



# **EU-ASEAN BUSINESS COUNCIL**

**Promoting Trade &  
Investment between  
ASEAN & Europe**

**August 2014**



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## Executive Summary

With the implementation date for the ASEAN Economic Community (AEC) less than 18 months away, now is a very opportune time for the international business community to bring forward its ideas for what it sees as essential components of the AEC in order to ease and improve the business and trading environment in the region. This document, presented by the EU-ASEAN Business Council (EU-ABC), the primary voice for European Business within the ASEAN (the Association of South East Asian Nations) region, sets out a number of recommendations for measures which the European Business community would like to see implemented by December 2015 or, in cases where there is not a relevant programme for achievement by 31 December 2015, for a clear road map to achieving these aims put in place by that time.

As an independent body which has been established to help promote the interests of European businesses operating within the ASEAN region, the EU-ABC works on a sectorial and cross-industry basis to help improve the investment and trading conditions for European Businesses in ASEAN through influencing policy and decision makers throughout the region *and* in the EU, as well as acting as a platform for the exchange of information and ideas amongst its members and regional players within ASEAN. The EU-ABC also seeks to contribute to improved economic effectiveness and development in all ASEAN Member States.

This document is presented to the ASEAN Economic Ministers, ASEAN Secretariat and to the European Commission with the aim of engaging them in an ongoing dialogue on the development of policies and to encourage the revising of rules, regulations and procedures so as to improve the overall business environment, assist European Businesses in the development of their operations and strategic investments within ASEAN and, therefore, help with economic development and advancement of ASEAN. The EU-ABC hopes that it can play an active and constructive role in any discussions between and within those bodies on measures to improve and enhance trading conditions within ASEAN and between the EU and ASEAN.

DGTrade, Trade in goods with ASEAN, April 2014

THE EUROPEAN UNION IS THE THIRD LARGEST TRADING PARTNER OF ASEAN AFTER CHINA AND JAPAN.

THE EU IS THE LARGEST SINGLE SOURCE OF FDI INFLOWS TO ASEAN WITH US\$73BN OF FDI FUNDS BETWEEN 2011 AND 2013

ASEAN Foreign Direct Investments Statistics Database, 1 June 2014

Influencing the views of the EU-ABC is the undeniable fact that trade and investment between Europe and ASEAN is strong and growing. The EU represents the third largest trading partner of ASEAN after China and Japan, far outstripping trade between the South East Asian bloc and the United States. This fact alone should mean that political and thought-leaders in both the EU and ASEAN should be striving to further enhance the trade environment between these strategically important regions. But more than that: the EU is also the largest single source of FDI inflows to ASEAN, demonstrating the long term view that many European businesses take to ASEAN.

The general stance of the EU-ABC is one of trade liberalisation and more effective investment for the benefit of all parties:

- promoting the removal of barriers to trade and commerce, both tariff barriers and non-tariff barriers;
- reducing red tape and unnecessary regulation and ensuring that where regulation is required it is appropriate and proportional;

- harmonising standards in line with accepted International norms; and,
- working towards the free movement of goods and services between Europe and ASEAN as well as within ASEAN.

**Our ultimate aim is to support regional and European institutions in the establishment of an EU-ASEAN Free Trade Agreement and, in the shorter term, finalising the bilateral FTAs between the EU and ASEAN Member States that are currently under negotiation.**

We firmly believe that all economic data and projections show that establishing an EU-ASEAN FTA can only benefit all of the economies involved and therefore the wider populations in both ASEAN and the EU.

The key recommendations set out below, and the more detailed sectorial recommendations that contained in the annexes to this document, are put forward here as stepping stones on the path to our ultimate goal. Even if that goal may be some way off, each of these recommendations, if implemented, would help advance economic co-operation, trade and investment between Europe and ASEAN, and ultimately help the economic development of ASEAN member states.

The key recommendations of the EU-ABC to ASEAN for the implementation of the AEC in December 2015 are:

- The phasing out and eventual elimination of tariffs to trade for the movement of goods and services within ASEAN;
- The phasing out and eventual elimination of non-tariff barriers (NTBs) to trade within ASEAN;
- Enhanced protection of Intellectual Property Rights and a clamp down on illicit trade;
- The harmonisation or alignment of standards and regulations in various business and industry sectors to ease intra-regional trade and ensure commonality of approach;
- Liberalisation of ownership and control rules in sectors where restrictions on foreign ownership exist;
- Provision of targeted support for SMEs, particularly in the area of financing;
- Implementation of measures to ease the movement of skilled and key staff around the region; and,
- Introduction of greater and improved transparency in the public procurement processes throughout the region.
- Rapid implementation of the ASEAN Single Window and effective ratification and implementation of WTO “Bali Package”

As a key partner of both the ASEAN Secretariat, ASEAN Member States and the European Commission, the EU-ABC hopes that our recommendations will be the basis of long-lasting benefit for all parties and looks forward to a continuing and ongoing dialogue with all parties involved.

## Key Recommendations

The key recommendations set out below are designed deliberately to cut across different industry sectors or to impact trade and commerce more generally. They should be seen as beneficial for economic development and betterment in the short to medium term and also as ultimate goals for ASEAN to aim to achieve as part of the AEC process and eventually as part of a potential EU-ASEAN Free Trade Agreement. Where possible we have set out some milestones to the achievement of the ultimate recommendation, milestones designed to be eminently achievable in the short to medium term.

The AEC initiative, given that it has historically developed over a period of time, is not reflected in a single agreement. Rather, it is a complex series of separate agreements and arrangements between ASEAN Member States with an overall target date of December 2015 for implementation, with some arrangements and goals for the “CLMV” group (Cambodia, Laos, Myanmar and Vietnam) to be phased in over subsequent years in recognition of the differing stages of development within ASEAN. The EU-ABC recognises that some elements of the AEC Blueprint have been implemented in full or in part well ahead of the December 2015 target date. However, because of the nature of the AEC, there is a risk of differing interpretations and implementation of standards which can add to confusion and distortions in the marketplace. Nevertheless, the EU-ABC applauds the general approach being taken by ASEAN Member States as it is one that will lead to increased liberalisation, freer movement of goods and services, and ultimately increased investment and trade within the region.



EU'S TRADE IN  
GOODS WITH  
ASEAN IN 2012  
WAS €35 BILLION  
MORE THAN US-  
ASEAN TRADE IN  
GOODS

DG Trade, Trade in Goods with ASEAN, April 2014

### Key Recommendation One: Tariffs

- ***The phasing out and eventual elimination of tariffs to trade for the movement of goods and services within ASEAN and between ASEAN and the EU will lead to enhanced trade and likely lead to greater investment.***

This is an element that the leadership of ASEAN has recognized as something that is essential if the aim for “Single market and production base”, as stated in the AEC Blueprint, is to be achieved. Indeed, the AEC Blueprint states clearly that the “free flow of goods is one of the principal means by which the aims of a single market and production base can be achieved”<sup>1</sup> and goes on to recognise that the achievement of such a free flow of goods and services is critical to the facilitation of production networks and the establishment of ASEAN as a global production centre.

Progress on tariff elimination has undoubtedly been made, but there is still some way to go. According to a recent Pricewaterhouse Coopers report, across ASEAN as whole just under 88% of Tariff lines have been set to 0%<sup>2</sup>. But this process is not uniform throughout ASEAN, with more recent Members in particular not reducing or eliminating tariffs at the same rate as some of the more developed or better established members of ASEAN. Indeed for the CMLV grouping only just under

<sup>1</sup> ASEAN Economic Community Blueprint, November 2007, p.6

<sup>2</sup> The ASEAN Economic Community - what does it mean for you?, Trade Intelligence Asia Pacific, May/June 2014, Pricewaterhouse Coopers

69% of tariffs have been set to 0%<sup>3</sup>. But clearly ASEAN is capable and willing to tackle tariffs and move to reduce and eliminate them wherever possible to do so.

Number of Tariff Lines at 0% in the ATIGA Tariff Schedule 2013

| Country                  | Number of Tariff Lines |               |            |               | Percentage   |              |             |
|--------------------------|------------------------|---------------|------------|---------------|--------------|--------------|-------------|
|                          | 0%                     | >0%           | Other*     | Total         | 0%           | >0%          | Other       |
| Brunei                   | 9,844                  | -             | 72         | 9,916         | 99.27        | -            | 0.73        |
| Indonesia                | 9,899                  | 17            | 96         | 10,012        | 98.87        | 0.17         | 0.96        |
| Malaysia                 | 12,182                 | 73            | 82         | 12,337        | 98.74        | 0.59         | 0.66        |
| Philippines <sup>^</sup> | 9,685                  | 109           | 27         | 9,821         | 98.62        | 1.11         | 0.27        |
| Singapore                | 9,558                  | -             | -          | 9,558         | 100.00       | -            | -           |
| Thailand                 | 9,544                  | 14            | -          | 9,558         | 99.85        | -            | -           |
| <b>ASEAN-6</b>           | <b>60,712</b>          | <b>213</b>    | <b>277</b> | <b>61,202</b> | <b>99.20</b> | <b>0.35</b>  | <b>0.45</b> |
| Cambodia                 | 3,327                  | 4,834         | -          | 8,161         | 40.77        | 59.23        | -           |
| Laos                     | 7,525                  | 1,946         | 87         | 9,558         | 78.73        | 20.36        | 0.91        |
| Myanmar                  | 7,614                  | 1,882         | 62         | 9,558         | 79.66        | 19.69        | 0.65        |
| Vietnam                  | 6,905                  | 2,463         | 190        | 9,558         | 72.24        | 25.77        | 1.99        |
| <b>CLMV</b>              | <b>25,371</b>          | <b>11,125</b> | <b>339</b> | <b>36,835</b> | <b>68.88</b> | <b>30.20</b> | <b>0.92</b> |
| <b>Total ASEAN</b>       | <b>86,083</b>          | <b>11,338</b> | <b>616</b> | <b>98,037</b> | <b>87.81</b> | <b>11.57</b> | <b>0.63</b> |

Source: ASEAN Secretariat & Ministry of International Trade and Industry

[http://www.miti.gov.my/cms/storage/documents/c1a/com.tms.cms.document.Document\\_5b0d425e-c0a81573-3de8b615-7ee22d31/1/Table%201.pdf](http://www.miti.gov.my/cms/storage/documents/c1a/com.tms.cms.document.Document_5b0d425e-c0a81573-3de8b615-7ee22d31/1/Table%201.pdf)

<sup>^</sup> as of 12 Feb 2013 these TRs are still tentative because it has been endorsed by the AFTA Council

\*Products in the Sch-H (current GEL).

Despite the progress made by ASEAN in many areas, for some sectors, particularly the food and beverage industry, there are prohibitively high import tariffs which constrain trade and encourage illegitimate activities. Similarly, excessive levels of domestic taxation or discrimination restrict consumer choice, fuel non-tax paid activities and bleed governments of revenue. For example, excessive duties or discriminatory excise taxes impact the trade of EU wines and spirits into a number of ASEAN countries like Malaysia, Indonesia and Thailand therefore encouraging smuggling and illicit liquor production, which both risks consumer health and can adversely affect revenues for governments.

However, as the following table illustrates, when ASEAN enters into FTAs with other regions and trading partners, good progress is being made with the elimination of tariffs even by the CMLV grouping where the average level of tariff elimination exceeds that currently being achieved under moves towards the AEC. This is one of the key reasons why the EU-ABC is pressing both the EU and ASEAN to enter into FTA negotiations as a collective.

<sup>3</sup>Ministry of International Trade & Industry, Malaysia,

[http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.section.Section\\_8de83760-7f000010-72f772f7-f5047602](http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.section.Section_8de83760-7f000010-72f772f7-f5047602)

### Tariff Elimination Coverage under ASEAN+1 FTAs

|             | ASEAN-ANZ | ASEAN-China | ASEAN-India | ASEAN-Japan | ASEAN-Korea | Average |
|-------------|-----------|-------------|-------------|-------------|-------------|---------|
| Brunei      | 99%       | 98%         | 85%         | 98%         | 99%         | 96%     |
| Cambodia    | 89%       | 90%         | 88%         | 85%         | 91%         | 89%     |
| Indonesia   | 93%       | 92%         | 49%         | 91%         | 91%         | 83%     |
| Laos        | 92%       | 97%         | 80%         | 86%         | 90%         | 89%     |
| Malaysia    | 97%       | 93%         | 80%         | 94%         | 92%         | 91%     |
| Myanmar     | 88%       | 94%         | 77%         | 85%         | 92%         | 87%     |
| Philippines | 95%       | 92%         | 81%         | 97%         | 90%         | 91%     |
| Singapore   | 100%      | 100%        | 100%        | 100%        | 100%        | 100%    |
| Thailand    | 99%       | 93%         | 78%         | 96%         | 95%         | 92%     |
| Vietnam     | 95%       | 92%         | 79%         | 94%         | 89%         | 90%     |

Source: Ministry of International Trade & Industry, Malaysia,  
[http://www.miti.gov.my/storage/documents/4df/com.tms.cms.document.Document\\_5a1bcd6f-c0a81573-448b1ca0-6e030bce/1/ASEAN%27s%20Bilateral%20FTA%20%28website%29.pdf](http://www.miti.gov.my/storage/documents/4df/com.tms.cms.document.Document_5a1bcd6f-c0a81573-448b1ca0-6e030bce/1/ASEAN%27s%20Bilateral%20FTA%20%28website%29.pdf)

## Key Recommendation Two: Non-Tariff Barriers to Trade

- ***The phasing out and eventual elimination of non-tariff barriers to trade for the movement of goods and services within ASEAN and between ASEAN and the EU will spur regional trade, reduce protectionism and ultimately improve consumer choice.***

Non-tariff barriers, such as the imposition of import quotas, restrictions on import/distribution licensing arrangements and product regulatory standards that are onerous and lack consistency only distort trade and consumer choice. Consumers inevitably end up paying the price for NTBs through reduced choice and higher charges. NTBs also compromise an economy's competitiveness.

**“FREE FLOW OF GOODS WOULD REQUIRE NOT ONLY ZERO TARIFFS BUT THE REMOVAL OF NON-TARIFF BARRIERS AS WELL”**

ASEAN Economic Community  
Blueprint, November 2007

Non-Tariff Measures (NTM) are defined as all policy-related trade costs incurred from production to final consumption, excluding tariff. Some NTMs are behind-the-border, while some are applied at-the-border. Para-Tariff Measures, Quantity Control Measures, Technical Measures, and Monopolistic measures are areas that have been identified as major Non-Tariff Barriers that affect the intra-regional trade within ASEAN.

It is notable that customs surcharges, under Para-tariff Measures, are applied to about 2,683 tariff lines, Technical Measures and product characteristic requirements, come in second involving more than 975 tariff lines.

ASEAN Member Countries have resolved to work on the elimination of non-tariff barriers and that is very much welcomed by the EU-ABC. A work programme on the elimination of non-tariff barriers, which includes the process of verification and cross-notification; updating the working definition of Non-Tariff Measures/Non-Tariff Barriers in ASEAN; the setting-up of a database on all NTMs maintained by the member countries; and the eventual elimination of unnecessary and unjustifiable non-

tariff measures, is currently being finalised. Nevertheless, as the table below demonstrates, there is considerable progress still to be made in this area and the EU-ABC asks that ASEAN consult and involve European Business in the identification of NTBs and steps to reduce and eliminate them.

