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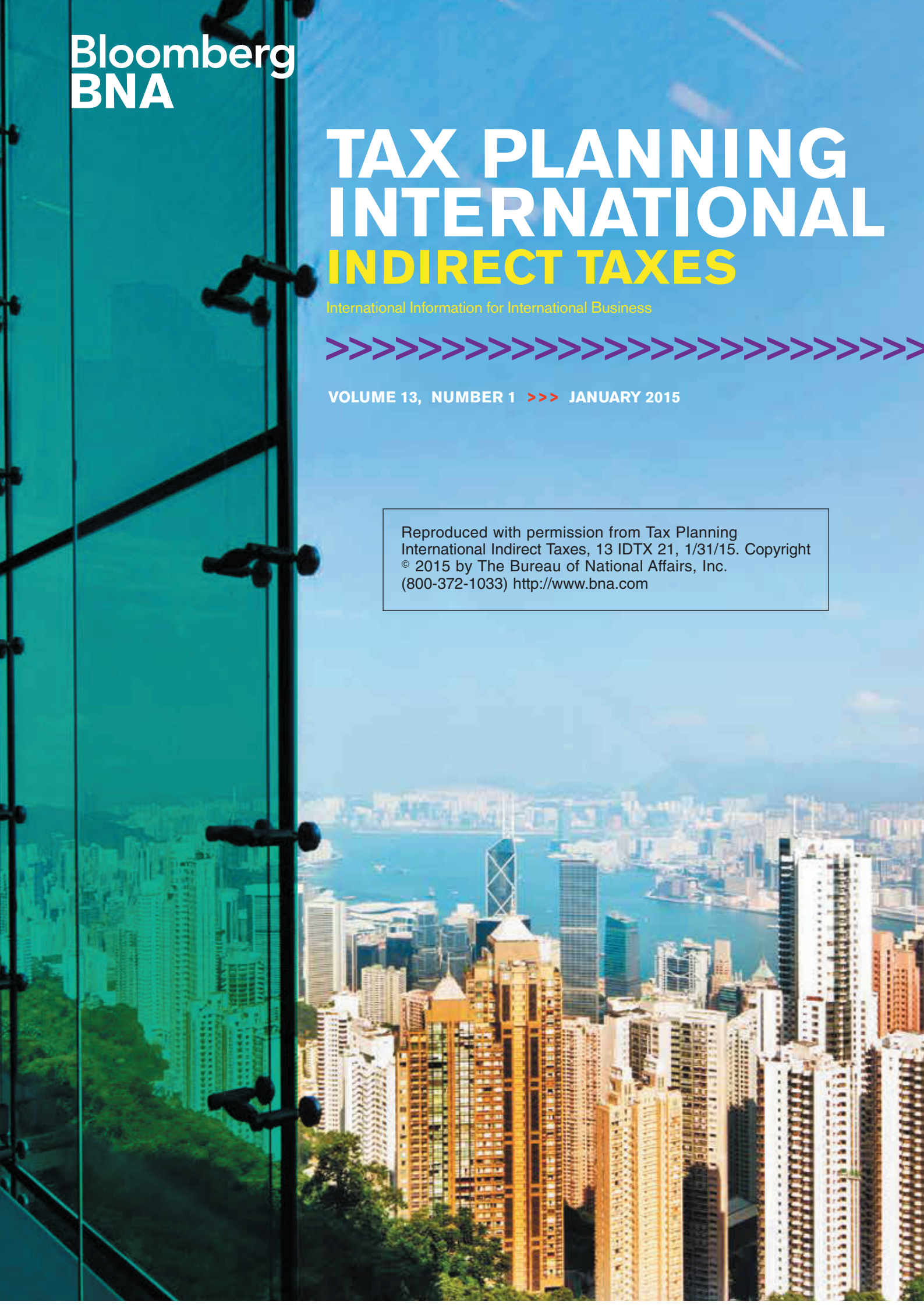
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# The EU-Singapore Free Trade Agreement—Big Deal or Little Deal?

