

EU-Singapore Free Trade Agreement

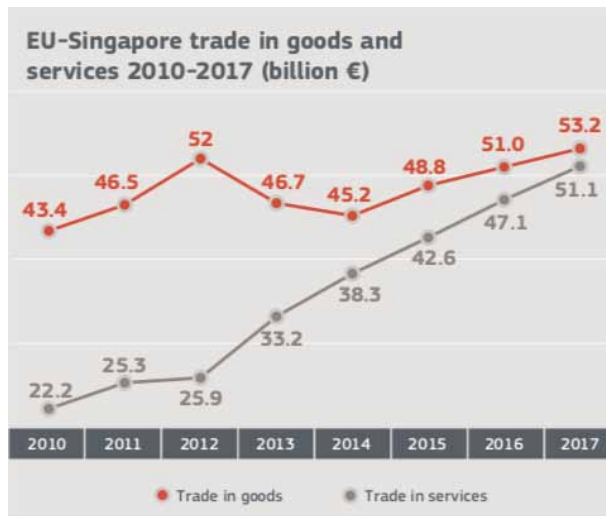
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AT THE OUTSET

In the beginning, the European Union (EU) intended to start negotiations on a bloc-to-bloc trade agreement with the 10 member nations of the Association of Southeast Asian Nations (ASEAN). Such an arrangement would hook together two large and diverse regional actors – the then-27 members of the EU with the 10 members of ASEAN (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam). The importance of ASEAN to European markets was large and rising, making the prospects for deeper integration in 2007 look quite promising.

However, while ASEAN may appear to operate as an integrated bloc, it does not negotiate as one. Instead, the 10 members negotiate trade separately, making a potential trade agreement with the EU a long and protracted affair. The EU therefore decided to switch tacks, building up to an integrated deal by starting with a series of bilateral arrangements with ASEAN member states.

Singapore was the most promising initial candidate. Not only was it the member most familiar with negotiating trade agreements, but the bulk of European trade was routed into or through Singapore.

Figure 1: EU-Singapore Trade Figures.¹

Keeping consistency across ASEAN-member FTAs could make it easier to combine six agreements into one (with Singapore, Malaysia, Thailand, Philippines, Indonesia and Vietnam). Cambodia, Laos and Myanmar were not invited to join in bilateral negotiations with the EU, but these countries already received preferential access to Europe through “Everything But Arms” trading schemes.² Hence, by the end of the process, the Europeans could combine enough “building block” agreements to finally wrap up a region-to-region deal.

Negotiations commenced with Singapore in 2010. The basic framework was finished by 2012, with a few minor issues remaining. As discussed in greater detail below, sticking points included geographical indications, financial services, and investment rules. The deal (except for investment) was finished by October 2014. In May 2015, both sides announced the conclusion of the agreement, when the final legal scrubbing was completed for the investment chapter.³

¹ *European Union-Singapore Trade and Investment Agreements Booklet*, EU Commission and Singapore MTI, 2019, http://trade.ec.europa.eu/doclib/docs/2019/february/tradoc_157684.pdf.

² The last ASEAN member, Brunei, was simply not an important enough bilateral partner to warrant separate negotiations. It would have to wait until the regional agreement was ready and be folded in at that time.

³ See Singapore’s Ministry of Trade and Industry Press Release at <http://www.mti.gov.sg/NewsRoom/SiteAssets/Pages/Singapore-and-the-European-Union-Initial-the-Investment-Protection-Chapter-/Press%20release%20on%20EUSFTA%20IPC%20Initialling.pdf>, accessed on 15 July 2015.

EXPLORING THE EUSFTA IN DETAIL⁴

So, what happened in the EU-Singapore FTA (EUSFTA)? In brief, the bilateral agreement represents a relatively high quality outcome. This result was easier to obtain than in many negotiations, given the quite open nature of the Singapore market. For example, Singapore's applied tariff rate for all goods (except for six tariff lines for some alcohol products and cigarettes) is zero. This always makes it easier to craft a trade agreement, since Singapore has fewer built-in sensitivities in goods that must be accommodated.

The final trade agreement covers most goods, including a few new provisions on electronics and a consultation process for agricultural trade regulations. Several important sectors have specific coverage under the agreement. Services trade was also opened and liberalised with a clear eye towards crafting an ASEAN-wide deal on services for the future.