Whilst it is presently inconceivable that ASEAN Member States would be able to move so radically as to eliminate all non-tariff barriers on intra-ASEAN trade by December 2015, setting out a clear road map of staged reductions and phasing out of NTBs should not be beyond the realms of possibility. For non-tariff barriers to trade, the removal of unclear or opaque wording in rules and regulations would also be a step in the right direction as an interim measure.

#### Most Prevalent NTBs by Tariff Lines in ASEAN

| Non-tariff Barrier                 | Number of Tariff Line Affected |
|------------------------------------|--------------------------------|
| Customs surcharges                 | 2,683                          |
| Additional Charges                 | 126                            |
| Single Channel for Imports         | 65                             |
| State-trading Administration       | 10                             |
| Technical Measures                 | 568                            |
| Product Characteristic Requirement | 407                            |
| Marketing Requirements             | 3                              |
| Technical Regulations              | 3                              |

Source: ASEAN, <http://www.asean.org/communities/asean-economic-community/item/non-tariff-barriers>

### Key Recommendation Three: Intellectual Property Rights & Illicit Trade

- ***Protection of Intellectual Property Rights and a clamp down on illicit trade will give companies greater confidence to invest and trade in ASEAN, and will provide enhanced protection to consumers whilst also improving government revenues.***

This is a key area for many industries, from High End Fashion through to Pharmaceuticals and encompassing food and beverages and, even, industries such as the production of spare parts for motor vehicles and aircraft, as well as the electronic and software development sectors.

Just looking at the Pharmaceutical industry, the World Health Organisation has highlighted counterfeit and substandard medicine as a priority given the alarming amount of unsafe medicine that is made available through illicit border trade and over the internet. For example, counterfeit medicines are contributing to the increased prevalence of drug resistant strains of malaria and tuberculosis.

Additionally in the Pharmaceutical industry, as well as other R&D heavy industries, an efficient patent system that provides timely grants and consistent enforcement are fundamental. ASEAN undoubtedly has tremendous potential to become competitive in such sectors. However, there is an inconsistent approach to patents among ASEAN countries. There may be significant delays in getting a patent approved, limiting the useful term. There are also challenges when it comes to enforcement of patents.

Furthermore, there are serious challenges for law enforcement authorities with deficient or limited legal powers in Free Trade Zones (FTZs) to be able to seize counterfeit and pirated goods and take legal action against those involved in this type of trade to exploit loopholes to the detriment of

legitimate business. A recent study<sup>4</sup> by the BASCAP<sup>5</sup> also “calls for increased regulation and better management of FTZs which, without proper oversight, can be vulnerable to counterfeiting and piracy”. The EU-ABC encourages ASEAN countries to grant customs authorities clear jurisdiction over goods in transit in FTZs.

Addressing these issues require a comprehensive partnership approach between trademark owners and the public sector that will tackle both supply and demand from multiple fronts:

- **Regional cooperation:** Develop an official cooperation program among key ASEAN law enforcement agencies to share intelligence and to work with brand owners.
- **Harmonization of import and export documents:** Harmonise trade import and export documents and data to ensure accurate data sharing between Customs agencies in origin and destination countries.
- **Technology standards:** Implement technology standards on product authentication and tracking and tracing that rely on open standards such as GS1 global standards<sup>6</sup>, and are easy to use and affordable by all parties (e.g. using smart phone technology) to help in securing the supply chain.
- **Education:** Increase public awareness on counterfeiting and smuggling to highlight the negative impact on health and safety, and the potential legal consequences.
- **Legislations and regulations:** Update regulations and legislations to provide law enforcement with powers in the FTZs to detain goods suspected of infringing IP rights and to inspect and seize goods that violate IP rights.

## Key Recommendation Four: Harmonisation of Standards and Regulations

- ***The harmonisation or alignment of standards and regulations in various business and industry sectors will ease intra-regional trade and ensure a commonality of approach. Standards and regulations should be in line with accepted International best practice.***

This is an area that impacts many industries: automotive, pharmaceutical, financial services, food and beverages, rail and road infrastructure, just to name a few.

In the Automotive industry, depending on domestic requirements, different approval and homologation processes have been observed in ASEAN. Local agencies often require manufacturers to comply with local mandatory certification standards on top of the international standards that already need to be adhered to. This redundancy has a substantial impact on the cost and time spent due to the unnecessary duplication of processes, as one test report/audit accepted by one agency is not accepted by other agencies. More importantly, this will have a direct impact on the development of the concept of a single manufacturing base in ASEAN to allow free flow of automotive products within the region. Hence, this will further hinder the investment opportunities in ASEAN, which will in turn prevent the region from becoming a global automotive player as it would only be able to serve domestic markets.


 A graphic with a blue and white geometric background. The text reads: "EU'S FDI STOCK IN ASEAN WAS €207.7 BILLION IN 2012".

EU-Singapore Trade & Investment,  
2014, European Commission

<sup>4</sup> *Controlling the Zone: Balancing facilitation and control to combat illicit trade in the world's Free Trade Zones* (BASCAP, 2013)

<sup>5</sup> Business Action to Stop Counterfeiting and Piracy

<sup>6</sup> [www.gs1.org](http://www.gs1.org)

This consolidation of approval and homologation processes will also facilitate the formation of a single regime for future regional agreements with other key trade partners such as the European Union.

For the financial services sector, whilst the move towards the ASEAN Economic Community is welcomed and encouraged, the European financial services industry would like to see greater movement towards a more meaningfully integrated financial region. As with European financial integration, and other examples around the world, financial integration should focus on the citizens of ASEAN and ensure that while they are safe, everything is clear and transparent. By doing this ASEAN will have greater influence on the global policy making stage and will bring significant economies of scale advantages to the region. As an example, the single user experience created by the Single Euro Payment Area enhances what a consumer faces and allows a consumer to have the comfort of knowing how payments and other transactions are carried out across the region. The transparency created by standardisation of payment platforms, payment instruments and the procedures allows for a safer environment for citizens and visitors. Regulatory harmonisation reduces the cost of compliance for financial services firms operating regionally and would encourage longer term investments. A more efficient industry has more resources to invest and support the real economy.

For ASEAN to develop the financial markets in a significant and substantive manner with meaningful impact in the short, medium and long term there should be attention put to a few areas. These focal areas fall into both the domestic and the regional spaces. In the domestic space, the buildup of financial market infrastructure, the institution of standards and a common platform are necessary. At the regional level, the establishment of a plan toward building a common technical substructure for the financial markets is essential. In those nations where there is no infrastructure to date to facilitate financial services, international standards and best practices should be studied to ensure that any implementation yields a system that will not have to be replaced at a later date to comply with ASEAN financial integration or with international standards and best practices.

In both the domestic and the regional spaces the achievement of financial literacy is paramount; literacy ultimately leads to financial inclusion. There must be a unified and concerted push by governments to ensure that people are aware of what the financial services industry is capable of providing, what citizens' rights are, how to use financial services and a basic understanding of financial instruments.

For the rail and road infrastructure in civil engineering the introduction and acceptance of European Standards issued by CEN (the European Committee for Standardisation) will support ASEAN in higher quality, longer life span and lower life-cycle cost for infrastructure. CEN standards for civil engineering are the worldwide best practice for sustainability of structures. Future maintenance and refurbishing costs will be significantly lower should these standards be adopted.

Also in the transport space, the alignment of regulatory and safety standards in aviation is important in order to enhance aviation safety, security and air traffic management across ASEAN. As members of the International Civil Aviation Organisation, ASEAN countries have to comply with all ICAO conventions but between member states there are discrepancies that need to be reviewed. Several areas have previously been identified and include: the development of human capital and training related to aviation safety; mutual recognition of certificates and licensing; and, development of safety rules on an ASEAN-wide basis.

Agri-Food is regarded as a key industry for both the ASEAN region and Europe. Global dynamism and regional integration bring about market opportunities; however, certain challenges remain as to applicable measures and regulations affecting the European food and beverage industry in ASEAN. When considering any changes or new rules and regulations, the EU-ABC believes that a formal

consultative process should be developed and followed by all government entities. The consultative process should include sufficient advance notice of public hearings, public dissemination of public hearing outcomes and feedback and comments from the relevant authorities on important issues concerning the industry. The European Agri-Food industry encourages co-ordination between governmental bodies to ensure that laws and regulations are consistently implemented.

Regarding Medical Devices, ASEAN members are on track to modernise and harmonise their medical device control regulations through the “ASEAN Agreement on Medical Device Directive” or “AMDD”. This agreement, which classifies medical devices according to their risk levels into 4 classes, in a similar fashion to the EU Council Directive 93/42/EEC, is expected to provide a uniform medical device framework across ASEAN member states. We strongly support the convergence, within ASEAN and with the EU, of the regulations pertaining to i) the classification of medical devices and ii) the definition of importation and distribution controls for each different class. These controls should follow a risk-based approach, focusing resources on the highest-risk areas, and should promote the reference to international standards and mutual recognition principles (ex. with the CE marking/certification); in a bid to reduce the duplication, for the administration and for the business operators, of the compliance processes and costs.

## Key Recommendation Five: Foreign Ownership

- ***Liberalising foreign ownership rules in sectors where restrictions exist would allow for fair and open competition, increased access to international best practice, and increased Foreign Direct Investment.***

Restrictions on foreign ownership exist in a number of sectors. Such restrictions hinder the flow of trade and investment, discourage the transfer of technology and limit the growth of industries. Restrictions currently apply, for example, in the transportation/logistics industry, financial services and in pharmaceuticals and can undermine economic competitiveness and lead to increased costs both for industry and for consumers. Whilst the EU is presently the largest FDI investor into ASEAN, there is little doubt that European businesses would invest more in the region if some of the restrictions on ownership and control in certain sectors were phased out or removed altogether.

A number of ASEAN countries do not allow foreign investors to own 100% of their companies in the financial services sector. Allowing for ownership provides confidence for investors; drives faster and deeper investment; and, leads to enhanced market growth. This has significant benefits for the local economy. For example, the life insurance and pension sector supports a country’s social and economic growth in the following ways:

- Bringing protection, financial security and proper pensions to the people;
- Establishing long-term domestic capital markets, thus reducing the reliance on foreign debt and creating market liquidity;
- Mobilizing domestic savings into productive capital; and,
- Encouraging investment in the wider economic development of the country, such as in infrastructure projects

If foreign ownership restrictions were relaxed or removed these benefits could flow throughout ASEAN.

## Key Recommendation Six: Support for SMEs

- ***Provision of targeted support for SMEs in the region, particularly in SME Financing would help promote sustainable economic development.***

Small and Medium Enterprises (SMEs) are the backbone of economies throughout ASEAN and it is essential that policies are in place to help SMEs grow substantially. Many countries rely on the SME sector for economic growth and to provide sustainable employment opportunities. In a globalised world, where intra-ASEAN trade is seen as essential to unlocking the full potential of the region, it is important that a regional approach is taken to facilitate the growth of SMEs in ASEAN. From a financial services perspective there are a number of cross-border and national policies that could be put in place to dramatically facilitate SME growth. Some of these include:

- Engagement with governments on the development of policy, including establishing and improving access, quality and quantity of information on credit bureaus, working with regulators on the design and implementation of payments and clearing systems and the development of electronic documentation to facilitate trade.
- Enhancing information transparency to help banks extend credit to SMEs.
- Establishing effective personal and credit bureaus.

## Key Recommendation Seven: Movement of Labour

- ***The implementation of measures to ease the movement of skilled and key staff around the region, including the adoption of an ASEAN Business Travel Card to allow for visa free travel, will aid businesses in the development and deployment of human capital.***

The movement of human capital across borders is vital to ensure that the manpower needs of business - large, medium and small, MNCs, local companies or regionally established entities - can be efficiently met. There are still substantial restrictions in place and ASEAN should look to further build on progress already made in this area. Whilst it is understandable that countries will wish to maximize the employment opportunities of their own citizens, manage pressures on public services and ensure any immigration is sustainable, a relaxation of cross-border labour restrictions for targeted human capital needs would boost economic growth in the long term, providing even greater employment prospects for citizens in the future. Human capital mobility also has the effect of enhancing learning and productivity for key employees and managers. In some industries, such as financial services, the supply of jobs is outstripping the supply of local workers in many markets, and in some cities the problem is further accentuated by remarkably low levels of unemployment. This inevitably means foreign workers are required to overcome the skills shortage and it is hoped that immigration rules will not hamper the growth of such industries.

Businesses working across borders see international exposure as vital to the development of key employees, managers and high potential future leaders. Being able to move talent around to gain exposure, not just in the ASEAN region but throughout the world, is seen as critical part of key employee development as it gives them exposure to different parts of the business, cultures, practices and procedures, thereby increasing their value to the business as a whole. Mobility, rotation and internship programmes improve both the employability of human capital and their promotion prospects. Furthermore, these programs allow employees to bring valuable experience and knowledge back to their peers in their home country and to raise levels of capability, innovation and best practice.

Unfortunately, current restrictions throughout the ASEAN region make it difficult or impossible for companies to move key staff around the region for organizational development and learning programmes, or even to cover short term resource shortages in other offices or to assist with start-up operations at new locations. Changing the rules and regulations connected with employment passes and residential rights to allow for such staff movements can be of benefit to the ASEAN region and to the businesses concerned.

Labour mobility starts even before employment. The European experience of cross-border internships, apprenticeships and research projects in companies shows a positive effect on employability and educational quality in the areas of technical studies, tourism, professional services and business education to name only the most obvious. Nearly all domains of higher education benefit from internships. Opening access to cross-border internships through student work visas would have a positive impact on human capital development for the next generation of workers.

Finally, to ensure that immigration rules are proportionate, the development of a common ASEAN visa would improve international competitiveness of the region, coupled with the introduction of an ASEAN Business Travel Card scheme that would allow citizens, residents and those on long term employment visas/passes in the region to move around ASEAN without the need for visas, thus facilitating business interaction and trade.

## Key Recommendation Eight: Public Procurement

- ***Increased and improved transparency in public procurement processes, will mean better and more competitive bids, resulting in greater value for money for governments.***

In many economies government procurement often plays an essential role in not only the development of infrastructure (e.g. roads, public transport systems, hospitals, schools etc.) but also as a stimulus for wider economy, especially in times of economic downturn or financial crises.

The best run government procurement processes provide for fully open and competitive tenders for all government funded projects and requirements, no matter how big or how small: doing so should ensure that the procuring department or agency is presented with a range of bids from differing consortia and companies which, in turn, should mean increased competition in terms of both the quality of the product or service being tendered for and in terms of the price to the purchaser.

For major purchases it is normally wise and prudent for a government to trail the idea first by speaking and consulting with a range of industry players in that particular sector to ensure that the service or product being sought can be provided within the parameters likely to be set. This not only allows the purchasing department or agency to get a better idea of what to expect from bids in terms of quality and price, but also allows industry to better prepare itself for the tender when it comes out, thus also ensuring an increase in the quality of the tender responses. However, it is crucial during such exercises, that the procuring agency does not favour one supplier over another and does not end up writing a specification for the end tender that either clearly favours one bidder or which is so tightly drawn that only one bidder could possibly win the contract.