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The long-running birth of the EU-Singapore Free Trade Agreement has given rise to questions about the genesis and development of such agreements. Frank Debets looks at the benefits and possible consequences of the Agreement and the ramifications for future free trade agreements between the EU and Member States of ASEAN. He is writing in a personal capacity.

Over the past few months it would have been hard to have missed the constant barrage of press around Free Trade Agreements (“FTAs”), particularly in the sidelines of various recent summits in Asia including the APEC Meeting in Beijing, the ASEAN(+6) 2014 Summit in Myanmar and the G-20 Summit in Brisbane. Acronym fatigue would probably have set in quickly, with FTAAP, TPP and RCEP leading from the front.<sup>1</sup> Suffice to say that all those acronyms refer to large groupings of countries that, taken together, make up a significant part of the world’s population, economy, trade, a combination of those, or many other measures one cares to consider. It is debatable whether such statistics add much, if any, value to the debate about the benefits of free trade. The mere fact that a particular set of countries has a certain level of trade between them is a weak reason for the value of an FTA. One could hazard a guess that all countries starting with the letter “C” or “U” between them could form the world’s largest trading bloc—but that does not mean that it makes sense for them to pursue an FTA.

However, all this talk about such “megapacks” has drowned out news about smaller but possibly more immediately meaningful and impactful agreements. One of those is the EU—Singapore Free Trade Agreement (“EUSFTA”). One could be forgiven for giving up

interest in its proceedings. As is usual with FTAs, the early rhetoric was not matched by the speed of real-life progress. Reaching a good agreement is certainly much preferable over reaching an agreement quickly. But it would be even better if politicians, and more importantly the press, did not create unrealistic expectations that risk alienating commercial operators that are instrumental in making any FTA a success.

Table 1 gives a quick overview of some of the key milestones in the negotiation and finalization of the EUSFTA.

The precise dates and actions matter less than the fact that it can easily take five years and more from the time negotiations start for an agreement to take effect, even if it is between two trading partners that are at similar levels of economic development. Such a time-frame may not be seen as long by negotiators and politicians, but unfortunately it goes well past the planning and interest horizon of many executives.

There are a number of reasons that might explain the length of time taken for the EUSFTA to take effect. The following looks at some of these in turn, before considering their impact on trade between Singapore and the EU, as well as their broader impact on the FTA landscape.

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**Table 1**

March 2010	Formal negotiations start (ASEAN-wide proceedings cancelled)
March 2010 – December 2012	Numerous negotiation rounds
December 2012	Agreement “signed”
September 2013	Agreement “initialled” and text made available to the public
December 2012 – October 2014	Continued negotiations on “Investments Chapter”
October 2014	Negotiations on Investment Chapter concluded
2015 onwards:	<ul style="list-style-type: none"> <li>■ Final legal scrubbing</li> <li>■ Translation</li> <li>■ Signing</li> <li>■ CJEU Ruling on competencies and ratification</li> <li>■ Ratification</li> <li>■ Entry into force</li> </ul>

## I. Depth of Content

EUSFTA is said to be a “deep agreement of high quality”. What this means in layman’s terms is that it allows few exceptions, and has broadened its scope well beyond the traditional areas of customs duty rate reductions and related barriers to trade in physical goods (such as technical barriers to trade and (phyto-)sanitary measures). It would be beyond the scope of this article to examine the content of the EUSFTA in detail. It is worth, however, summarizing the more traditional parts of the agreement that deal with the trade in goods, as they still draw the most attention and provide the most immediate benefits, in this case mostly for those exporting from Singapore to Europe:

- a duty reduction on many products immediately upon implementation: some delayed by three or five years, a few excluded altogether;
- the rules of origin are product-specific, mostly based on added value or a change of tariff;
- a large number of processes are deemed insufficient—this is aimed at preventing companies from moving only insignificant processing to Singapore in order to benefit from the agreement;
- self-certification of origin by exporters, subject to certain approved exporter status.

