of true democracies. The case of the Philippines, for example, which has a record of human rights abuses and government corruption, may call for stronger conditionalities specifically designed to strengthen local democratic institutions and the processes engaged in efforts to counter violations of democratic principles. Other ASEAN countries may require other types of conditionality.

The ASEAN-level agreement could emphasize the trade component, but must also be sufficiently clear about its relationship to the individual cooperation agreements. A dispute settlement mechanism should be set up for the trade component, and members should decide whether this is binding. The other areas of cooperation, including political dialogue and democracy- and governance-related issues, should provide for a consultation or complaints procedure by which parties can raise and discuss issues in a neutral venue.

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Annex I. PCAs entered into by the EU (as of 1 January 2009)

Table I. Multilateral PCAs

| Regional Grouping | Type of Agreement | Signing/ Entry into force | Status | Stated aims (including those related to democratic principles) | Coverage |
|--|---|-------------------------------|---------|---|--|
| 1. Central American Republics (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama) | Interregional Framework Cooperation Agreement* | 15/12/2003 | Pending | Promotion of political and social stability through democracy, respect for human rights and good governance; developing political dialogue and reinforcing cooperation, and creating the conditions under which a feasible and mutually beneficial association agreement, including a free trade agreement, could be negotiated. | Institutionalizes current political dialogue process and broadens cooperation to include new areas: human rights, migration and counterterrorism. The agreement does not contain a trade component. (Note: Negotiations for an FTA are ongoing). |
| 2. Political dialogue and Cooperation Agreement with the Andean Community (Bolivia, Colombia, Ecuador, Peru and Venezuela) | Interregional Framework Cooperation Agreement | 15/12/2003 | Pending | Promotion of political and social stability through democracy, respect for human rights and good governance; developing political dialogue and reinforcing cooperation, and creating the conditions under which a feasible and mutually beneficial association agreement, including a free trade agreement, could be negotiated. | Institutionalizes the political dialogue to include cooperation in new areas such as the fight against terrorism and illegal immigration, human rights, conflict prevention. The agreement does not contain a trade component. (Note: Fourth round of negotiations in July 2008 was cancelled). |
| 3. Partnership agreement with the African, Caribbean and Pacific Group of States (ACP), also called Cotonou Agreement | Partnership Agreement* (succeeds the Lomé Convention) | April 2003 (entry into force) | | Based on five interdependent pillars with the underlying objective of the fight against poverty: an enhanced political dimension, increased participation, a more strategic approach to cooperation focusing on poverty reduction, new economic and trade partnerships and improved financial cooperation. A suspension clause is provided where one of the elements of the Agreement is breached. | The Cotonou Agreement is a global and exemplary Agreement, introducing radical changes and ambitious objectives while preserving the 'acquis' of 25 years of ACP-EU cooperation. |

| Regional Grouping | Type of Agreement | Signing/ Entry into force | Status | Stated aims (including those related to democratic principles) | Coverage |
|--|---|------------------------------|--------|---|---|
| 4. Interregional Framework Cooperation Agreement with the Southern Common Market (Mercosur) | Interregional Framework Cooperation Agreement | 01/07/1999 | | To strengthen existing relations between the Parties and to prepare the conditions enabling the creation of an interregional association which will cover trade and economic matters, cooperation regarding integration and other fields of mutual interest. Joint agreement (due notably to the fact that the political declaration was inserted in the agreement). It is designed to strengthen existing relations between the two entities on the basis of reciprocity and community of interests with the prospect of future establishment of an interregional free trade association of an economic and political nature. Although 'two-stage approach', the first stage is nevertheless already very complete and structured as regards the sectors and means of cooperation. Respect for democratic principles and human rights is an essential element (Article 1). | The sectors include: trade, including all cooperation on standards, customs, statistics and intellectual property; economic cooperation, with the emphasis on industrial, energy, scientific and technological cooperation, telecommunications, the environment and investment promotion. Strengthening integration and inter-institutional cooperation including the fight against drug trafficking. (Note: Negotiations on an FTA have stalled). |
| 5. Cooperation Agreement with the Gulf Cooperation Council (the United Arab Emirates, Bahrain, the Kingdom of Saudi Arabia, the Sultanate of Oman, Qatar and Kuwait) | Interregional Framework Cooperation Agreement | 01/01/1990 | | To broaden and consolidate economic and technical cooperation relations and also cooperation in energy, industry, trade and services, agriculture, fisheries, investment, science, technology and the environment, on mutually advantageous terms, taking into account the differences in levels of development of the Parties; to help strengthen the process of economic development and diversification of the GCC countries and so reinforce the role of the GCC in contributing to peace and stability in the region. (No mention of democratic objectives) | The current Agreement provides only for a most-favoured-nation clause but both parties have confirmed their desire to conclude an additional trade agreement. |

| Regional Grouping | Type of Agreement | Signing/ Entry into force | Status | Stated aims (including those related to democratic principles) | Coverage |
|---|-----------------------|------------------------------|--------|--|---|
| 6. Mediterranean Partners in the Euro-Med – Barcelona Process (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria, Tunisia and Turkey) | Cooperation Agreement | Launched 13/07/2008 | | Provides a regional framework for cooperation which is complemented by a network of Partnership Cooperation and Association Agreements. To advance democracy and human rights through stronger political dialogue and cooperation, including the setting up of a 'governance facility'. Contains provisions on democracy-related Community assistance for: political dialogue and reform; promoting the rule of law and good governance, including strengthening the effectiveness of public administration and the impartiality and effectiveness of the judiciary, and supporting the fight against corruption and fraud; supporting policies to promote social development, social inclusion, gender equality, non-discrimination, employment and social protection including protection of migrant workers, social dialogues, and respect for trade union rights and core labour standards, including on child labour; promoting and protecting human rights and fundamental freedoms, including women's rights and children's rights; supporting democratization, inter alia, by enhancing the role of civil society organizations and promoting media pluralism, as well as through electoral observation and assistance; fostering the development of civil society and of non governmental organizations; supporting reform and strengthening capacity in the field of justice and home affairs. | The new, comprehensive Euro-Mediterranean partnership focuses on three key aspects: the political and security aspect aims to establish a common area of peace and stability; the economic and financial aspect hopes to allow the creation of an area of shared prosperity; the social, cultural and human aspect aims to develop human resources and promote understanding between cultures and exchanges between civil societies. Migration was added as a key sector in 2005. |