The EU-ABC urges those ASEAN Member States that do not currently have an open and competitive government procurement process to adopt and implement such a system, based on international best practice, as soon as possible. Such systems should include some or all of the following components:

- Public registration system for government contractors, covering not only the company registration but also their financial capability and the level, type or size of tenders that they are entitled to bid for;
- Published and easily understood rules for the release of requests for information, expressions of interest, and tenders;
- Published and easily understood rules for the assessment of any tenders, including criteria for shortlisting;
- Standardised contract terms wherever possible;
- All tenders and information requests to be published in a single location, preferably via an on-line portal;
- Tender responses to follow the “two-envelope” system where by the technical aspects of the tender is assessed first to ensure compliance *before* the commercial/pricing element is considered.

## Recommendation Nine: ASEAN Single Window & WTO Trade Facilitation Agreement

- *Rapid implementation of the ASEAN Single Window and effective ratification and implementation of WTO “Bali Package” relating to trade facilitation will ease cross-border intra-ASEAN trade.*

In the short term, making the ASEAN a “Single market and production base” also demands the rapid implementation of the ASEAN Single Window (requiring the interconnection of Member States National Single Window systems) and a consistent application throughout the ASEAN Member States of the existing Free Trade Agreements (ATIGA as well as all the ASEAN+1 FTAs). Interpretation guidelines should be issued to avoid diverging implementation by different member countries. In particular, Rules of Origin (ROO) need to be applied consistently across Member States as well as in Free Trade Zones (FTZ) within Member States. FTZ ROO should be aligned with ATIGA’s, i.e. the same standards and processes need to be applied whether an FTZ-manufactured good is exported to a Member party or sold domestically, out of fairness for the Member parties and in the own interest of the concerned country (to avoid imported products to be preferred over locally-manufactured parts). This alignment with ATIGA should include the possibility for companies to resort to the Direct Method to prove their Regional Value Content (RVC) content and to non-RVC criteria when allowed (ex. CTC, product list rules). Finally, the FOB pricing description requirement for the Certificate of Origin should be abolished without exceptions (like it is in the case on the Form A to Europe), as an impediment to trade involving intermediary parties (it was removed early 2014 from a number of ASEAN-related FTAs but only in limited cases). This required harmonisation of rules will also pave the way for the expected realization of the Regional Comprehensive Economic Partnership (RCEP).

In another recent development, the effective ratification and implementation of the WTO Dec 2013 “Bali Package” focused on Trade Facilitation measures is also strongly encouraged, including:

- **Publication of Laws, Regulations and Procedures** (Article 1); incl. via the internet and in particular with regard to import, export and transit procedures;
- **Opportunity to comment and receive prior information on new/amended laws and regulations** pertaining to the movement, release and clearance of goods (Article 2);
- **Provision for Advanced Rulings** (Article 3); with a notification in writing, setting out the relevant facts and basis for the rejection will have to be issued when the case may be;
- **Appeal or review procedures** (Article 4); incl. the right of administrative and judicial appeal on Customs related matters (e.g. Customs Rulings and decisions);



- **Fees and charges imposed on or in connection with importation and exportation** (Article 6); required to be limited to only the approximate costs of the services rendered by Customs, with info on the rationale, responsible authority and payment mode;
- **Tighter measures on customs penalties** (Article 6); including measures to avoid conflicts of interest and refrain from the creation of incentive program for the collection/assessment of penalties;
- **Adoption of measures relating to the release and clearance of goods** (Article 7); which may facilitate customs clearance processes, incl. pre-arrival processing, risk management-based system to expedite the release of low risk consignments, electronic payment facilities, release of goods prior to determination of customs duties, taxes, fees and charges, provide additional trade facilitation measures for authorized operators (“AEO”).

We encourage the ASEAN Member States to include these measures as their Category A commitments (i.e. implemented immediately upon the agreement’s entry into force) upon the ratification of the Trade Facilitation Agreement. The Business Council would also be open to discussing how best to deliver capacity building to assist with the implementation of commitments taken under the trade facilitation agreement.

## Europe & ASEAN: Key Partners Together

Why is trade and the development of economic ties between Europe and ASEAN so important? Put simply, it is because the two partners have a very entrenched and long lasting relationship, built on the back the early trade routes between Europe and Asia and developing in recent years in to a stable and growing political and economic relationship.



Trade and investment between Europe and ASEAN is significant and growing, in both directions. Well over 10,000 European businesses have a presence in ASEAN, many using the region as their base for all of the Asia operations and, according to the European Commission, the EU is ASEAN’s largest investor accounting for around 20% of inward Foreign Direct Investment (FDI) in ASEAN in 2012<sup>7</sup>. But this investment is not all one way. Indeed, ASEAN’s FDI to the EU has doubled in recent years now standing just below €90 billion, demonstrating the importance of this bilateral relationship<sup>8</sup>.

Without a doubt, the European Union represents the largest trading bloc in the global economy, with the EU being the biggest exporter and importer of goods in the world (in 2011 EU exports exceeded €1550 billion and its imports from the rest of the world were greater than €1700 billion)<sup>9</sup>.

Furthermore, the EU’s biggest trading partner in geographical terms is Asia with €514 billion of exports in 2011 and €722 billion of imports<sup>10</sup>.



Despite these impressive figures, the importance of Europe as a trading bloc is frequently underestimated, misunderstood and not generally recognised.

In the context of Europe’s overall trade and investment profile, the importance of the relationship between Europe and ASEAN should not be underestimated. There is a long history between the two regions, driven originally by trade and commerce. That relationship remains strong and as important as ever today.

To put it into context, ASEAN is the European Union’s third largest trading partner outside of Europe, with trade in goods and services totaling some €235 billion in 2012<sup>11</sup> and the EU is ASEAN’s 3rd largest trading partner after China and Japan, accounting for around 13% of ASEAN trade<sup>12</sup>.

<sup>7</sup> EU-Singapore Trade & Investment, 2014, European Commission, p.27

<sup>8</sup> EU-Singapore Trade & Investment, 2014, European Commission, p.27

<sup>9</sup> International Trade & Foreign Direct Investment, 2013 Edition, Eurostat, p.11

<sup>10</sup> International Trade & Foreign Direct Investment, 2013 Edition, Eurostat, p.13

<sup>11</sup> Figures derived from information in EU-Singapore Trade & Investment, 2014, European Commission and corroborated by ASEAN Merchandise Trade Statistics Database, November 2012

<sup>12</sup> European Union, Trade in Goods with ASEAN, 16 April 2014, DGTrade p.9

The table below amplifies this point and clearly demonstrates that the European Union has a greater commercial relationship with ASEAN than many other trading blocs, including the United States, though general public perception would have many think otherwise.

**Total Goods: ASEAN Top Trading Partners 2012**

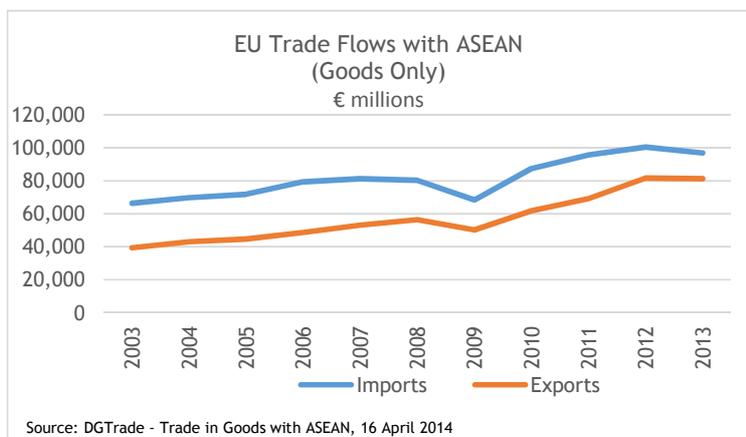
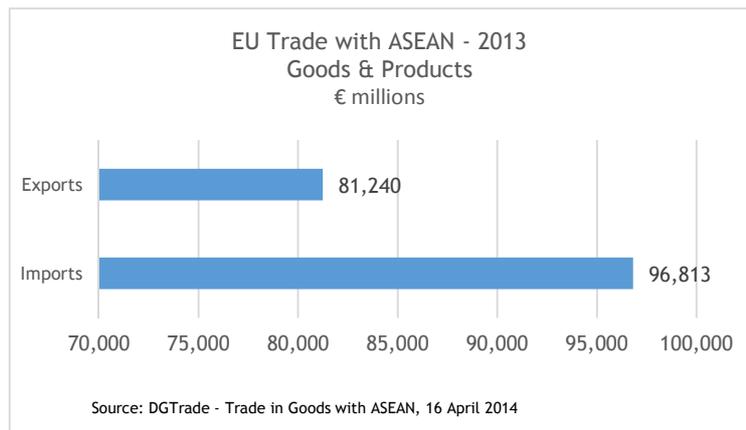
| Imports        |            |       | Exports        |            |       | Total Trade    |            |       |
|----------------|------------|-------|----------------|------------|-------|----------------|------------|-------|
| Partner        | Value (€m) | Share | Partner        | Value (€m) | Share | Partner        | Value (€m) | Share |
| China          | 142,234    | 19.2% | China          | 110,648    | 15.4% | China          | 252,882    | 17.3% |
| Japan          | 106,305    | 14.3% | Japan          | 100,125    | 13.9% | Japan          | 206,430    | 14.1% |
| European Union | 92,869     | 12.5% | European Union | 98,255     | 13.6% | European Union | 191,124    | 13.1% |
| USA            | 71,246     | 9.6%  | USA            | 85,430     | 11.9% | USA            | 156,676    | 10.7% |
| South Korea    | 60,045     | 8.1%  | Hong Kong      | 61,320     | 8.5%  | South Korea    | 103,066    | 7.1%  |
| UAE            | 30,695     | 4.1%  | South Korea    | 43,020     | 6.0%  | Hong Kong      | 72,650     | 5.0%  |
| Saudi Arabia   | 29,176     | 3.9%  | Australia      | 35,816     | 5.0%  | India          | 54,986     | 3.8%  |
| India          | 21,898     | 3.0%  | India          | 33,088     | 4.6%  | Australia      | 54,296     | 3.7%  |
| Australia      | 18,480     | 2.5%  | UAE            | 12,127     | 1.7%  | UAE            | 42,822     | 2.9%  |
| Switzerland    | 12,461     | 1.7%  | Panama         | 10,163     | 1.4%  | Saudi Arabia   | 35,158     | 2.4%  |

Source: DGTrade Trade in Goods with ASEAN, April 2014

Indeed, the trade in goods with the EU represents over 13% of ASEAN's total trade, with exports in goods from ASEAN to the EU accounting for 13.6% of all exports by value from ASEAN in 2012, something which clearly shows that the relationship is far from a one way street.

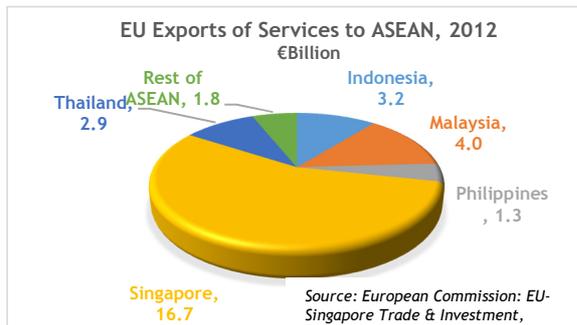
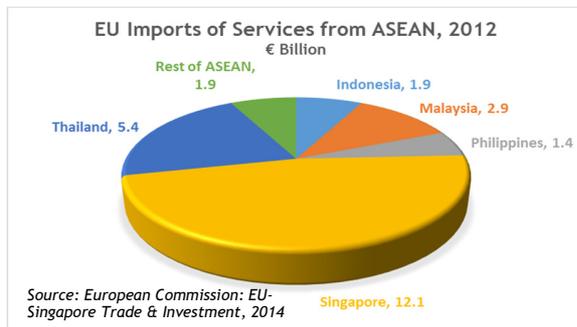
In 2011, more than 40% of the EU's imports came from Asia and the region is the pre-eminent destination for the EU's exports. ASEAN, as a key component of Asia, is, therefore, a vital trading partner for Europe. In 2013, according to figures from the Directorate-General for Trade in the European Commission, in terms of trade in Goods alone, trade with ASEAN represented 5.2% of the EU's total trade at some €178 billion<sup>13</sup>.

What is more, this trading relationship has been growing at a considerable rate with imports from ASEAN to the EU increasing by 9.1% between 2009 and 2013, and the trade in goods in the opposite direction rising by nearly 13%<sup>14</sup>, demonstrating a clear



<sup>13</sup> EU-Singapore Trade & Investment, 2014, European Commission, p.14

<sup>14</sup> European Union, Trade in Goods with ASEAN, 16 April 2014, DGTrade p.3



interdependence between the two regions.

The extensive and growing trading relationship is not solely driven by manufacturing and the export/import of tangible items, however. There is also a deep and burgeoning relationship in the provision of services in both directions.

Statistical data for trade in services often lags that for trade in goods as it is not as easy to collect and collate the information. Thus, the most recent data available comes from 2012.

Nevertheless, from the most recent data that is available, trade between the EU and ASEAN in services amounted to more than €55 billion in 2012<sup>15</sup>, with the trade in services growing by 6% over the previous year. At 13.8% of trade in services for ASEAN, the EU represents one of the larger trading partners for South East Asia in this sector.

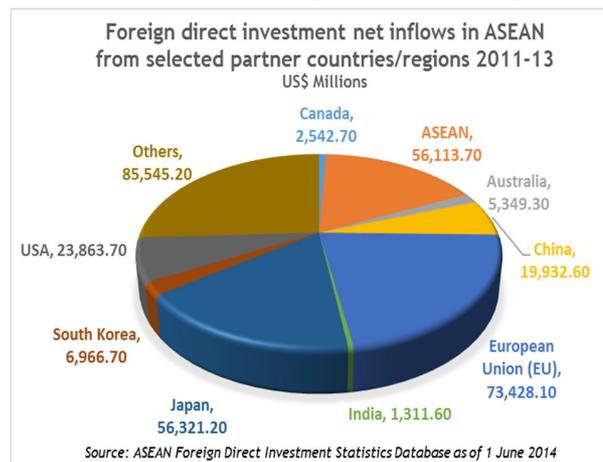
Additionally, The EU is by far the largest investor in ASEAN countries with EU companies investing an

average of €13.6 billion annually in the region in the period from 2005-2012<sup>16</sup>. Foreign Direct Investment (FDI) flows also reflect the overall picture of the importance of the trading relationship between the EU and ASEAN. In 2010, Asia accounted for over 20% of outward FDI from the EU, with Singapore alone accounting for over 7%. The inward flow relationship is even more impressive with all of Asia accounting for a little more than 29% of FDI to the EU (Singapore accounted for 8.4%)<sup>17</sup>.

ASEAN's own statistics show that the EU is the largest single source of FDI inflows to the region providing over US\$73 billion of FDI funds between 2011 and 2013, nearly US\$50 billion more than the United States, and US\$17 billion more than Japan<sup>18</sup>.

In short, the trade relationship between the EU and ASEAN is extremely important to both parties.

As such, it is the view of the EU-ABC that Ministers, Senior Officials. Multi-national corporations and Businessmen in both regions should pay more attention to the development and enhancement of trade relations. For instance, the EU should look to help and assist ASEAN as it moves to implement the final building blocks of the ASEAN Economic Community by the end of 2015, and both parties should look seriously at negotiating an EU-ASEAN Free Trade Agreement as such an FTA would certainly enhance trade and commercial development between these two complementary regions.