More details can easily be found online as the text of the agreement is readily available on the website of the European Commission. From there it can be seen that much of the agreement extensively addresses the more modern aspects of international trade. To name a few:

### ■ Services

Long and very detailed commitments of both the EU and Singapore for economic operators from the other party to its markets in services, either by establishing operations in the other party’s territory or by supplying the other party’s territory from its home base.

### ■ Government procurement

Improving access to the many large and lucrative EU government-funded projects to economic operators from Singapore, and vice versa.

### ■ Intellectual property

There are guarantees to protect intellectual prop-

erty rights, although much of the headline discussion has been about protecting the EU’s geographical indicators in Singapore.

### ■ Investment

A detailed chapter outlining the rules for encouragement and protection of investment by EU companies in Singapore and vice versa.

### ■ Environment

A chapter dealing specifically with encouraging investment in renewable energy, and numerous components in the sustainable development chapter considering climate change, such as sustainable forestry and fishing.

### ■ Labour standards

Various components in the sustainability chapter pushing predominantly EU views on labour laws and practices.

It can be argued that many of the above have little to do with the traditional views on what constitutes international trade (i.e. moving a box across a border and paying some customs duty). Prior and other FTA negotiations often limit themselves to more limited definitions. Consequently, they reach conclusions quickly and implementation can be achieved relatively fast, as reduction in at-the-border tariffs and barriers is by now a well-trodden path. Opening up markets for services and government procurement, and agreeing how to conduct business from a labour, environmental and business protection perspective are much more sensitive topics. It is no surprise that even comparable trading partners like the EU and Singapore took their time to commit. Especially when considering the next reason: regionalization.

## II. Regionalization

EUSFTA is the first FTA between an ASEAN country and the EU. Negotiations started in earnest after attempts to negotiate and agree an ASEAN-EU FTA were abandoned. Nevertheless, an ASEAN-EU FTA is still the ultimate prize worth chasing after.

Consequently, in the back if not in the front of the negotiators’ minds, compatibility with other future EU agreements with ASEAN Member States, as well as a potential ASEAN-EU agreement would have played a part. The EU, partly because of its economic and political clout, has been much better at negotiating and creating agreements with different trading partners that are consistent, say in rules of origin or market access clauses, than ASEAN has. It could be argued that in ASEAN, the underlying mindset to FTAs is one of competitive advantage, meaning that a new FTA that an FTA partner agrees with a third country will be perceived to be in competition with the existing FTA, rather than complementary to it. Clearly, it makes sense for the EU to expand its FTA with Singapore to other ASEAN Member States. But this also makes sense for Singapore, which draws its strength and growth more from providing access to the rest of ASEAN than it does from competing directly with economic activities in other ASEAN economies. (The same argument of complementation could be made for other ASEAN countries, but can probably only be achieved at greater pain, as it would require more redirection of economic activities that provide economic advantage.)

Many of the outcomes of a more regional mindset to the EUSFTA negotiations are implicit and hard to point to. There are, however, some clear examples, as follows.

### A. Regional Cumulation of Origin

Materials originating in other ASEAN Member States can be counted as originating in Singapore if the other ASEAN country has a bilateral FTA with the EU (which none of them have yet) or is still benefiting from the EU's Generalised System of Preferences ("GSP") Scheme. These rules should encourage more intra-ASEAN trade as a stepping stone to EU—ASEAN trade.

### B. Absorption

Non-originating materials that are used in the production of an originating component used for further production become irrelevant for qualification purposes. In other words: if a Singapore manufacturer buys a product from a Singapore supplier that contains 50% non-originating materials but originates under the EUSFTA rules of origin, he can count 100% of that product as originating for whatever he makes himself. The non-originating content is "washed out".

