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Foreword

The EU-ASEAN Business Council (EU-ABC) is a strong supporter of ASEAN's regional economic integration process. The aims and goals of the ASEAN Economic Community (AEC), as set out in the Blueprint in November 2007, are welcomed and well supported by both our Membership and by European business more generally. Once achieved, they will undoubtedly boost economic and social development in the region to the benefit of the broad population and the countries of ASEAN. The Member States of ASEAN should be applauded for their foresight and ambition.

We recognise that the movement towards these of aims and goals is a process: the "deadline" of the end of 2015 is just a point in time, rather than a "big bang". There is much work that remains to be done, and the comments and recommendations included in this paper should be seen as part of this process. Our aim is to highlight some areas where, in our opinion, further work is required to achieve one of the key stated goals of the AEC, i.e. the elimination of non-tariff barriers (NTBs) to trade.

This paper takes a broad overview of market access and trade-flow restrictions across the ASEAN region and highlights some common themes across the region, namely:

- The scope for improvement in efficiency of customs procedures and greater harmonisation between ASEAN Member States;
- The need for more predictable application of regulations and procedures;
- Continuing restrictions on foreign ownership and control in many sectors; and,
- The lack of harmonised standards or the mutual recognition of standards across many industries and economic sectors.

Each of these elements, to varying degrees, inhibit the free flow of goods, services and investments, reduce competition, increase costs for producers and consumers, and can lead to unwanted results, such as the proliferation of illicit trade and the potential for negative impacts on consumer health, safety and government revenues.

There remain a large number of NTBs across ASEAN despite the progress to date and the stated aims of the AEC. The table below, taken from the World Trade Organisation (WTO), puts the number of recorded NTBs at well above 2,000 as at the end of June 2015. NTBs represent, in our view, the greatest obstacle to achieving the stated goals the AEC in the near term. We recognise that removing or reducing NTBs is not always an easy process especially where they are perceived to be protecting or assisting domestic industry and, therefore, there may, at times, be domestic political considerations that need to be handled carefully.

Some Member States of ASEAN have a larger number of active NTBs to deal with than others, often reflecting either their stage of economic development or domestic political concerns. The EU-ABC, however, encourages greater and accelerated movement in tackling these issues as the long-term benefits to economic growth, to the competitiveness of domestic industry, to integration in global value chains, and to consumers in terms of price, choice and improvements in quality and health, should far outweigh any short-term negative impacts on domestic players.

Table 1: Non-tariff Barriers by Country

Country	Anti-Dumping		Quantitative Restrictions	Safeguards		Sanitary and Phytosanitary		Technical Barriers to Trade		TOTAL
	Initiated	Inforce	Inforce	Initiated	Inforce	Initiated	Inforce	Initiated	Inforce	
Brunei	-	-	-	-	-	2	1	2	-	5
Cambodia	-	-	-	-	-	-	-	2	1	3
Indonesia	20	15	-	10	16	53	46	78	41	279
Laos	-	-	12	-	-	1	-	1	-	14
Malaysia	8	19	-	2	-	27	6	205	6	273
Myanmar	-	-	-	-	-	-	-	1	-	1
Philippines	1	-	10	4	7	119	147	242	1	531
Singapore	-	-	135	-	-	36	17	28	11	227
Thailand	4	34	59	2	2	205	19	523	23	871
Vietnam	-	-	-	1	1	43	23	44	7	119
TOTAL	33	68	216	19	26	486	259	1126	90	

(Data as of 01/06/2015). Source: WTO, Integrated Trade Intelligence Portal. Retrieved from: https://i-tip.wto.org/goods/Forms/MemberView.aspx?data=default

The key recommendations set out in section II of this paper can be broadly put into the following groups:

- Establishing an independent and public comprehensive list of NTBs across ASEAN coupled with more regular monitoring and reporting of the reduction of NTBs across the region. Such moves would enhance confidence in the AEC process and help businesses better serve their customers through a clear understanding of the complex web of rules and regulations.
- Enhanced collaboration between the private sector and ASEAN, its working groups and various regulators to identify NTBs and work out ways to remove them.
- Rapid harmonisation and standardisation of requirements and regulations across various industry segments or, failing that, the rapid acceptance of mutual recognition of such standards on a bilateral basis.
- Removal of harmful restrictions on foreign investments, ownership and control; and,
- Implementing measures aimed at increasing transparency, predictability, and the simplifying of customs procedures across the region.