<sup>15</sup> EU-Singapore Trade & Investment, 2014 - DG Trade

<sup>16</sup> European Commission, <http://ec.europa.eu/trade/policy/countries-and-regions/regions/asean/>

<sup>17</sup> International Trade & Foreign Direct Investment, 2013 Edition, Eurostat, p.63

<sup>18</sup> ASEAN Foreign Direct Investment Statistics Database as of 1 June 2014



## About the EU-ASEAN Business Council

**THE TOTAL VALUE OF IMPORTS AND EXPORTS TO/FROM THE EU EXCEEDS €3,250 BILLION PER ANNUM MAKING THE EU THE WORLD'S LARGEST TRADING BLOCK**

Eurostat, International Trade and Foreign Direct Investment, 2013

The EU-ASEAN Business Council (EU-ABC) is the primary voice for European Business within the ASEAN region, being endorsed as it is by the European Commission and recognised as such by ASEAN. Independent of both bodies, the Council has been established to help promote the interests of European businesses operating within ASEAN and to advocate for changes in policies and regulations which would help promote trade and investment between Europe and the ASEAN region. As such, the Council works on a sectorial and cross-industry basis to help

improve the investment and trading conditions for European Businesses in the ASEAN region through influencing policy and decision makers throughout the region *and* in the EU, as well as acting as a platform for the exchange of information and ideas amongst its members and regional players within the ASEAN region.

Formally established and constituted in early 2014, the EU-ABC has existed on an informal basis since 2011, successfully organising several EU-ASEAN Business Summits and regularly interacting with the European Commission, ASEAN Member States, ASEAN Secretariat, and other related organisations such as the ASEAN Business Advisory Council.

The EU-ABC's membership consists of large European Multi-national Corporations and eight European Chambers of Commerce from around South East Asia. As such, the EU-ABC represents a diverse range of European industries cutting across almost every commercial sphere from car manufacturing through to financial services and including Fast Moving Consumer Goods and high-end electronics and communications. Our members all have a vested interest in enhancing trade, commerce and investment between Europe and ASEAN. The overarching objective of the EU-ABC to promote changes in policies, rules and regulations so that European businesses can more easily invest and develop their businesses in the region to the benefit of the local economies and populations as well as their own shareholders.

The mission of the EU-ABC is to:

- Advocate for European business interests in the ASEAN region;
- Push for the reduction and eventual elimination of barriers to trade (both tariffs and NTBs);
- Facilitate trade and investment between Europe and ASEAN;
- Collaborate and interact with the ASEAN Secretariat and other related bodies;
- Contribute to and promote pan-ASEAN economic integration; and
- Support the establishment of an EU-ASEAN free trade agreement, and FTAs between the EU and ASEAN Member States in the meantime.

**THE TOTAL VALUE OF IMPORTS AND EXPORTS TO/FROM ASEAN IS AROUND €1,820 BILLION PER ANNUM.**

ASEAN Finance and Macro-economic Surveillance Unit Database, 2013

To support this overall mission, the EU-ABC has established, and continues to develop, a series of Advocacy Groups covering both individual commercial sectors (e.g. Fast Moving Consumer Goods (FMCG); Automotive; Financial Services) and cross-industry issues (e.g. IPR/Illicit Trade; Human Resources & Labour Regulation). These Advocacy Groups are made up from leading MNCs in each area plus representatives from the Committees from our European Chamber of Commerce membership. This approach ensures a broad based approach to raising and handling issues that face industry and inhibit the ability of businesses to trade and invest.

Our founding membership includes the following companies and organisations:



For inquiries about membership of the EU-ABC please contact our membership team at [info@eu-asean.eu](mailto:info@eu-asean.eu) or visit our website at [www.eu-asean.eu](http://www.eu-asean.eu)

## Sectorial Position Papers

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The EU-ABC has established, or is establishing, a number of Advocacy Groups which look at a range of doing business issues faced within particular industries, as well cross-sector issues faced by business as a whole within South East Asia. In the annexes to this document we have included the current editions of some of the detailed papers from these Groups. Each paper looks at the particular issues that are being faced by individual industries operating within the ASEAN region, and then make a series of recommendations for changes on a Pan-ASEAN basis that could help to enhance trading conditions not just for the benefit of European businesses, but more generally for their industry sector.

The aim of these papers is to stimulate dialogue amongst policy developers and decision makers in the governments of ASEAN Member States, as well as amongst industry players and other relevant parties, with the hope and expectation that rules, regulations, practices and policies can be altered in such a way as to reduce protectionism, remove tariffs and non-tariff barriers, and either reduce regulation or ensure that regulation is more appropriate where it is required (such as in the areas of health and safety, security etc.), thus facilitating increased trade and investment.

The EU-ABC will regularly update these papers, and produce new papers from other sectors and on cross-industry topics. These papers will form part of a programme of continuing dialogue between European Business and the relevant authorities and associated interest groups in both the ASEAN region and Europe. Further updates on these papers and future papers will be published on our website as they become available.

## Annex 1 - Automotive Industry

### Background

With the implementation of the AEC in 2015, ASEAN will reach a prominent position to attract foreign investment. As ASEAN is set to become the world's sixth-largest automotive market by 2018, it is expected that regional sales will double to nearly 4.7 million vehicles from 2.4 million last year. Therefore, its 10 member-states continue to facilitate significant investments to flow into this region. A harmonisation of standards and regulations has to be seen as an essential step to the success of the AEC in 2015. Only with such a harmonisation can the creation of a single manufacturing base as well as free movement of goods be ensured.

According to the "CEO 360 Degree Perspective of the Automotive Industry in ASEAN", Indonesia, Malaysia, Thailand and Vietnam are demonstrating a compound annual growth rate (CAGR) of 10.1%. Sales in Thailand and Indonesia have reached over 1 million vehicles each, and a significant increase in production is expected based on local demands, with Thai dominance of nearly 2.5 million vehicles produced last year alone.

#### Production of Motor Vehicles

| Country      | Passenger Vehicles | Commercial Vehicles | 2013             | 2012             | Variance (%) |
|--------------|--------------------|---------------------|------------------|------------------|--------------|
| Indonesia    | 925,111            | 283,100             | 1,208,211        | 1,065,557        | 13%          |
| Malaysia     | 543,892            | 57,515              | 601,407          | 569,620          | 6%           |
| Philippines  | 26,490             | 52,679              | 79,169           | 75,413           | 5%           |
| Thailand     | 1,071,076          | 1,385,981           | 2,457,057        | 2,453,717        | 0%           |
| Vietnam      | 58,629             | 35,001              | 93,630           | 73,673           | 27%          |
| <b>Total</b> | <b>2,625,198</b>   | <b>1,814,276</b>    | <b>4,439,474</b> | <b>4,237,980</b> | <b>5%</b>    |

Source: ASEAN Automotive Federation, 2013

In addition to serving the regional market, ASEAN has assumed a greater role as a global supplier to the automotive industry, and is expected to grow in importance due to a competitive production base with strong competencies in certain product ranges. This will increase substantially not only in terms of economic growth, but also employment and technological advancement.

Since the last ASEAN-EU Business Summit in 2012, the automotive sector has seen significant improvements by the various governments, particularly in regulations and incentives to encourage the adoption of low-emission vehicles. While there has been progress in many areas, others still need to see further improvement.

#### Key recommendations:

- Alignment of automotive products with international UNECE standards
- Consolidation of approval and homologation processes
- Adoption of higher fuel quality and emission standards
- Harmonisation of the definition on local content requirements
- Technology-neutral vehicle taxation scheme
- Availability and quality of skilled workforce

The EU-ASEAN Business Council (EU-ABC) has identified key areas in order to raise ASEAN global competitiveness:

## Recommendations

### Alignment of automotive products with international UNECE standards

The harmonisation of automotive product standards is an essential basis for a single manufacturing base. As work has begun within ASEAN on the alignment of technical requirements, 50 UNECE regulations have been identified where 19 of those have been prioritized and will form part of the Mutual Recognition Arrangement (MRA) for automotive products in ASEAN.

#### The 19 Priority UNECE Regulations for Harmonisation are:

| Regulation number | Topic   |
|-------------------|---|
| ECE R13           | Heavy vehicle braking   |
| ECE R13H          | Braking of passenger cars                                       |
| ECE R14           | Safety-belt anchorages  |
| ECE R16           | Safety-belts  |
| ECE R17           | Strength of seats, their anchorages and head restraints         |
| ECE R25           | Head restraints (headrests)                                     |
| ECE R30           | Tires for passenger cars and their trailers                     |
| ECE R39           | Speedometer   |
| ECE R40           | Exhaust Emission  |
| ECE R41           | Noise emissions (L Category)                                    |
| ECE R43           | Safety glass  |
| ECE R46           | Devices for indirect vision (Rear view mirror)                  |
| ECE R49           | Diesel Emission   |
| ECE R51           | Noise Emissions of M and N categories of vehicles               |
| ECE R54           | Tires for commercial vehicles and their trailers                |
| ECE R60           | Driver Operated Controls  |
| ECE R75           | Tires for motorcycles/mopeds                                    |
| ECE R79           | Steering Equipment  |
| ECE R83           | Exhaust Emissions of M <sub>1</sub> and N <sub>1</sub> vehicles |

While discussion within the Automotive Product Working Group (APWG) under the ASEAN Consultative Committee on Standards & Quality (ACCSQ) is ongoing, 19 regulations have been identified but have yet to be agreed among APWG members. On this priority, regulations of their respective local agencies have been implemented according to their domestic industrial standards. Hence, this non-uniform progress is hindering the advancement of these priorities to be harmonised, where a different pace of adoption is observed within each market. More importantly, an identical methodology is yet to be seen when implementing UNECE standards across ASEAN.

Alignment with Global Technical Regulations (GTRs) will help increase ASEAN's competitiveness, and will enable the export of automotive technologies to countries following the UNECE standards. The alignment with international standards will, furthermore, ensure global automotive competitiveness as these standards not only serve local demand, but also fulfil more stringent global requirements for road safety and environmental protection.

#### *Recommendation*

ASEAN to adopt UNECE regulations for automotive products and to work closely with all member countries in the region to align the 19 priority UNECE standards. Target is to achieve a single regulatory regime in ASEAN by end of 2015. ASEAN should implement identical testing procedures using the same metrology methods, standards and application regulations.

## Consolidation of approval and homologation processes

Depending on domestic requirements, different approval and homologation processes have been observed. Local agencies (mostly a member of APWG under ACCSQ) require manufacturers to comply with local mandatory certification standards on top of the international standards that need to be adhered to.

This redundancy has a substantial impact on the cost and time spent due to unnecessary duplication of processes, as one test report and/or plant audit accepted by one agency is not accepted by other agencies. More importantly, this will have a direct impact on the development of the concept of a single manufacturing base in ASEAN to allow free flow of automotive products within the region. Hence this will further hinder the investment opportunity for ASEAN to become a global automotive player as it would only serve domestic markets. This consolidation of approval and homologation processes will also facilitate the formation of a single regime for future regional agreements with other key trade partners such as the EU.

### *Recommendation*

ASEAN to eliminate any non-tariff barriers by creating a single regulatory regime for approval and homologation processes to improve time and cost efficiency. We strongly advocate relevant authorities to recognise approvals based under the agreements administered by the World Forum for Harmonisation of Vehicle Registrations (WP29) and test reports by qualified foreign bodies and align their standards in order to facilitate exports based on UNECE-approved regulations.

## Adoption of higher fuel quality and emission standards

Globally, automakers have already moved towards modern low carbon emission technologies to comply with Euro V/VI standards and to reduce vehicle emissions significantly. In order to become a single manufacturing base for the global automotive market, it is essential that ASEAN harmonises emission regulations and fuel quality standards across the region and complies with international commitments.

A higher fuel quality with a low sulphur content for both petrol and diesel fuel is essential for the introduction of modern low emission technologies. The low fuel quality in most of the ASEAN countries (except Singapore and Thailand) is the biggest hurdle for the introduction of such modern low emission technologies. Low fuel quality standards are not only having an adverse impact on the environment, but also cause a serious disadvantage to the end-consumer since they do not have access to the latest innovations available, and the technical requirement of such modern technologies demand fuel of higher quality.

While ASEAN countries are encouraging and developing policies on fuel economy improvements for vehicles that are manufactured, assembled or sold in their respective countries, the availability of high quality fuel is actually one of the most effective means to reduce fuel consumption, leading to less dependency on crude oil imports and lowering fuel subsidies (where applicable). Currently, there is no clear plan to align those fuel quality standards across the ASEAN region.

### *Recommendation*

The introduction of higher fuel quality and emission standards is the pre-requisite for the introduction of environmental-friendly low emission technologies. In order to prepare for the AEC 2015 and to enable free movement of goods, ASEAN will have to implement more stringent fuel quality and emission standards and harmonize those standards across the region. A concrete roadmap of implementation is urged by automotive manufacturers and the oil companies.

### Harmonisation of the definition on local content requirements

Rules of Origin and local content are differently defined across ASEAN countries despite promoting local content requirements (40%). Without harmonised rules, local OEMs encounter higher production costs. As such, cheaper imported parts are preferred as compared to those produced locally, and this adversely impacts the local manufacturers and hence local employment.

In addition, different certification processes by different local authorities have resulted in complexity in applying the Rule of Origin. This impedes the integration of ASEAN to become a single manufacturing hub and market.

#### *Recommendation*

The Automotive sector recommends a harmonisation of related implementing procedures for local content and Rules of Origin application as part of the approval and homologation processes in order to become a single manufacturing hub by 2015.

### Technology-neutral vehicle taxation scheme

Environmental issues are becoming a major factor in general and in the automotive industry in particular. Therefore, we strongly advocate that vehicle taxation schemes should be based on the effective carbon dioxide (CO<sub>2</sub>) emission levels of vehicles, with technology-neutral regulations across the ASEAN countries. With a clear focus on the emission output of vehicles, the best (cleanest) vehicle technologies will be incentivised; and not by selected drive types only. This will enhance competitiveness and productivity among all market players and gives the end-consumer a wide range of options.

With such a taxation scheme, the consumers will be more likely to choose environmentally friendly vehicles, which would lead to a gradual decrease in the usage of old, high-pollution vehicles - a shift towards clean, green vehicles, and a reduction in overall fuel consumption and fuel subsidies (where applicable).

#### *Recommendation:*

ASEAN to promote to member nations the introduction of a technology-neutral emissions based taxation scheme, such that vehicles with low CO<sub>2</sub> emissions would receive a tax relief whereas high fuel consumption and high CO<sub>2</sub> emission vehicles would be taxed more, independent of their power train technology.

### Availability and quality of a skilled workforce

As growth in the automotive industry area is expected to continue, an increasing shortage in labour and skilled workforce is being experienced at all levels across ASEAN, particularly in the highly-skilled and technology-intensive manufacturing sector.

Despite an increase in the number of graduates and qualified engineers, ASEAN continues to experience a shortage of labour as these graduates do not meet increased industrial standard requirements.

For these reasons, ASEAN productivity in industrial sectors, particularly in the automotive industry, has yet to realize its full capacity.