The agreement also included provisions on government procurement, new rules on intellectual property rights including a greatly expanded set of covered geographical indications, a chapter on competition, development objectives, and labour standards. Each of these elements is covered in more detail below.

Trade in Goods

Given Singapore's duty-free applied access to goods, the EUSFTA binds Singapore tariffs at 0 for European goods imports. The bulk of the negotiations focused on tariff reductions for the European side. Basically, the EU agreed to reduce its own tariffs to match the levels found in the 2011 EU-Korea free trade agreement (EUKTA) within five years of entry into force. This included dropping tariffs to 0 on entry into force for approximately 75% of tariff lines. Most of the remaining lines were also scheduled to go to 0 across a time period of 3-5 years, with reductions taking place in annual instalments.

A goods agreement cannot be evaluated on the basis of tariff line reductions alone, however. Trade between parties is often concentrated, so the bulk of actual trade between members in an FTA might take place in a handful of tariff lines alone. If these lines are not included in the final agreement, a headline figure of even 95% tariff reductions may not translate into meaningful economic outcomes on the ground. However, EU-Singapore trade is relatively widely dispersed making it more

⁴ This section borrows heavily from the chapter by Elms in AnnMarie Elijah, Donald Kenyon, Karen Hussey, and Pierre Van Der Eng (eds), *Australia, the European Union and the New Trade Agenda*, ANU Press, 2017.

likely that tariff cuts would affect tradeable sectors like machinery, chemicals and pharmaceuticals.

Tariffs also interact with rules of origin (ROOs). ROOs are necessary to ensure that only firms from member countries are eligible to receive the benefits (particularly lower tariff rates) built into the agreement. If any company could take advantage of the deal, it would undermine the specific benefits for members. Hence, every FTA comes with rules of origin to ensure that products claiming preferences are either wholly “from” members (i.e., grown, produced, mined or extracted from the member without any additional content added from any other member state) or are substantially transformed from their original materials or components into a new type of product within the geographic spaces covered by the FTA.

It is possible to create an agreement with 0 tariffs across the board, but make the requirements for receiving duty-free treatment so onerous that almost no firms are able to take advantage of the lower tariff rates. Or, conversely, it is possible to have tariffs drop by less, but make it so easy for firms to use the agreement that nearly all companies participate in the agreement.⁵

The EUSFTA contains mostly product-specific ROOs. The agreement includes some co-equal rules (which allow firms to use one or the other of two calculation methods to prove sufficient content). The agreement is effectively a bilateral agreement between the EU (counting EU members as if they were one) and Singapore. Hence, the agreement does not allow content from across ASEAN to count towards content. This can be a problem for Singapore, since the country has very few indigenous items to add to a product’s content. Singapore’s major exports to the EU include oil and oil-related products, manufactured goods (especially electronics), and pharmaceuticals. With raw materials, parts and components usually coming from overseas, it is not always possible to reach high levels of locally added content, absent the ability to add up, or cumulate, content from elsewhere. Nevertheless, as the EU moves towards incorporating all the bilateral trade agreements into one

⁵ Companies never get the benefits of an FTA automatically – each requires firms to certify that they are using an FTA. The method of certification varies, but often FTAs require a certificate of origin to be obtained from a local chamber of commerce or another designated body before customs officers at the border will grant lower tariffs. Without a certificate of origin (or self-certification in some newer generation agreements), products cannot qualify for the preferential rate and are instead charged the most-favoured-nation (MFN) rate. The MFN tariff rate is the tariff charged to all World Trade Organisation (WTO) members automatically without requiring any certification of origin. Since more than 160 countries are WTO members, practically speaking, nearly all firms can use MFN rates for their goods shipments. For many firms, unless the preferential benefits of an FTA are substantial, companies often opt to avoid the hassle required in using the provisions of an FTA and ship goods under MFN tariffs.

region-wide ASEAN agreement, it is likely that ASEAN cumulation rules will be built in the future, making it easier for Singaporean firms to use the final ASEAN-wide agreement.

The EU did not pledge to reach duty free status in all products. The EUSFTA left some items that will not be subject to tariff elimination including some fish products (tilapia, catfish, salmon in vegetable oil, bonito, and surimi); as well as chemically pure fructose; and sweetcorn and maize.