Taken together, we firmly believe that the recommendations, if implemented, would greatly advance the economic integration agenda in ASEAN and speed up the delivery of benefits to the populace of the region.

The EU-ABC is at the disposal of policy makers to be the bridge between them and the private sector in helping put into place the recommendations in this paper.

I. Overview of Key Issues by Country

	Import restrictions	Non-transparent & heterogeneous customs processing practices	Restrictions on foreign investments & ownership	Lack of mutual recognition & harmonisation of standards	Regulatory Requirements	Specific issues
Brunei	●	-	●	-	●	-
Cambodia	●	●	-	-	-	Attempted restrictions on legal practices; persisting non-transparent practices and facilitation payments; smuggling
Indonesia	●	●	●	●	-	Non-competitive local content requirements; facilitation payments; poor inter-agency coordination
Laos	-	-	●	-	-	Infrastructural limitations
Malaysia	●		●		●	
Myanmar	●	-	●	●	-	Complex regulatory procedures & lengthy approval period
Philippines	● (Easing)	●	●	● (Being Addressed)	●	-
Singapore	-	-	-	-	●	-
Thailand	●	●	●	-	●	Customs Reward System; failure to distinguish between negligence & intent
Vietnam	●	●	● (Easing)	●	-	Weak inter-agency coordination for customs

II. Overview of Key Recommendations

Trade	Gradual and eventual elimination of all non-tariff barriers	The phasing out and eventual elimination of non-tariff barriers will encourage economies of scale, offer greater product differentiation, improve a country's import-export competitiveness, and overall spur regional trade and economic growth.
	Harmonisation of standards and regulations	Harmonising technical and certification requirements, with a view to having a single harmonised system adopted by all ASEAN Member States, as well as progressive alignment with international standards.
Customs	Harmonisation of customs procedures	A single, harmonised customs procedure with even handed and regularised enforcement would, increase predictability and confidence in doing business in ASEAN; improve the efficiency of supply chains; and assist the establishment of the ASEAN Single Window.
	Streamline customs procedures	Improving the efficiency of supply chains with streamlined and automated customs procedures would greatly decrease administrative costs that particularly hinder the expansion of SMEs across borders.
	Improving inter-agency coordination	Improving inter-agency coordination between the various trade and customs ministries would enable the proper implementation of policies and regulatory factors enabling faster customs procedures, and import processes.
	Capacity building for customs officials	Establishing a programme to improve the level of qualification of customs officials to ensure standardised interpretation and transparent application of customs regulations and best practices.
	Simplification and automation of customs procedures where necessary and possible	• Speeding up the planned automation of customs procedures by Member States. • Creating a platform for data sharing and conciliation where necessary and possible in order to simplify and expedite customs clearances. • Where possible, implementing a simple online registration process that would replace the approval processes of import licenses.
	Implementation of a common *de minimis* baseline	Implementing a common *de minimis* baseline across ASEAN Member States would ease movement of goods with the expedited customs clearances.
Investments	Abolish restrictions on foreign investments and ownership	• Abolishing restrictions on foreign investments and ownership would boost FDI inflows, and encourage deeper, longer term investments that are more beneficial to a country's sustainable development than short to mid-term investments. • Revisions to foreign negative investment lists to ease restrictions on foreign companies.
	Supporting SMEs	Providing targeted support for SMEs in the region, particularly for financing and overcoming the various regulatory regimes that poses as significant barriers to their expansion across borders.

Capacity Building	Continued dialogue	Supporting industry specific consultations with ASEAN wide working groups, to improve understanding and knowledge exchange on best practices between the private sector and government. Specifically talks relating to standardisation and harmonisation efforts.
	Establishment of an independent portal to monitor NTBs present	Establishing an independent portal to report and rank all NTBs present in Member States, as a mean to assist both regulators and companies in identifying and eliminating NTBs to trade and investment.
	Establishment of an independent authority to monitor the goals of the AEC	Establishing and empowering an independent authority to monitor and report on the progress of measures and goals agreed under the AEC.