It is by no means certain whether any of the implicit or explicit components of the EUSFTA aimed at further regionalization within ASEAN will make it easier for agreements between the EU and other ASEAN Member States to be concluded, and ultimately one single ASEAN—EU agreement. Nevertheless, the additional time taken to consider such regional implications can be very helpful in creating greater traction and speed in the negotiations between the EU and other ASEAN Member States.

## III. The Politics of International Trade

A third reason for the arguably slow progress in concluding the EUSFTA is the fact that much in FTA negotiations is no longer about trade or even economics at all, but more about international geopolitical relations. In that respect, the contents of an FTA may only be the front line of broader considerations of what type of economic alliances should and could be pursued with whom, and how to manage the public opinions of the good or bad that FTAs may bring to a country's fortunes. Both Singapore and the EU are among the staunchest supporters of open economies and trade liberalization. But even they have reservations about opening certain aspects of their economies to outside competition or interference.

Increasingly, the population at large is more sceptical of free trade, because it tends to be much easier to point to the few disadvantages that freer trade brings, often immediately and directly felt by affected parties, than to point out the many benefits, usually emerging over a longer period of time and applying to those that seize the opportunities. Singapore has fewer hurdles to overcome in this respect, given that its economy does not rely heavily on economic sectors—like agriculture—that are typically very negatively predisposed to free trade. Its overall economy and therefore much of its population has thrived on being open. Singaporeans are therefore generally well aware of the benefits of free trade, (although it remains to be seen

how well many services industries will cope with greater competition).

In Europe, the landscape is very different. Consequently, even the EUSFTA is subject to much scrutiny from national, parliamentary and interest groups. As a result of this, the EU Commission has decided to ask the Court of Justice of the European Union ("CJEU") to determine whether the Commission has stepped beyond its scope of authority in negotiating some of the more modern aspects of the EUSFTA. The CJEU's processes can be expected to delay the implementation of the EUSFTA even longer, but will also provide welcome certainty on what can be achieved by the EU in its FTA negotiations with further ASEAN countries.

In addition to concerns about—for example—whether the investment chapter went beyond what the Commission was allowed to agree on, there are also concerns as to whether the agreed dispute mechanisms may open avenues for companies to seek compensation for any national policies that can be deemed, for example, to restrict or affect investments considered under FTAs (commonly referred to as ISDS or Investor State Dispute Settlement). Clearly that is not something that any country would like to see proliferate.

It is not just the EU which struggles with brakes on its ability to conclude FTAs. The US government continues to be hindered by its lack of Trade Promotion Authority ("TPA"). In essence this means that any FTA put before Congress can be challenged in any of its details, rather than just accepted or rejected as it stands. In practice, lack of TPA makes it unlikely for any FTA to be ratified in the US, including the Trans-Pacific Partnership ("TPP") and Transatlantic Trade and Investment Partnership ("TPIP").

So to revisit the question this article posed: is the EUSFTA a big deal or a little deal? In terms of economics and size, the actual current trade in goods and services flows that it covers is not immaterial but neither is it all that significant in the greater scheme of international trade. However, in terms of its implications for the future of international trade liberalization, it plays a much more significant role. It will immediately impact on FTAs that the EU negotiates with other ASEAN Member States and perhaps ultimately ASEAN as a whole. It will impact the extent to which the EU Commission can negotiate and speed at which it can conclude new agreements, which in turn will affect its trading partners approach to negotiations and the types of market access that can be offered. And, with a bit of luck, it will help convince some of the sceptics of freer trade that trade liberalization is subject to strong checks and balances that will help ensure that it is used for the greater good only.

*The views expressed in this article are that of the author's and may not reflect that of the firm's.*

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### NOTES

<sup>1</sup> Editorial note: The three acronyms refer to the Free Trade Area of Asia Pacific, the Trans-Pacific Partnership and the Regional Comprehensive Economic Partnership.