Specific customs duties will remain for some vegetable and fruit products imported into Europe including: vegetables (fresh or chilled tomatoes, cucumbers, globe artichokes, and courgettes); citrus (including fresh sweet oranges, clementines, monreales and satsumas, mandarins and wilkings, tangerines, and lemons); and fruits (including table grapes, apricots, sour cherries, nectarines, and plums).⁶

Other Goods Provisions

The agreement included an additional chapter on what are called Technical Barriers to Trade (TBT). These are largely regulatory and standards-based rules that govern specific types of goods. The EUSFTA sets up a rudimentary structure to strengthen cooperation in regulatory areas in the future, as well as better procedures for exchanging information and streamlining regulations between the parties.

One exception to the largely generic nature of the TBT rules can be found in an annex on electronics. Singapore has an unusually complex system of testing in this sector. The agreement contains promises to use conformity assessments and international standards bodies as much as possible.

Another chapter covers rules for food and food safety. The Sanitary and Phytosanitary (SPS) chapter codified that both sides can have import requirements for food and food stuffs. Imports can be stopped and checked for compliance with relevant SPS rules, under a set of procedures that were tightened and clarified with specific timelines for inspections. The agreement sets out a variety of committees and consultations to take place around SPS issues in the future.

Finally, the agreement also sets out four sector-specific provisions. For autos, Singapore agreed to recognise EU standards and testing regimes for cars and car parts. The agreement also has language on green rebates for more environmentally friendly autos. A second section covers electronics, where Singapore agreed to gradually replace third-party testing of products (particularly to accept supplier's

⁶ For the specific exceptions, please see the market access schedules of the EU found in Annex 2A Appendix at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=961>, accessed 21 February 2019.

declarations of conformity that are widely used inside the EU). A third sectoral element of the EUSFTA looked at pharmaceuticals where the primary pledge calls for greater transparency in pricing structures. Finally, the agreement has a section on green technology. Both sides pledged to allow renewable energy equipment to move between the EU and Singapore with national treatment (foreign products granted the same treatment as locally produced comparable items) and no additional conformity tests.

Trade in Services

While the agreement covers trade in goods, the primary offensive objective of the European Union was to improve access to Singapore's services markets. Services could include financial services, insurance, banking, brokerage, accounting, design, architecture, legal, management, food and beverage, travel and tourism and so forth. For most developed economies, services can represent the bulk of economic activity. Even in manufactured goods, the services content of goods in cross-border supply chains can be 40-70 percent. Hence, greater access and better protections of these key sectors were important objectives for both sides.

The European Union claimed to have given Singapore levels of access comparable to the EU-Korea FTA⁷ in telecommunications, financial services, computer, transport, environmental services and some business services. The sections of the agreement covering postal services, the EU argued, went beyond what Korea got.

Both parties agreed that the governments may not use licensing requirements as a mechanism to obstruct entry into services markets. While licensing is not a particularly serious barrier to entry in either the EU or Singapore, this remains a favoured mechanism in many ASEAN countries to restrict foreign firm competition. Hence, the inclusion of clauses on licensing for services in the EUSFTA is primarily a marker for future ASEAN and ASEAN-wide agreements.

To ensure that both parties maintain the very best access to each other's services markets going forward and to capture whatever gains come from future negotiations with other partners, the parties agreed to include a most-favoured-nation ratchet clause into the agreement. This means that the EU automatically receives new, matching benefits if Singapore ever negotiates an improved services agreement in any other format and vice-versa for Singaporean firms entering the EU.

⁷ The text of EUKFTA can be found at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:L:2011:127:TOC>, accessed 21 February 2019.

The services chapter does not cover all services. Carved out of the deal are: audio-visual services; national maritime cabotage; air transport; and mining, manufacturing and processing of nuclear materials. The Europeans were not terribly successful in getting new market access to Singapore's financial services sector.⁸

The EUSFTA opens up competition in postal services. These are services that are often considered sensitive by many governments with extensive restrictions or non-existent options for entry into the market.