#### *Recommendation*

ASEAN Governments to facilitate public/private partnerships in engineering and technical trainings to ensure that the workforce meets industrial demand, as well as allowing free movement of unskilled workforce where appropriate. In the longer term, the improvement of educational standards that incorporates industrial trainings as part of the academic curriculum should be considered in order to improve the quality of workforce.

## Transparency and law enforcement on parallel import vehicles

Parallel importation, also known as the “grey market”, has long been an issue of concern among the automakers in ASEAN. By under-invoicing and illegally importing vehicles without the normal emissions checks and licences, grey market importers are able to reduce significantly the duty and tax burden on vehicles. Additional cost savings from not having to undergo the normal testing regime in accordance with local regulations has also made grey market vehicles more price-competitive and quicker to launch in market. Such lax control has created an extremely uneven playing field, non-transparency in law enforcement and additional risks to the end consumer.

It is important to create and maintain efficient co-ordination among all relevant authorities to effectively ensure a level playing field for manufacturers and maintain or enhance the levels of investment in the ASEAN region by the European car manufacturers.

### *Recommendation*

We strongly urge the relevant authorities to exercise their powers in examining whether the declared invoice valuation is an appropriate customs value in accordance with the WTO Valuation Agreement. Relevant authorities should improve co-ordination to ensure the proper inspection and importation processes for grey market vehicles.

## Annex 2: Financial Services

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### Background

A strong and competitive financial services industry has an important role to play in achieving ASEAN's Vision 2020. South East Asia is an important market for European business institutions and the financial services industry has a key role to play as an enabler and facilitator of growth. The financial services industry supports proportionate regulation as a healthy and well-functioning financial sector can be a true enabler of real economic growth. Key to this is greater cooperation, economic integration and regulatory harmonisation in the region.

A healthy financial services industry is important for a number of reasons, including:

- Supporting economic development, including the long-term funding of major infrastructure projects in the region;
- Financing the development and growth of SMEs, the backbone of ASEAN's economy, and financing trade;
- Providing sustainable long-term financial solutions to fund people in retirement and to service the needs of ASEAN's growing middle classes;
- Deployment capital more effectively, including mobilising consumer savings into productive investment in the wider economy;
- The industry is also a major employer and contributes significantly to government treasuries through the payment of taxes.

Given the developments in the banking, insurance and capital market sectors and the need for more cross-border activity to support AEC's vision, we would like to reinforce the notion that financial literacy is of high importance to the financial integration agenda in ASEAN. To this effect, we propose the ministers accept a series of recommendations from enterprise in the private sector, in line with public sector interest, on best practices in financial literacy development for the region from the EUABC.

The desired effect is to build awareness and trust in the financial services sector within ASEAN as a bloc for ASEAN citizens as well as for foreign investors. If the finance ministers should accept such a proposal, the EUABC would be inclined to coordinate the design and delivery of such a document outlining a set of suggestions on how financial literacy may be a comprehensive exercise helping drive a more stable form of growth in the financial services sector while increasing individual, institutional and foundational capacity for financial services in the region. This would be in support of growing international volumes on the ASEAN Exchanges and for further capital market integration, as well as to enhance the understanding of ASEAN citizens about cross-border payments. The scope of any financial literacy programme can extend beyond capital market integration and cross-border currency flows, to include a wide range of topics such as savings, pensions, protection, capital investment, and more. Financial education, therefore, is a key building block of consumer protection and helps to mitigate the risks of consumers purchasing the wrong products.

In the following section areas and suggested actions are highlighted to help realise an integrated, healthy and competitive financial services industry in ASEAN.

### ASEAN Economic Community and Regional Financial Regulation

The development of an ASEAN Economic Community is welcomed and the European financial services industry encourages regional policymakers to continue with work towards the creation of an Economic Community. An Economic Community could help ASEAN better realise its potential on the world stage - by breaking down national barriers and encouraging cross-border economic integration ASEAN will

have greater influence on the global policymaking stage and will bring significant economies of scale advantages for the region.

Regulatory harmonisation reduces the cost of compliance for financial services firms operating regionally and would encourage longer term investments. A more efficient industry has more resources to invest and support the real economy.

The financial services industry welcomes moves towards the creation of the AEC and urges more to be done to ensure that the concept of a regional free market is achieved. The removal of national barriers - regulatory, trade, labour market restrictions - will help both local and international financial institutions deliver a more comprehensive service to customers in the region so that a seamless trading platform can become a reality.

## Market Access

There has been much talk about an ASEAN Qualified Bank license and more information about how this will operate, the qualifying requirements and the impact on international banks operating in the region would be welcome. There are international banks in the region with a very strong heritage in ASEAN that are able to provide greater pan-ASEAN product coverage - clarity around the how the license would operate and the wider impact of the proposals would be welcome.

## Capital Markets Development

The development of capital markets in the region is a cornerstone of economic growth. The development of stock exchanges and the securities market will provide local companies with additional sources of funding, making available essential capital for growth.

The bond markets in particular are fragmented and suffer from a lack of supply. The ASEAN+3 / Asian Development Bank's Asian Bond Markets Initiative (ABMI) is an important step and further measures to boost the securities market, both in terms of financial infrastructure development, supply and demand issues, accounting and regulatory compliance practices would be welcome.

Some of the key challenges to local bond market growth and integration include:

- Lack of harmonised regulatory standards in the region;
- Creating standardised documentation and investor due-diligence procedures;
- Creating a pan-Asian rating scale;
- Lack of bond market infrastructure, including a pan-Asian clearing system and a pan-Asian bond issuance and trading platform;
- Lack of harmonised taxation framework for negotiable debt instruments across the region, i.e. some jurisdictions apply withholding tax (WHT), whilst others do not. This is important to facilitate like for like comparison of net of tax return / yield across different bonds issued within ASEAN;
- Regulators allowing the trading in their jurisdictions the securities listed in other jurisdictions to avoid the issue of 'selling unregistered securities', and the Central Banks exempting from their convertibility rules securities traded under this platform;
- The G20 recommendations on OTC clearing are an important step towards creating a resilient financial system. Full implementation of the G20/FSB recommendations across ASEAN would be welcomed, to avoid regulatory arbitrage and the creation of new pockets of systemic risk.

## Payments

Facilitating cross-border electronic payments will assist intra-ASEAN trade flows and is in line with the creation of a truly integrated market. At present, national payments systems are not always

compatible with each other and work should be undertaken to create a harmonised system that allows national payments systems to operate and function internationally. A useful first step would be the creation of national payments advisory bodies, consisting of representatives of the Ministry of Finance, regulatory bodies, the central bank and local and international financial institutions. A national payments advisory body could help inform policy development with regards to electronic payments and could cooperate and confer with similar organisations across ASEAN.

## Retail Banking and Access to Bank Accounts

More steps should be taken to increase financial inclusion in ASEAN, ensuring everyone has access to a bank account and that financial capability is improved through high-quality consumer education programmes. Financial inclusion can be brought about through investment in banking infrastructure, the development of innovative banking tools and moving towards a cashless economy.

Financial inclusion brings benefits for consumers, the government and industry:

- Consumers - benefits include being an economic stakeholder in society with opportunities to access a greater range of savings, investment and protection products
- Government - only when financial inclusion is widened to everyone can moves be taken towards a cashless economy. A cashless economy is more transparent, efficient, and reduces opportunity for tax evasion.
- Industry - financial inclusion opens up new markets for the financial services industry and larger markets bring economies of scale and encourage innovation.

## SME Financing

Small and medium sized enterprises are the backbone of economies in ASEAN and it is essential that policies are in place to help SMEs grow sustainably. The global economic downturn has meant that many countries are relying on the SME sector for economic growth and to provide sustainable employment opportunities for their rapidly growing populations. In a globalised world, where intra-ASEAN trade is seen as essential to unlocking the full economic potential of the region, it is important that a regional approach is taken to facilitate the growth of SMEs in ASEAN.

The strategic action plan for SME development adopted in 2010 is an important step. It is essential they receive the support (financial and otherwise) to make investments for future growth and internationalisation. Growing SMEs is important to ensure the regional economy is innovative, internationally competitive and that an increasing working population has access to sufficient and sustainable sources of employment.

There are a number of cross-border and national policies that could be put in place to dramatically facilitate SME growth:

- Establishing effective personal and business credit bureaus;
- Enhancing information transparency, to help banks extend credit to SMEs. This could include effective company registers and tax reporting;
- Improving the legal framework governing property and security rights, including proper records of court judgments, effective registration of property and security charges, foreclosure procedure and time horizons;
- Effective and efficient government guarantee schemes across the region;
- Engagement and collaboration between governments and the private sector. The financial services community is keen to engage with governments on the development of policy, including establishing and improving access, quality and quantity of information on credit bureaus, working with regulators on the design and implementation of payments and clearing systems, development of electronic documentation to facilitate trade.

## Insurance

As the ASEAN region continues to enjoy strong economic growth, income levels rise and the need and demand for financial services naturally increases. The rapidly emerging middle class will require more sophisticated financial products to plan for their retirement and other life events such as their children's education. At the same time, countries are faced with ageing populations, presenting significant challenges to economic systems that have to adapt to shrinking labour forces, rising health care and pension costs and necessary economic restructuring.

The insurance industry plays a unique and important role within the financial services sector providing wealth protection and accumulation for consumers and servicing their long term retirement and saving needs, in turn reducing pressure on government budgets. The industry also serves a long term investor and partner in the countries and markets in which it operates. As major institutional investors, insurance companies drive economic development, mobilizing domestic savings into more dynamic productive long term capital, and playing an essential role in the development of capital markets.

In order to perform this function more effectively for consumers and continue to support economic development, the following recommendations are highlighted:

- Introduce measures to encourage the deepening and broadening of equity markets - bringing more SMEs to market and expanding their access to capital;
- Continue to deepen and develop capital/bond markets - deeper and more diverse corporate bond market and access to more long term dated bonds;
- Ensure adequate infrastructure in both credit rating and market making institutions;
- Ensure a degree of basic uniformity with regards to prudential regulation aimed at maintaining solvency and financial stability (however care needs to be taken regarding the globalization of 'conduct of business' regulation and the impact this might have on developing markets;
- Design policy frameworks that are supportive of long-term investing: the general investment policy environment for long-term investments often lacks transparency and stability;
- Introduce appropriate policy measures to encourage the development and provision of long term savings;
- Promote consumer financial awareness, education and literacy;
- Develop multi distribution channels enable consumers to choose their preferred market entry facilitating full financial inclusion, life insurance penetration rates continue to be considerably low in all ASEAN markets.

## Skills and Labour Market Issues

The movement of skilled labour across borders is important to ensure that the manpower needs of corporates - large, medium and small - can be efficiently met. There are substantial restrictions in place and ASEAN should look to build on progress made in this area. We would strongly encourage the financial services industry to be included in the mix of professions that are able to move staff across border with greater ease. Whilst it is understandable that countries will wish to maximise the employment opportunities of their own citizens and manage pressures on public services, a relaxation of cross-border labour restrictions would boost economic growth in the long term, providing even greater employment prospects for citizens in the future.

The financial services industry is international. The supply of jobs in the financial sector is fast outstripping the supply of local workers to fill these vacancies. In some cities this problem is



accentuated by remarkably low levels of unemployment. This inevitably means foreign workers are required to overcome the skills shortage and it is hoped that immigration rules will not hamper the growth of the financial services industry. In addition to ensure that immigration rules are proportionate, the development of a common ASEAN visa would improve the international competitiveness of the region - not just for financial services, but for business as a whole.

## Annex 3: Agri-Food Industry

### Background

Agri-Business is a key component of economies across the EU and ASEAN. The food and beverage industry is Europe's largest manufacturing sector while agriculture accounts for more than a quarter of GDP in several ASEAN member states.

Although agri-food products account for a significant part of both regions' international trade, outstanding issues in the regulatory arena are constraining development and growth. Within ASEAN, outdated regulatory practices and a lack of institutional capacity have contributed to problems with food safety, non-tax paid trade, overregulation and customs clearance delays. A number of market access issues have yet to be resolved satisfactorily. These include: high import tariffs and excessive levels of domestic taxation; discriminatory excise tax systems; widespread non-tariff barriers such as import quotas, licensing restrictions, and inconsistent or unreasonable regulatory standards; and inefficient SPS and Halal inspection and certification regimes. Other regulatory issues faced by European importers include restrictions on foreign investment, lax intellectual property protection, and substandard traceability protection.

### Overview of Agri-Food in ASEAN and the EU

#### ASEAN

Almost all countries in ASEAN are experiencing high economic growth accompanied by rapid changes in consumption patterns. A growing middle class is developing preferences for foods that are more convenient, nutritious and packaged in environmentally friendly ways. There is high growth expected in red meat, poultry, dairy, instant noodles, packaged drinks (juices and beverages), baby food, bakery products and premium beverage alcohol.

ASEAN has a large agricultural base with over 60 million hectares of arable land. Agriculture accounts for over 25% of GDP in several ASEAN member states such as Myanmar (50%), Cambodia (33.4%) and Laos (29%)<sup>19</sup>. The agri-food industry that processes and sells these agricultural products is increasingly sophisticated growing above 10 per cent per year. Through ASEAN's Economic Community blueprint, the seven priority areas for food, agriculture and forestry include<sup>20</sup>:

- Strengthening food security
- Facilitating trade in agriculture and forestry products
- Generating and transferring technology to increase productivity and develop agri-business
- Developing rural communities and human resources
- Involving and investing in the private sector
- Managing and conserving natural resources for sustainable development
- Strengthening ASEAN cooperation in addressing regional and international issues.

Although ASEAN as a whole is the EU's 3rd largest trading partner (after the US and China) with more than €206 billion of trade in goods and services in 2011, the EU's share of food imports into the ASEAN countries has tended to lag behind that of other ASEAN trading partners due to tariff, regulatory restrictions and requirements.

<sup>19</sup> Source: Agriculture and Agri-Food Canada (2011). *Agri-Food Regional Profile - ASEAN*. Available at: <http://www.atssea.agr.gc.ca/ase/pdf/3701-eng.pdf>

<sup>20</sup> Source: *ASEAN Economic Community Blueprint*. Available at: <http://www.asean.org/archive/5187-10.pdf>

## European Union

Businesses in the EU agri-food chain generate a turnover of €2.2 trillion and provide direct employment to more than 33 million Europeans.<sup>21</sup> Together, the European food and drink industries are the largest manufacturing sector in the EU in terms of turnover, value added and employment.<sup>22</sup> Overall, food and drink accounted for 6% of all EU exports in 2011, and 5% of all EU imports.<sup>23</sup> Distilled spirits are the EU's biggest agri-food exports with exports of €8.5 billion in 2011.<sup>24</sup>

EU agri-food imports are performing strongly and have expanded by 10 per cent on average over the last decade. Key product groups include processed animal based products, dairy products, frozen fruits and vegetables, confectionery industry products, various prepared foods and sauces, such as pasta, ice-creams and soups, and processed starch products. In 2011, exports of European agricultural products to ASEAN were worth €5.3 billion, while imports were worth €16.2 billion.<sup>25</sup> The EU's leading agricultural exports to ASEAN are spirits and liqueurs, cereal preparations, wine and vermouth, and dairy products.<sup>26</sup>

## Key Issues

While ASEAN and the EU markets offer great potential for enhanced trade and investment in agri-food, there continues to be key issues in the regulatory space that is constraining development and growth.