Source: Based on various treaties and international agreements registered with the European Commission Treaties Office Database <<http://ec.europa.eu>>

Table II. Bilateral PCAs

| Regional Grouping | Type of Agreement | Signing/ Entry into force | Stated aims (including those related to democratic principles) | Coverage |
|----------------------|--|------------------------------|--|---|
| 1. Republic of Korea | Cooperation Agreement | 28/10/1996 | To enhance cooperation and promote further development of economic relations. Efforts will be aimed at: (a) stepping up, establishing cooperation in and diversifying trade; (b) establishing economic cooperation in fields of mutual interest, including scientific and technological cooperation and industrial cooperation; (c) facilitating cooperation between businesses by facilitating investment. Respect for democratic principles and human rights constitutes an essential element. | Negotiations for FTA ongoing. |
| 2. Chile | Association Agreement | 1/03/2005 (entry into force) | Establishes an FTA, but also covers political dialogue and cooperation. The trade aspect is ambitious in scope, covering goods, services and government procurement, liberalization of investment and capital flows, the protection of intellectual property rights, cooperation for competition and an efficient and binding dispute settlement mechanism. | Widespread, with specific commitments on services. expanding the previous framework agreement. Not subject to a suspension clause. |
| 3. Russia | Partnership and Cooperation Agreement | Launched 1/05/2008 | Commitments by the EU and Russia to human rights and democratic standards, most notably in the Council of Europe and the OSCE, and respect for these standards will need to be reflected in the agreement. | |
| 4. South Africa | Trade, Development and Cooperation Agreement | 1/05/2004 | To strengthen dialogue between the parties based on respect for democratic principles, human rights and the rule of law, the agreement establishes an ongoing political dialogue on subjects of common interest, at both the bilateral and the regional level. The agreement establishes preferential trade arrangements between the EU and South Africa, along with the progressive introduction of a Free Trade Area. | 1. Includes a 'future developments' clause, making it possible to widen the field of cooperation. Covers social cooperation based on dialogue, covering freedom of association, workers' rights, children's rights, gender equality and violence against women; the environment, particularly as regards climate change; cultural cooperation; the fight against drugs and money laundering; health and, in particular, the fight against AIDS. |

Source: Based on various international agreements registered with the European Commission Treaties Office Database <<http://ec.europa.eu>>

Annex II.

Table I. Towards Economic and Political Conditionality in EU Development Policy

| | Pre-1989 | 1990s | | 2000 |
|-------------|---|---|--|--|
| | Lomé I-III (1975-89) | Lomé IV (1990) | Lomé IV bis (1995) | Cotonou (2000-2020) |
| Policies | Economic growth Reference to human dignity, and economic, social and cultural rights (Lomé III) | Economic growth Provisions on democracy, human rights and the rule of law | Economic growth Provisions on democracy, human rights, and the rule of law Good governance | Economic growth Provisions on democracy, human rights, and the rule of law Good governance |
| Instruments | Financial and technical assistance Stabilization of export prices Preferential trade arrangements | Financial and technical assistance (economic and political conditionality) Preferential trade arrangements | Financial and technical assistance (economic and political conditionality) Suspension clause for democracy, human rights, and the rule of law Political dialogue Capacity building (public sector) Preferential trade arrangements | Financial and technical assistance (economic and political conditionality) Suspension clause for democracy, human rights, and the rule of law and good governance (corruption) Political dialogue Capacity building (public and private sector) Inter-regional free trade agreements |

Source: Borzel, T. and Risse T., *One Size Fits All: EU Policies for the Promotion of Human Rights, Democracy, and the Rule of Law* (Stanford: Stanford University, 2004), available at <<http://cddrl.stanford.edu/publications>>

Annex III.

Table I. Provisions in the ASEAN Charter relevant to democracy promotion

| Article | Provision |
|--------------|---|
| Preamble | 'Adhering to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms' |
| Article 1.7 | 'to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms' |
| Article 1.11 | 'to enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare, and justice' |
| Art. 1.13 | 'to promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building' |
| Art. 1.15 | 'to maintain the centrality and proactive role of ASEAN as the primary driving force in its relations and cooperation with its external partners in a regional architecture that is open, transparent and inclusive' |
| Art. 2 | (h) adherence to the rule of law, good governance, the principles of democracy and constitutional government, (i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice |
| Art. 14 | Establishment of an ASEAN Human Rights Body |
| Art. 20.1 | Decision-making shall be based on consensus and consultation |
| Art. 22.1 | Dispute resolution through dialogue, consultation and negotiation |
| Art. 22.2 | Maintenance and establishment of dispute settlement mechanisms in all areas of cooperation |

Source: Based on the ASEAN Charter, Association of Southeast Asian Nations, December 2008, available at <www.aseansec.org/ASEAN-Charter.pdf>