Both sides agreed that telecommunications has a vital role to play in business today. They agreed to respect the confidentiality of information and to require firms to provide services on non-discriminatory terms, conditions or rates. The agreement also outlined competitive safeguards for major suppliers of telecoms services. While the agreement does not break new ground on e-commerce, it does pledge cooperation between both sides. Both sides agreed to avoid imposing unnecessary restrictions or regulations on e-commerce activities. The agreement recognises the importance of the free flow of information and commits both sides to uphold international standards of data protection.

Other New Areas of Coverage

Meat: One issue of concern for Europe was Singapore's complex system of approval for meat imports. Under the EUSFTA, Singapore agreed to remove a requirement that meat products should be individually inspected and approved by the Agri-Food and Veterinary Authority (AVA) in Singapore. Going forward, Singapore agreed to set up an auditing system and allow inspections only when triggered by the auditing system.

Government procurement: Both Singapore and the European Union are signatories to the Government Procurement Agreement (GPA) at the World Trade Organisation (WTO). Since both parties are included in the GPA, the EUSFTA extended the coverage areas under which tenders are to be accepted. The EU agreed to include EU central government entities, public works concessions like railways, and some additional utilities. In addition, the EU dropped the threshold levels for bidding by Singaporean firms.

⁸ The goal was to get comparable coverage to what the Americans received in their bilateral FTA with Singapore. But the EU was not successful in meeting this object. See Singapore's specific commitments on financial services in Annex 8B-2: http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151750.pdf, accessed 21 February 2019.

Geographical Indications (GIs)

Although the EUSFTA includes other elements in the intellectual property rights chapter, nearly all the focus was on geographical indications (GIs). This issue nearly derailed the entire negotiations and largely held up the conclusion of the agreement for nearly two years.

The basic problem is that the EU is the world's most staunch supporter of GIs, while Singapore has been generally hostile to the idea. To complicate matters further, Singapore was simultaneously negotiating an FTA with the United States and other parties in the Trans-Pacific Partnership (TPP). The TPP specifically did not include GIs and TPP members were extremely uncomfortable with reconciling the two agreements at the end.⁹

A GI is a specific type of product protection. Put simply, a GI suggests that products are unique largely due to specific conditions, reputations and traditions surrounding their creation. These products cannot be recreated elsewhere and should not be allowed to bear similar names. To allow similar names is to confuse consumers who are not receiving benefits from all the specific aspects of a good.

The EU has pushed for the inclusion of GIs in FTAs and has expanded the list of products beyond wines and spirits (many of which now have protections at the global level under the WTO) to items like cheeses and meats.¹⁰ Once a product receives GI protections, no other similar product can use the same product terms even if the label makes the origin explicit. The EU tries to stop firms from producing products made "like" or "in the style of" or using a "method."

Singapore had no list of GI protections and no products that it wanted included on a list. After heated negotiations, Singapore developed a list of 196 products to be granted GI protections in the marketplace. Recognition was therefore not automatic, but subject to negotiation and approval from the regulatory authorities in Singapore. The Singapore list is particularly heavy on compound names (not just

⁹ The resolution of this issue in the aftermath of Singapore's commitments in the EUSFTA for the TPP has been to allow GIs for "compound names." In general, such product designations require two names. Thus, "feta" cheese is considered generic (and not protected). But "Wisconsin cheddar" might qualify. See the CPTPP texts, Chapter 18, Section E at: <https://www.mfat.govt.nz/assets/Trans-Pacific-Partnership/Text/18.-Intellectual-Property-Chapter.pdf>, accessed 21 February 2019.

¹⁰ In the EU-Korea FTA, the GIs annex runs to 22 pages and includes a wide range of products including a host of different types of mushrooms. The EU's internal register of these products includes more than 1000 food items and 3000 different types of alcohol. The US, by contrast, prefers to give products protection under trademarks, if the products meet the necessary criteria for trademark protection.

parmesan cheese, but Parmesan-Reggiano cheese or not just ham but Parma Ham) and items already protected with trademarks. In general, the stance of the Singaporean government was to add products to the list only after determining whether such product names were viewed in Singapore as a “generic” name. If so, products could not be granted GI protection.

Singapore added another wrinkle to the negotiations by insisting in a side letter that the entire agreement would not go into force until the GI procedures were sorted out and the list of protected GIs was confirmed by the Singapore Parliament. The bill was passed in April 2014.¹¹

Competition Chapter

The agreement includes a chapter on competition policy. Both Singapore and the EU already have in place laws that are designed to prevent the growth and spread of monopolies. Hence, the chapter starts at a deeper level and commits both parties to enforcing their own respective laws on competition. The chapter also urges both sides to address the horizontal and vertical agreements between undertakings that might distort competition.