## ASEAN

The regulatory environment has struggled to keep pace with the growth in the agri-food industry. Outdated regulatory practices and lack of institutional capacity has contributed to problems in food safety, non-tax paid trade, overregulation and customs clearance delays.

### Market Access:

#### *Tariffs, taxes and non-tariff barriers*

For some sectors, there are prohibitively high import tariffs which constrain exports and encourage illegitimate activities. Similarly, excessive levels of domestic taxation or discrimination, restrict consumer choice, fuel non-tax paid activities and bleed government of revenue. For example, excessive duties and discriminatory excise taxes impact the trade of EU wines and spirits into a number of ASEAN countries like Indonesia and Thailand encouraging smuggling and illicit liquor production, which risks consumer health.

Alcohol excise structures should be non-discriminatory and rates should be set at a levels which are effective. This means as far as possible they should be linked to a per-litre-of-pure-alcohol (LPA) basis, and at a level which does not incentivise non commercial alcohol at the low end of the market or illicit activity at the high end. Such structures are recognised as best practice internationally (for

<sup>21</sup> Source: Food Drink Europe analysis: "Regular agricultural workforce of 27.6 million (Eurostat 2007), 4.2 million jobs in food and drink industry (Eurostat 2012) and 1.8 million jobs in wholesale of agricultural and food products (Eurostat 2010)." Available at: [www.fooddrinkeurope.eu](http://www.fooddrinkeurope.eu)

<sup>22</sup> Source: *Data & Trends of the European Food and Drink Industry 2011*. Available at: <http://www.fooddrinkeurope.eu/publication/data-trends-of-the-european-food-and-drink-industry-2011/>

<sup>23</sup> Source: Eurostat analysis. Available at: [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Extra-EU\\_trade\\_in\\_goods](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Extra-EU_trade_in_goods)

<sup>24</sup> Source: Spirits Europe analysis. Available at: [http://spirits.eu/page.php?id=17&parent\\_id=2#.UO-Pn-SKKul](http://spirits.eu/page.php?id=17&parent_id=2#.UO-Pn-SKKul)

<sup>25</sup> Source: European Commission DG Trade. *ASEAN Main Economic Indicators 2011*. Available at: [http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_113471.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113471.pdf)

<sup>26</sup> Source: European Commission DG for Agriculture and Rural Development. *International Aspects of Agricultural Policy* (p. 55). Available at: [http://ec.europa.eu/agriculture/consultations/advisory-groups/international/2012-03-12/report\\_en.pdf](http://ec.europa.eu/agriculture/consultations/advisory-groups/international/2012-03-12/report_en.pdf)

example all EU Member States must apply specific tax regimes on alcoholic beverages) as they are administratively clear, allow certainty of revenue generation (by avoiding valuation challenges) and support responsible levels and patterns of drinking. Where such systems are not possible immediately and an ad valorem component remains, their negative effects should be minimised by at least implementing a mixed structure (i.e. part ad valorem, part specific). Ad valorem components should be based on CIF (to ensure transparent Customs Valuation rules are applied), set at a moderate level which can be enforced and capped to ensure illicit activity is not incentivised.

Non-tariff barriers, such as the imposition of import quotas, restrictions on import/distribution licensing arrangements and product regulatory standards that are onerous and lack consistency only distort trade and consumer choice. In Vietnam, a number of non-tariff measures have been introduced on imported alcohol and other sectors to address economic and illegitimate trade concerns. Such developments need to be done in full consultation with stakeholders to ensure they do not undermine legitimate business operations and are not trade barriers that breach WTO rules.

#### *World Trade Organization (WTO) compliance*

Taxes and regulations should comply with international trade agreements and where there is a possible breach, they should be rectified as soon as practicable. In the Philippines, the government has just revised its distilled spirits excise structure following the EU and the United States' successful WTO action against the discriminatory nature of its tax system. This has not only enhanced the Philippines reputation as a trade partner, but also delivered more efficient revenue collection for the government and fairer prices for consumers. Of the four WTO cases on discriminatory taxation taken to a panel decision, three have now been in Asia (Korea, Japan, Philippines). Given the scrutiny trade partners currently have on potentially discriminatory tax structures in other ASEAN markets, such as Thailand and Indonesia, without rectification to ensure local products and imported products pay the same tax, it is likely there will be more.

#### *Technical standards and product classification rules*

Technical standards and product classification rules across ASEAN are not always compatible with internationally generally accepted rules such as the International Food Security Standard (*Codex Alimentarius*), which the EU follows. Differences in definitions or standards can result in trade barriers when they are inconsistent with international standards. Product registration procedures are often lengthy caused by limited capacity in the national food registration offices and lack of mutual recognition agreements (MRA) with the source countries of food products. Food additives have also increased as manufacturing technology has developed requiring the need to establish national lists of food additives to accommodate these developments. Ideally, these should be in line with the *Codex* guidelines.

#### *Labelling*

Labelling requirements can be extremely onerous in some countries often exceeding the requirements needed to adequately inform consumers. This can lead to additional packaging costs and could be a non-tariff barrier if the requirements for imported goods differ to that for domestic products. Certain requirements should also be exempted for specific products where they are not relevant or would be unnecessarily burdensome. For instance, ingredient listing and detailed nutritional labelling in tabular format should not need to apply for alcohol beverages which have simple principal components (alcohol and water) and, at a minimum, already provide information relating to alcohol content, allergens (if any) and responsible drinking reminders. A label should provide correct information to consumers and avoid requirements which may be perceived as misleading.

### *Sanitary and Phytosanitary Standards (SPS)*

Some SPS requirements in ASEAN can exceed internationally accepted guidelines/recommendations and often require extensive production site inspections for diseases or residues by the importing country, which causes considerable cost to exporters and delays without added value to product safety.

### *Religion and Halal standards*

ASEAN and the EU should explore constructive ways to facilitate trade in Halal products and ensure that Halal requirements do not constitute a barrier to trade.

### Regulatory Improvements:

#### *Foreign Investment restrictions*

Many ASEAN countries apply restrictions in the agri-food sector. For example, international alcohol beverage companies are prevented to engage in any new form of foreign investment into Indonesia due to investment restrictions. The effectiveness of these restrictions, taking into account the contribution that such investments can make to employment growth, export income, industry value-add, tourism benefits, needs to be reviewed regularly.

#### *Intellectual property protection*

Protection of European geographical indications could be enhanced across ASEAN and should be a priority for the free trade agreements between the EU and ASEAN Member States that are currently being negotiated or will be launched in the future. Greater IP protection for wine and spirits in markets like Vietnam and Malaysia will discourage widespread contraband and counterfeit activity.

#### *Earmarked Taxes*

An earmarked tax differs from a general tax in that the receipts it generates can only be spent for a pre-designated purpose. However, the conditions for earmarking to work effectively are very onerous and in practice are never met. Instead, the application of earmarked taxes introduces a range of serious problems that undermine good fiscal policy and leads to a loss of transparency in public expenditure.

#### *Traceability protection*

EU law and the *Codex Alimentarius* guidelines, require production lot codes on food packaging to be able to trace products throughout the supply chain. This supports consumer health and food safety by providing an avenue for effective and targeted product recall. It also provides an effective tool to identify illicit trade of products. Regrettably, traceability information is not protected across ASEAN, which, for highly traded products like distilled spirits, leads to illegitimate traders' removal/modification/replacement of production lot codes to ensure the sales of illicit products cannot be traced.

## Key Recommendations

### Elimination of import tariffs and non-tariff barriers

Import tariffs and other non-tariff barriers should be phased out over time. The strengthened focus on free trade agreements between the EU and ASEAN member states provide an opportunity to liberalize tariffs and remove burdensome regulations, and should be prioritized by the European Union and ASEAN countries. Authorities must also ensure that where measures are implemented to

recognize religious and/or moral sensitivities that they do not constitute a barrier to trade and are implemented in the least trade restrictive manner.

### Compliance with WTO rules

Internal taxes and regulations should be simple, transparent and be fully compliant with WTO rules. In particular, non-discriminatory taxes and measures need to be in place to create a level playing field for domestic and imported goods, establishing a competitive business environment in ASEAN.

### Harmonisation of technical standards/definition and product classification rules with internationally-recognized standards

Resolving differences in definitions and standards on goods such as alcohol beverages across ASEAN would minimize inefficiencies and enhance trade. The EU's *Codex Alimentarius* guidelines provide a useful benchmark which ASEAN countries should consider.

### Greater harmonisation and simplification of labelling rules

Harmonisation and simplification of labelling rules for packaged goods will simplify processes, reduce costs and allow industry to move stocks between markets in response to consumer demands.

### Intellectual Property rights implementation and enforcement

Protection of IP rights should be paramount including strong trademark protections and recognition of geographical indications, e.g. Scotch whisky, Irish whiskey, Irish Cream, Cognac and Champagne. Enforcement of those laws is also just as critical.

### Traceability protection

ASEAN should provide protection on producers' traceability information via legislation. It is fundamentally important to protect consumers, support legitimate EU trade and to deter illicit trade.

### Industry consultation

Governments should consult industry on proposed amendments or any new regulations affecting the agri-food sector. Issues of compliance with international rules, efficiency and economic impact should be discussed. Domestic and foreign-based companies including organizations like the International Chambers of Commerce should be consulted. An "EU-ASEAN Agri-food Consultative Committee" comprising of interested companies and other stakeholders could be established, which would comment on proposed draft regulations and engage in a constructive dialogue with government.

### EU-ASEAN co-operation

The EU and ASEAN should strengthen co-operation in the following key areas:

- Trade related capacity building support to regulatory and enforcement institutions in ASEAN;
- Product safety, labeling and technical standards, and SPS acceptance;
- Establishment and protection of producers' traceability system;
- Mutual recognition of food product registrations and of export establishments certified by the national competent bodies;
- Export Quality Infrastructure, which includes testing laboratories and inspection agencies; and,
- Best practice customs valuation and transfer pricing framework for related party transactions.

## Annex 4: ICT

The positions and recommendations in this paper are based on the common interests of that voice of business in ASEAN economies which: support open markets and fair competition; support foreign investment and service sector liberalisation; and, recognise ICT as an engine for innovative growth. The vast differences in state of development and effective use of ICTs across ASEAN are shown in the Networked Readiness Index - see Figure A. But integration forces are reflected in these regional positions and also in various programs such as the aims of the ASEAN ICT Masterplan - see Figure B.

The ASEAN/EU responses to the 2013 ICT Recommendations presented at the March 2013 EU-ASEAN Business Summit have been taken into consideration.

### Issues and Recommendations

#### Structure

The telecoms industry works best for the economies which it serves if it is well structured. The desired telecoms industry is well reflected in legislation in most ASEAN economies, but the reality is often different. All operators should be on a level playing field with arms-length licensing from a single National Regulatory Authority (NRA), a wholesale market with mandated access pricing, fair interconnect and competition regulation. The protection of incumbent operators and national champions inevitably hurts end consumers and the wider economy which the industry serves. We encourage foreign investment participation in info-comms and avoiding special anti-foreigner rules. There are AFAS targets and these should increase investment, diversity and quality of service. An optimal size seems to be 3-5 mobile operators. Forced entry may not be conducive to stated outcomes.

The sector is evolving rapidly. Considering MVNOs and OTT players:

- ASEAN regulators should promote a market-led approach to competition and innovation embracing traditional telecommunication providers and newer OTT players.
- Keep the entire communications and internet space competitive and attractive to investors, while restraining dominance where it exists

#### Recommendation 1:

Telecoms sector needs the right structure; fair and equal treatment, ideally all operators under the same kind of licence conditions from a single regulator where foreign investment is encouraged, noting the AFAS targets. A wholesale market with regulated pricing is encouraged. The propping up or biased treatment in favour of state-owned enterprises in the sector is detrimental to the sector, its users and the economy in the long run. Consideration should be given to an optimal number of mobile operators. OTT players are part of the industry. Inclusive regulation and net neutrality principles are needed.

#### Skills, Education and free movement:

ICT skills are in short supply. The nature of the industry is global. Confining source pools to national boundaries makes it harder to find the right skills and limits innovation and participants. National decisions need to go beyond the pace of AEC agreements.

#### Recommendation 2:

Modify laws and rules to support free movement of skilled people and invest more in education and training in ICT areas. Recognition should be by a competency framework, not additional certification or licensing regulation.

### Independent National Regulatory Authority

An independent National Regulatory Authority, whether 'merged' or not, is important for investor and operator confidence. Three dimensions: Independent of government direction (even if generally a requirement to comply with overall policy) - can the NRA take action without approval and not be subject to micro-directive from government?; Independent of any operator (sometimes heavily influenced by government-related operators); Integrity: independent board with some independent, non-executive directors. Many NRAs in the region have a dual role - that of industry developer and regulator: when well managed, this is not seen as a conflict of interest.

#### Recommendation 3:

Modify rules and practices to meet the three dimensions of NRA independence. Clearly define the policy role of government vs the regulatory role of the NRA. Weakening institutional strength is not healthy in the long run.

### Value in freedom of the internet

Over-played national security is often cited as the reason for the support of restrictions on internet usage. Cybersecurity and social harmony are important but they do not justify the changes to the ITU Regulations which would weaken a strong and effective internet. The internet needs to be trusted and continue to make positive contributions.

#### Recommendation 4:

Changes to ITU Regulations to allow for intrusion, censorship etc., are not conducive to continuation of the positive contributions of the internet. The internet needs to be trusted in order to continue to be an effective business tool.

### Data Protection

In the world of Big Data, investor, consumer and user confidence in the way data is collected, stored and applied is needed. Cross border management regimes need to be workable.

#### Recommendation 5:

Data Management/Data Protection legal regimes are needed; there are benefits in having a regional model which also provides a workable regime for cross-border flows.

### ASEAN ICT Masterplan and Spectrum; Nationalistic developments

Apart from co-ordination about spectrum use (including the engagement of the EU through the READI programme), progress with several aspects of the ASEAN ICT Masterplan has been disappointing.

#### Recommendation 6:

Spectrum management harmonisation continues to be important. There are benefits in regional co-ordination and harmonisation. Unfortunately in some areas, for example participation in the sector and deployment of foreign skills, the trend in some cases is away from AEC integration.

## Individual Economies

Select issues (non-exhaustive) from each ASEAN economies are shown which illustrate the regional/multi-local positions and recommendations. Order is alphabetical.

### Brunei

The existence of two mobile operators illustrates that competition is possible even in a small national market. However, the take up of higher end mobile data services could be enhanced by structural and operational incentives.

### Cambodia

The draft Law on Telecommunications (released July 2014) sets out powers of the Ministry, establishes the Telecommunications Regulator of Cambodia (TRC), provides for licensing/authorisation of services, standards, quality of service, numbering, and universal service obligations.

The draft Law diverges from exemplary practice and advice from respected agencies such as the ITU.

The emphasis of the draft Law seems to be aiming to control key sector assets and infrastructure, including mandating the separation of infrastructure, return of all spectrum to the Government, and power to take control of network services and equipment and the tariffing of services.

The definition of powers of the Ministry and the TRC, including lack of proportionality in penalties and lack of appeal process or recourse to independent body, are amongst the issues to be addressed.

Consistent with our general recommendations, a focus on creating a competitive, innovative industry as a whole is needed.

Continued support for **consolidation** in the industry seems economically sound, thus not issuing additional licenses in the mobile sector or mobile broadband licenses to new operators. A consultation process on technology-neutral unified licensing with a view to migrating towards a new and transparent licensing framework by 2014-2015 would be welcome.

Linking the **National Broadband Plan** with the **Digital Dividend** and **Digital Switchover Policy** to ensure holistic policies would be welcome. Retention of the **interconnect** MTR at the existing US cents/min should be accompanied by specific reform in other areas, which is critical as it represents Cambodia's willingness to support the implementation of ASEAN ICT Masterplan 2015 by facilitating transparent and harmonized ICT regulations with other ASEAN members.

We believe **retail pricing caps** are not justified. As the retail market is competitive and maturing, relying on regulated wholesale is preferred.

### Indonesia

Social media take-up is very high; Indonesia is fast becoming a mobile nation. Infrastructure investment in a competitive industry has been quite strong. A national focus on broadband is commendable but we would caution against the extent to which certain restrictions on permitted use of infrastructure with regard to content are appropriate.

**Type Approvals** are a normal part of ensuring that appropriate equipment is connected to networks. But there is no real need to require re-certification of equipment tested in global labs. An ASEAN standard **process** may be a positive step. Various restrictions on the importation of tested and certified equipment is, in effect, an NTB, and a review of the tax treatment would be helpful.

## Laos

As in Cambodia, the mobile market has benefited from competition. The need for enhanced fixed line especially for wholesale and backhaul is needed. The possibility of privatisation of Lao Telecommunications would be a major milestone.

## Malaysia

**Net Neutrality** approach is similar to that described under Singapore, i.e. freedom of internet traffic is essential, lawful content should not be blocked. But some traffic shaping and management by network operators is necessary to ensure a reasonable level of service quality, prioritisation of wholesome content for nation-building and public safety, as well as the commercial viability of service provisioning ("Smart Network" capabilities). MVNO development has been good in Malaysia.

With more countries in Asia and around the globe supporting and aligning with the APT700 band plan (698-806MHz) for **digital spectrum**, ASEAN economies would do well to expedite their decision to align as soon as possible to capitalize early on the potential economic growth associated with broadband proliferation, while managing expectations and needs of broadcasters.

Greater predictability and transparency would be welcome in spectrum allocation as multiple bands are up for expiry (850/900/1800), making this a topical issue. Clarity on plans and allocation method are important. Globally, experience shows that an auction process (for all commercial spectrum) delivers the best economic value to the nation as well as consumers.

Lifting of **foreign equity caps** is a precondition to industry stimulation and useful growth. Malaysia has done well to lift them in some other sectors. There is some lack of clarity about actual foreign equity cap for mobile operators (NFP and NSP license holders). In a public statement by the Prime Minister in October 2012 the cap was lifted to 70%, and this was also announced on the Ministry's website. This is in line with AFAS expectations and clear confirmation would be welcome.

Malaysia, particularly the public sectors and GLC's, should **increase transparency and competitiveness in sourcing and partners** in major tenders. Instead of the traditional system hardware/software outright purchases focused on price, Malaysia should look for strategic partnership with the EU-ICT companies that will result in skills and knowledge transfer, benefitting Malaysia in the long run.

**Cybersecurity** technology deployment needs enhancing. The horizontal (non-sector specific) PDPA (data protection law) is a positive step. Overall it should be more efficient for ASEAN to push for the development of ASEAN-wide standards for the treatment of customer data without the need to mandate detailed prescriptive rules or regulations at regional level.

## Myanmar

The enormous changes in the sector in the past 12 months are remarkable. The issuance of two technology-neutral telecoms licences to Telenor and Ooredoo and the rebuilding of MPT though a major strategic alliance all bode well for the sector and the contribution it can make to the national economy. The Telecoms Law was promulgated in 2013 but only gives a high level framework for the sector. This requires a substantial amount of Rules and/or Regulations in order to provide a prescriptive framework for the sector. The World Bank provided a set of priority Rules in late 2013 which were subject to a full public hearing, but due to capacity restraints at the Attorney General's Office none of these have, as of today, been issued. These include detailed Licensing Rules, Interconnection and Access Rules, Competition Rules, Spectrum Rules and Numbering Rules.

In light of that the two new licenses were only issued on the 5<sup>th</sup> of February 2014, and where both launched in the August 2014 timeframe, the only viable transmission options are rental from MPT. This has proved to be extremely difficult in light of the current process of integrating their new partners. Furthermore, the absence of the detailed Rules further complicates the decision making in the Regulatory Body PTD although the engagement with the industry to find solutions has been remarkable, thus providing the required trust between industry and Government. Capacity building for policy and regulation with the Ministry and Regulatory Agency to develop the necessary expertise to implement the framework should be a high priority.

A major infrastructure gap exists in Myanmar due to lack of fixed-line backbone and backhaul.

The Myanmar Government recently requested assistance from the European Union in relation to the preparation of the draft Lawful Intercept and Network Shut Down Regulations. Such a draft, when finalized, will go to a full Public Consultation prior to finalisation.

Above all else, we urge as our **one over-arching recommendation** that Myanmar finalise the right set of rules, regulations, investment incentives and vision for a competitive, attractive and innovative industry, backed by a workable plan. Those economies which have done this have produced innovative, attractive and effective sectors. Those which have not are still seeing sub-optimal performance, corruption having a strong effect, and the industry not serving key stakeholders well: business, government, individual users and the overall economy.

## Philippines

The **Data Privacy Act** is seen as a positive step. The situation with the **Cybercrime Prevention Act** perhaps illustrates the challenge with potential over-reach: balancing the importance of protection from intrusion with maintaining certain freedoms.

**Consolidation** in the industry through PLDT-Smart acquiring Sun Cellular resulted in only two major cellcos. **Movie and TV** content on mobile is seeing positive development. **E-Learning** systems development has shown some very positive steps.

## Singapore

The **cost of bandwidth** in Singapore needs continual monitoring. Surveys in 2013 showed an increasing gap of prices for business customer's access solutions in Singapore vs Hong Kong, probably due to lower levels of competition due to timing of liberalization and different ownership.

The NGNBN (Nationwide Next Gen Broadband Network) is focused on consumers and SME business customers, not corporates. **Facilities-based competition** and regulated wholesale pricing will continued to be needed for these larger groups. The decision to form a trust to own the facilities-level 'NetCo' (OpenNet) in the NGNBN context was controversial and was the subject of objection in September 2013 by most of the industry. One key issue was that in the initial model, the incumbent was appointed by OpenNet to effect rollouts, but understandably its loyalties were for its own interests. It remains to be seen whether the prescribed safeguards will be effective to meet the strategic and operational objectives.

On **Net Neutrality**, the right and need of network operators to dimension, manage and shape networks is important. While we recognise that requirement, we recommend no blocking of legitimate Internet content (and support the IDA's recommendation in this regard). Services and applications and ISPs and telecom network operators should not block legitimate Internet content, services and applications. Broadband providers should not be allowed to favour their own or commercially affiliated content, services and applications over others and it is the end-users who

should choose which to access. “Blocking” is not only outright blocking, but also as service degradation so as to render particular content, service, or application unusable (*de facto* blocking) or as an additional tariff for particular packet types (economic blocking).

Content blocking, self-censorship are issues separate to the above.

A related issue is the amount of **bandwidth demanded by broadband mobile**. OTT (Over The Top) providers mean that network operators have a larger load to cope with, and are using WiFi handoff - hence heterogeneous networks (hetnets). IDA’s policy uses a non-discriminatory principle and is a reasonable balance of competing requirements.

**ICT skills** are always in short supply. Our recommendation is to strive for an innovative and entrepreneurial mindset in graduates and other ICT industry participants. This implies a change to education and also continuing to allow participation by foreigners. At the same time, no nation can satisfy demand for ICT skills from its own citizens only. Non cumbersome access to foreign skills is essential for an effective ICT industry. Recent moves to restrict foreign manpower do have a negative impact on Singapore as a regional hub.

The **Data Protection** legislation has been widely welcomed by industry and consumers and came into force in July 2014, although it appears that the ‘consent’ aspect has been dealt with on a ‘take it leave it’ basis by some providers. It deals with cross border use and other important aspects. The operation of the law will be widely watched as a possible model, perhaps without a central Do-Not-Call register at least initially.

## Thailand

The current administration in Thailand, the National Council for Peace and Order (NCPO), has obtained royal assent to an interim constitution which provides for an executive, a unicameral legislature (NLA) and a National Reform Council (NRC). There is a serious commitment to reforms and moves away from corrupt practices.

But some developments, in our recommendation, need revising as they would if not checked, have some long term negative consequences.

World experience shows that the telecoms sector needs to be appropriately structured. For a long time special privileges have been given to the two main State-Owned Enterprises in the sector. As with all bodies of their kind, SOEs need to evolve to playing a productive role in the sector, for example by being fixed line wholesale providers and for TOT to continue with its role as a retail fixed line provider. Continued privilege support in our recommendation does not aid this evolution.

The Frequency Act 2010 includes a long-debated compromise which resulted in a timeframe to underpin this evolution. Changing it now in ways which would allow further delay with this evolution will set the industry, and key user groups, back. A related group, the JFCCT, has written about this in May 2013<sup>27</sup> and an all-day conference in July 2013 highlighted by example the need for and benefits of such evolution.

One stated reason for the review of the Frequency Act is to ensure transparency and better returns for the now-postponed 4G auction. It can rightly be said that the 3G spectrum auction outcomes were in line with regional practice, but some have felt that the 3G auction lacked competition. If changes are designed to maximise benefit to Treasury, we would note that the more that is sought via

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<sup>27</sup> See <http://www.jfcct.org/files/2012/10/ICT-SOE-Development-ICT-Minister-13-May-2013.pdf>

spectrum auctions in up front receipts, the less generally available for network and service investment. Specifically we recommend:

- The proposed change which would require the use of SOEs for infrastructure, on the basis that they need support, is not in the interests of the industry, its users or the wider economy.
- Extending existing SOE spectrum rights enabling them to compete with the private sector is also not in those interests.
- All spectrum for commercial use should be allocated by auction.
- The long term aim must continue to be direct licensing from the NBTC for all operators.

We strongly encourage the authorities to seek a well-functioning, competitive industry as a whole, rather than shoring up the welfare of existing arrangement with the SOEs.

An effective **wholesale structure and market for broadband services** are needed. Key issues needing attention are how an effective wholesale broadband market will be created, some issues concerning whether existing policy can meet overall objectives, the cost of implementing government policy, the source of the investment needed, making the investment attractive to the private sector with an overall aim of achieving a realistic target of a large percentage of the population for quality broadband services within a reasonable time and ensuring a competitive structure.

While price based competition has taken hold in 2G markets, there is little service and innovation competition. Further liberalisation to promote this type of competition is needed.

Great cognisance should be taken of international trends in **broadband** development. That an existing State Owned telco Enterprise (and an unevolved one at that) as the centrepiece of the nation's broadband infrastructure is not likely in our view to produce the best result. The re-monopolisation of broadband infrastructure and services is in our view not a healthy trend. It is well acknowledged in various reports that the state of broadband infrastructure and services lags many other nations and is an impediment to Thailand's competitiveness.

We also recommend the raising of **foreign equity limits** for *all* categories of telecoms licences, with a closer review of some possible limitation in those parts of category 3 licences where fixed line services have a domestic national obligation. The exceptional allowance of high foreign equity levels in category 1 licences should be made an overt policy. The '**Foreign Dominance**' regulation is a scourge on the industry. It is overtly and unreasonably anti-foreigner, and due to its nature, it pre-empts new foreign investment in the sector from both inside ASEAN (70% equity cap) and outside (49% equity cap) and is now subject to examination by the WTO Council for Trade in Services, in an enquiry brought by Norway and supported by the EU, US and Japan.

The **work permit and visa regimes**, we believe, need major changes to support availability and development of skills. We commend all initiatives to enhance the development of critical thinking skills in the education and training context, but work permit and visa regulation for ICT skills in particular are in dire need of review. Recent detailed submissions by foreign business interest groups have been made on this topic. We do not recommend creating a local regime for the certification of **IT skills**, rather using a competency framework.

Thailand has made strides in **creativity** measures in IT and other areas, but overall programs have gaps.

**Software piracy** rates are still high and we recommend improved education, and enforcement. The responsibilities of on-line intermediaries (ISPs, mobile operators, data centres) in the context of

copyright infringement needs balance and we recommend a review of the proposed changes to the Copyright Act.

A **trusted internet** is an important economic tool. Internet governance thus means that interception, surveillance for national security reasons should not undermine that trust. Our long standing recommendation is for revisions to law and policy, starting with policy and practices.

**Equipment standards** (e.g. set top boxes, smartphones) and Type Approvals should be to published standards which are regionally compatible, even if there are some Thailand specific features. There is slow progress on ASEAN harmonisation. The certifications of global labs should be respected. The feasibility of a national smartphone company (a separate issue) is doubtful economically.

A **single international gateway** would not be a positive step for attracting foreign investment. Reliable, world class communications infrastructure and quality services are very important.

A government - run social media may be seen to be more about control and acceptable messaging. We would recommend that such moves are not necessary.

Some progress may be made on various **government procurement** topics, including removal of the unlimited liability requirement, selection based on getting best overall value and related issues.

We also recommend a continued focus on enhancement of the services sector and the development of **higher-end services** such as BPO, KPO and related activities.

## Vietnam

The **real competitiveness and future development** of the telecom sector continues to be questionable. The mobile sector is still dominated by three 100% state owned enterprises, which combined account for just under 90% market share. In order for smaller operators to effectively compete, consolidation within the mobile sector will be needed, as are policies which promote fair competition. The ISP sector is also dominated by SOEs. The needs of smaller players should be recognised and their growth promoted to stimulate competition which will lead to innovation, efficiency and better service to all user groups. WTO provisions and AFAS do open the door for investment but do not seem to be followed. An EU-Vietnam FTA should bring positive developments. Programmes supporting SOE evolution including at least partial privatization are recommended. Strategic policies are needed to make that work effectively.

Current **competition** in the mobile sector largely focuses on prices, but not on quality of services and innovation. Both prices and service quality in the ISP sector can be greatly improved, as that will have a positive impact on national competitiveness. We welcome encouragement of competition in service quality, price and encourage innovation in all sectors. Bandwidth prices on a regional basis are high. The situation illustrates the benefits which an effective **independent regulator** (NRA) could bring.

Positive moves in eGovernment are welcomed, but the proposed (draft) **IT Services decree** with heavy restrictions on the provision of IT services will not, in our recommendation, serve industry users nor the economy. If only local companies can provide IT services, the cost benefits of on-line delivery will be lessened with no advantage in skills. Noting that:

- Both Vietnamese and foreign entities which “directly participate” or “are related to IT services” in Vietnam thus has a very broad coverage;
- Investors in the renewing and refurbishing hardware business must apply for a license from the MIC, even though they have already been granted an investment license and the MIC was consulted and it consented to investment during the licensing process; and,
- IT companies which are licensed to provide IT services must also register certain IT services

These requirements would make Vietnam unique among ASEAN countries and create significant barriers to doing business in Vietnam. Such a decree would deter many IT service providers from investing in Vietnam and would place Vietnam at a disadvantage.