The chapter does, however, explicitly allow for public undertakings with special or exclusive rights and the maintenance of state monopolies. Finally, the chapter includes provisions that clarify procedures around subsidies. The agreement allows for subsidies for things like: serious disturbances to the economy; the coal industry; social character; natural disasters; economic development for abnormally low income areas; certain economic activities like research and development (R&D), environment and supporting small and medium sized (SMEs) enterprises; culture; and regional interest projects.

Trade and Sustainable Development

All European agreements include a chapter on trade and sustainable development, including the EUSFTA and the EUKFTA. The primary purpose in these two agreements is to include binding commitments on domestic levels of environmental and labour protections consistent with core international standards and agreements.

The deal has provisions for corporate social responsibility (CSR) activities, as well as conservation efforts. Fish and logging are specifically highlighted in the texts.

¹¹ The legal text of the legislation can be found at <https://sso.agc.gov.sg/Act/GIA2014/Uncommenced/20171124?DocDate=20140523>, accessed 21 February 2019.

This chapter includes information about the procedures for stakeholder engagement and consultation with civil society. Finally, the chapter comes with its own dispute mechanism.

Labour Standards in EUSFTA

The agreement gives each party the right to establish their own levels of labour protection. Both sides also have the right to adopt or modify relevant laws or policies on labour. Finally, both sides committed to upholding the 1998 International Labour Organisation (ILO) Declaration. Under this provision, parties agreed to the freedom of association, and effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; effective abolition of child labour; and elimination of discrimination in respect of employment and occupation.

THE INVESTMENT AGREEMENT

The original EUSFTA included a chapter on investment. However, internal changes in the EU over the prolonged course of negotiations meant that investment was eventually detached from the EUSFTA and put into a separate agreement, now called the EU-Singapore Investment Agreement.¹² There is insufficient space to detail the specifics of this element of the negotiations except to note that the investment provisions should be viewed in parallel with the EUSFTA.

THE RATIFICATION JOURNEY

Issues over investment derailed ratification of the EUSFTA for years. To simplify significantly, while the EU Commission originally negotiated investment as part of the FTA, by the time of conclusion, member states insisted that a decision on competence should be determined by the European Court of Justice (ECJ). The ECJ decision took a very long time and the final determination split the EUSFTA into two elements – the trade components and a separate investment agreement.

The EU Parliament gave approval to both elements in February 2019, paving the way for final procedures to be completed. The last hurdle prior to entry into force for the EUSFTA has been that Singapore needed to register GIs. This final step

¹² The complete text can be found at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=961>, accessed 21 February 2019.

over GIs replicated the delay in the original negotiations which kept the talks from concluding for over a year.

However, once the latest issue with GIs is resolved, the EUSFTA will come into force and companies will – at very long last – be able to start using the provisions of the agreement first mooted more than a decade previously. At that point, the EU will finally be able to move ahead as well with the original plan to use the deal as the first building block to a regional agreement in the future.

Deborah Elms is the Founder and Executive Director of the Asian Trade Centre. The Asian Trade Centre works with governments and companies to design better trade policies for the region. Dr. Elms is also Vice Chair of the Asia Business Trade Association (ABTA) and sits on the International Technical Advisory Committee of the Global Trade Professionals Alliance and is Chair of the Working Group on Trade Policy and Law. She is also a senior fellow in the Singapore Ministry of Trade and Industry's Trade Academy. Previously, Dr. Elms was head of the Temasek Foundation Centre for Trade & Negotiations (TFCTN) and Senior Fellow of International Political Economy at the S. Rajaratnam School of International Studies at Nanyang Technological University, Singapore. Her projects include the Trans-Pacific Partnership (TPP) negotiations, the Regional Comprehensive Economic Partnership (RCEP), the ASEAN Economic Community (AEC) and global value chains. Dr. Elms received a PhD in political science from the University of Washington, a MA in international relations from the University of Southern California, and bachelor's degrees from Boston University. Dr. Elms publishes the *Talking Trade* Blog.