By imposing certain requirements such as licensing and certification and impractical conditions (e.g. university degree) on consultants, the Draft would prevent many experienced foreign IT experts and consultancy service firms from providing advisory services in Vietnam.

Entities providing IT services to state bodies must be “Vietnamese organisations or individuals.” Such a requirement, in addition to raising issues in the context of WTO commitments on national treatment, will unduly restrict the range of choices available to state bodies

We thus recommend a major revisiting of this proposed decree.

**Decree 72** (from late 2013) introduced a number of requirements that businesses in Vietnam, as well as foreign investors and those providing internet services on a cross-border basis, are finding onerous and impractical. For example:

- persons providing public information that is accessed by Vietnamese people or from Vietnam by anyone, must comply with Vietnamese law and the regulations on the cross-border provision of public information to be issued by the MIC. This provision seems to apply to most websites due to the very broad definition of “public information”.
- A new local server requirement for general news websites, online social networks, mobile telecommunications network based content services, and online games. If this requirement applies to the cross-border supply of these services (as seems likely) it would call into question whether these services could be provided on a truly cross-border basis at all.
- News and other sites to require licences.

Vietnam has many ingredients to make it an attractive IT and start-up hub, however both overregulation and opaque regulation may remove its lustre and stunt its growth.

Although an enhanced **Data Protection** regime is needed the draft Information and Security Law ought to further implement best practices which would allow organisations and individuals to have greater control over their personal data, as applied by other regulatory authorities such as the European Union.

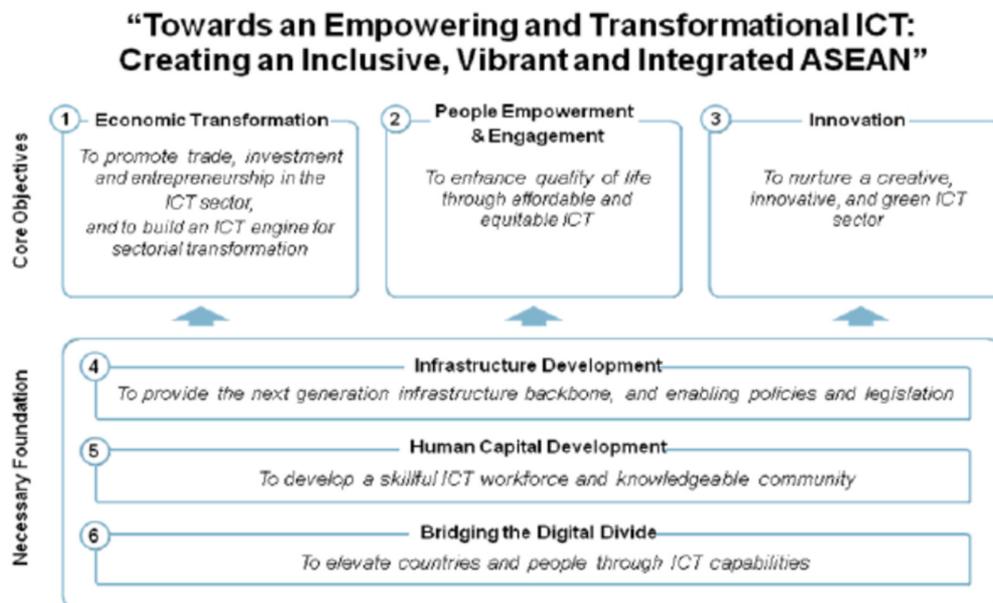
A **national network development plan** would best focus on the broad availability of connectivity with suitable bandwidth and reliability at a competitive price. The current levels of competition, especially in the mobile sector, though leading to a fast reduction of consumer mobile prices, may fail to secure a market environment to deliver long term investment in network infrastructure and services. The ability to sustain internet usage, high growth rate in the future will particularly depend on the pace of internet infrastructure development in rural parts of the country. Business users and others would welcome a major increase in International bandwidth. The current high prices of fast connectivity that businesses are required to bear is currently a disincentive for some companies seeking to expand and invest into Vietnam, these companies are currently electing to invest elsewhere in ASEAN where the costs are more reasonable.

Annex

**FIGURE A - NRI rankings noting current large differences in ICT situations in the region. The sub-indices on which each overall ranking is based make useful information for development. Networked Readiness Index published by WEF & INSEAD (Global IT Report).**

| ASEAN Member State     | 2012       | 2013       | 2014       |
|------------------------|------------|------------|------------|
| Brunei                 | 54         | 57         | 45         |
| Cambodia               | 108        | 106        | 108        |
| Indonesia              | 80         | 76         | 64         |
| Laos                   | N/A        | N/A        | 109        |
| Malaysia               | 29         | 30         | 30         |
| Myanmar                | N/A        | N/A        | 146        |
| Philippines            | 86         | 78         | 86         |
| Singapore              | 2          | 2          | 2          |
| Thailand               | 77         | 74         | 67         |
| Vietnam                | 83         | 84         | 84         |
| <b>Total economies</b> | <b>142</b> | <b>144</b> | <b>148</b> |

**FIGURE B - The three Pillars and the three Foundations of the ASEAN ICT Masterplan**



## Annex 5: Pharmaceuticals<sup>28</sup>

### Key Recommendations

- The EU pharmaceutical industry recommends greater and more frequent private sector consultation in advance of the development of domestic regulations, and that private sector issues be more frequently addressed at the ASEAN level.
- The EU pharmaceutical industry recommends that ASEAN and member countries liberalize foreign ownership laws so there is a consistency with WTO obligations, and that EU companies are able to compete equally with ASEAN domestic companies.
- We recommend clear and transparent procurement or listing procedures for biopharmaceuticals that recognize the value of innovation, rather than create disincentives for access to innovative medicines.
- We recommend that IPR protection be prioritized among ASEAN member countries and a regional initiative be developed to reduce the delays and backlogs that exist in certain granting patents.
- We recommend greater inter-ministerial coordination at the ASEAN and domestic level so the trade, health, economic matters can be effectively and cohesively addressed.
- We recognize that ASEAN member countries take the threat of counterfeit and substandard medicine seriously, and recommend greater collaboration among all healthcare stakeholders be developed regionally to address this growing cross-border issue and promote awareness among consumers.

### Background

- Sustainable access to innovative healthcare and continued advancement in research and development of innovative biopharmaceuticals are critical components for economic growth in the EU and ASEAN.
- ASEAN leaders identified Healthcare as one of the 12 priority sectors to help drive ASEAN integration and the creation of the ASEAN Economic Community.
- ASEAN Health Ministers have also emphasized that health development is a shared responsibility and must involve greater participation from all groups. EU business commends this commitment for collaboration among governments and private sector.
- The EU biopharmaceutical industry supports ASEAN and its member countries' trade, health, and regulatory reforms that promote the free flow of goods for consumers and ensures quality, efficacy, and safety of pharmaceuticals, however, challenges exist.
- Patient safety and producing quality medicines is the foundation of the EU pharmaceutical industry, but unnecessary, burdensome, or inconsistent regulations impede or delay access to medicines in ASEAN member countries.

<sup>28</sup> Originally produced in March 2013

- Market Access restrictions in the form of unclear foreign ownership laws, and preferential procurement and listing procedures impede the ability to introduce innovative products to market.
- Inadequate intellectual property protection and enforcement have a detrimental impact on the availability of safe medicines, and create potential health hazards to consumers.
- The EU pharmaceutical industry will continue to support the ongoing reforms and act as a partner of local and regional health authorities to deliver on their healthcare goals.

## Overview of Pharmaceutical in ASEAN and the EU

### ASEAN

The pharmaceutical industry in most ASEAN markets is growing and dynamic, albeit at variant rates. This growth is driven by several factors including the emergence of more efficient health systems that are expanding access for consumers. Both innovative and generic pharmaceutical sectors are benefiting from this growth. However, expansion of healthcare access has also created financial and budgetary strains. These pressures are being met through a variety of cost containment measures, and these measures, in some markets, are also being used to promote locally made generic products. This has resulted in greater growth for the indigenous generic industry. In 2015 the AEC will begin its integration, and will be a driver on expanding healthcare services and goods throughout ASEAN with more partnerships being formed, and greater collaboration on research and development being encouraged. The EU pharmaceutical sector stands ready to be a collaborative partner. Finally, and most importantly, the EU's bilateral FTAs with certain ASEAN markets have the potential to be the most significant driver for opening the markets and benefiting EU and ASEAN companies alike.

### European Union

The European Union is the second largest market for pharmaceutical sales worldwide, and the pharmaceutical industry in the EU represents the 5th largest industrial sector accounting for 3.5% of total manufacturing production. Pharmaceutical companies in the EU employ approximately 633,000 employees, and in 2011 invested €27.5 billion in R&D in Europe. This R&D expenditure accounts for 16% of the sector's overall business expenditures, and is the highest R&D percentage for any industrial sector. Levels of trade vary among ASEAN countries, but pharmaceuticals exports to ASEAN from the EU are an important category and account for the majority of the chemical exports from the EU.

### Key Issues

Throughout ASEAN there have been efforts to increase the quality of products, promote patient safety, and create sustainable access to pharmaceutical products. The EU pharmaceutical sector supports these important health-related objectives and recognizes that trade policy should support these important health related issues.

In this respect, the EU pharmaceutical sector recognises the recent improvements in the implementation and alignment with the ASEAN Common Technical Dossier (ACTD) registration process, and the implementation of Good Manufacturing Practices (GMP) standards in ASEAN countries. We see these improvements as important steps towards enhancing patient safety and market access, and we remain committed to cooperating with regulators in all markets to achieve successful implementation of the ACTD process.

Further challenges remain in ASEAN, but by adhering to the common goals of patient safety, free markets, and respect for intellectual property, we are confident that positive outcomes in trade and health will flourish.

### Patient Safety

Patient safety is the cornerstone for the EU pharmaceutical sector and is a shared goal among ASEAN countries and industry. The EU pharmaceutical sector notes some of the following challenges as a priority given their impact on patient safety and timely access to medicines.

#### Clarification of Laws:

Within many ASEAN countries there are overlapping domestic laws, regulation or guidelines that are intended to ensure patient safety. However, due to the rapid development of the health and pharmaceutical sector, some laws and subordinate legislation are enacted without industry consultation. The unintended consequence is a set of laws that may be ambiguous and not consistently enforced.

#### Clinical trials:

Some ASEAN countries are focused on attracting clinical trials to their country, and there is also increased competition throughout Asia to attract clinical trials and related research. Some countries, rather than creating market based incentives, would prefer to mandate clinical trials. Mandated country specific clinical trials could not only be redundant, but also delay market entry of innovative medicine to that market, and raise the cost of the product.

#### Regulatory delays:

There is a variance of administrative requirements and procedures among ASEAN regulatory agencies. This variance of resources can create delays in granting market authorizations, which limits access to innovative medicines despite the efforts of harmonizing regulatory environment like the ACTD and ASEAN Common Technical Requirement (ACTR) in drug registration.

#### Parallel trade:

There is a significant increase in parallel trade of pharmaceutical medicines among ASEAN countries. These products may enter markets through illicit supply chains, have unauthorized repackaging, and may not be subject to regulatory review. The risk to patients of such parallel traded products is high.

#### Labelling Standards:

In the interest of patients, ASEAN countries have created unique labelling requirements. However, providing unique information on primary packaging may not be feasible for all products and creates unnecessary administrative burdens.

### Market Access

#### Foreign Direct Investment:

Several ASEAN countries place limitations on foreign ownership in pharmaceutical trading companies, and also limit the activities that a foreign owned pharmaceutical company may undertake. These limitations create a disincentive to invest in the markets.

### **Government Procurement:**

In ASEAN countries that have a government procurement and national listing system, the procedures for pricing and reimbursement and tendering may be unclear, inconsistently enforced, and lack transparency.

### **Preferential Treatment for State Owned Enterprises:**

Several ASEAN countries have state owned pharmaceutical companies. The state owned pharmaceutical companies enjoy particular exemptions and privileges that other private owned domestic companies do not receive. The exemptions and privileges may vary in each country, but the competitive disadvantage borne by private sector is consistent.

### **Intellectual Property**

#### **Patents:**

An efficient patent system that provides timely grants and consistent enforcement are fundamental for any technology based industry. ASEAN has tremendous potential to become competitive in the life science sector. However, there is an inconsistent treatment of patents among ASEAN countries. There may be significant delays in getting a patent approved, limiting the useful term. There are also challenges in enforcing patents through the legal system.

#### **Regulatory Data Protection:**

Regulatory data protection is a separate form of protection required under the WTO TRIPS agreements. However, there is an inconsistent approach on this protection if provided. Several ASEAN countries do not provide data protection, and others provide a form which is not consistent with international standards.

#### **Counterfeit Medicines:**

The World Health Organization has highlighted counterfeit and substandard medicine as a priority given the alarming amount of unsafe medicine that is made available through illicit border trade and over the internet. Counterfeit medicines are contributing the increased prevalence of drug resistant strains of malaria and tuberculosis. Falsified medicines may be found in many therapeutics classes, but remain very difficult to detect. ASEAN countries are working to improve enforcement and awareness, but given the complexity of the problem, the availability of counterfeit medicines is increasing.

## **Key Recommendations**

### **Patient Safety**

#### **Full and Advance Consultation:**

The EU pharmaceutical sector shares ASEAN's objectives of enhancing patient safety, and by working closely on country specific legislation and implementing regulations, as well as ASEAN regional initiatives, we can better address the challenges that are being faced. In this regard the formation of an EU-ASEAN Pharmaceutical Consultative Working Group that meets regularly to discuss and find constructive solutions to challenges would be the first step in addressing our concerns.

### Labelling and other Duplicative Regulations:

When quality and safety controls are already in place and consistent with international standards, the duplicative requirements should be removed. Labelling regulations should consider the feasibility and practicality of implementation.

### Parallel Trade:

The potential detrimental effects of parallel trade on patients are high and outweigh any perceived benefit. We recommend that ASEAN closely examine the safety risks to patients and work with the EU and the EU pharmaceutical industry to develop a response that will ensure that this practice can be eliminated and patients can be confident in the source of their medicine.

### Regulatory Delays:

We understand that many of the regulatory delays in granting authorization are due to limited resources and administrative processes. In this regard, we would recommend that ASEAN regulators collaborate with their counterparts in the EU and with the EU pharmaceutical industry to develop benchmarks that address administrative and internal infrastructure. Such a benchmark study would allow for improvements based on best practices and improve the efficiency of the application process.

### Market Access

#### Foreign Direct Investment:

ASEAN countries should eliminate any limitation on foreign ownership in pharmaceutical trading companies and any restrictions on activities that a foreign owned pharmaceutical company may undertake.

#### Government Procurement:

ASEAN countries should implement clear, efficient, and transparent procedures. To ensure patients are receiving the most innovative treatment, these procedures should recognize the value of innovation rather than being based on cost savings.

#### Preferential Treatment for State Owned Enterprises:

A level playing field based on open competition will best serve consumers, and preferential treatment for state owned pharmaceutical companies should be eliminated.

### Intellectual Property

#### Patents:

We recommend that ASEAN countries put additional resources to the administration of patent examinations, and that ASEAN emphasize the important role and economic benefits that patents and intellectual property have in stimulating innovation.



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