III. Defining Barriers to Trade

Non-tariff measures (NTMs) have always been around and are frequently employed with underlying, valid concerns for public health and security, consumer and environmental protection. However, the proliferation of increasingly complex regulations with potentially discriminatory or protectionist intent is a growing concern that needs attention for the benefit of sustainable economic development. Many such regulations affect trade and market accessibility and deter foreign investments, to the detriment of economic growth, consumer choice and innovation.

For the scope of this paper, the EU-ABC defines non-tariff measures[1] as:

> *Policy measures that have an economic effect on international trade and market accessibility, by imposing specific requirements on certain transactions or activities. Some of these instruments, in particular technical regulations, minimum standards and certification systems regarding health and consumer safety do not, ipso facto, constitute barriers to trade, as they are generally employed to meet legitimate policy goals. However, there is a perception that under some circumstances, these sorts of policy instruments are used by governments to favour domestic over foreign investors, resulting in indirect hindrances to trade with a damaging impact equivalent to, or greater than tariffs.*

A common misconception is to refer NTMs as non-tariff barriers (NTBs), and to use the terms interchangeably. The difference lies in that NTMs encompass a wider set of policy measures that may have an indirect negative effect on trade, whereas NTBs are intended to be discriminatory actions imposed by governments to favour domestic over foreign producers or suppliers. As such, NTBs are defined for the purposes of this paper as:

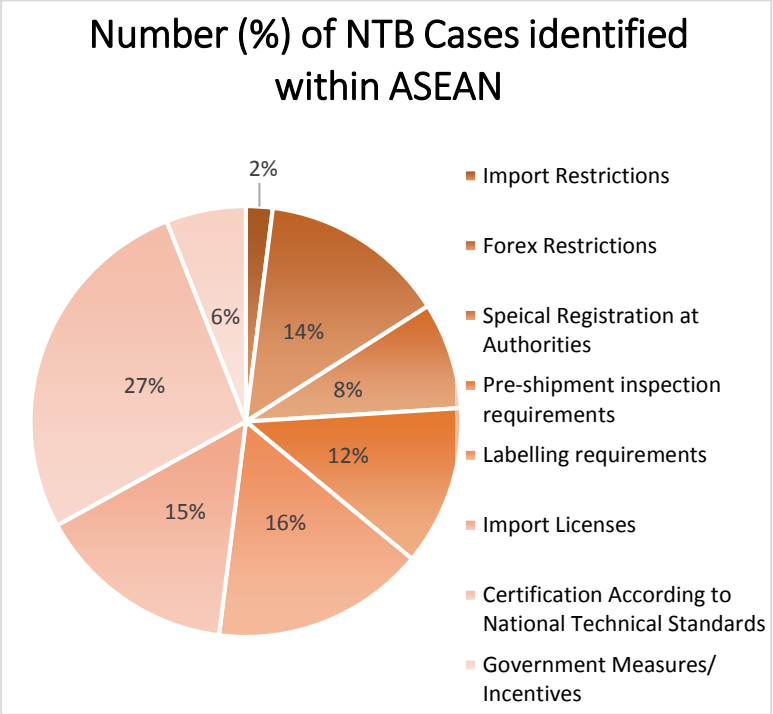
> *Discriminatory actions of a bureaucratic or legal nature intended to protect domestic companies, while creating trade restrictions or market distortions. Examples include countervailing and anti-dumping duties, "voluntary" export restraints, subsidies which sustain operational losses, import monopolies, and other direct obstacles to the establishment and provision of foreign controlled or operated services. Moreover, the term is often used to include certain domestic measures, such as restraints on distribution and non-competitive practices that can distort trade in the same way as tariff measures do*.

Given their scope, intent and implications for trade, a better understanding of the costs and benefits of NTBs would greatly assist domestic and international policy making, with regards to the greater movement of goods and services throughout the region, and between the EU and ASEAN. For the purpose of this paper, only NTBs and market access barriers within ASEAN will be addressed.

[1] This definition has been derived from such standards as developed by the OECD and the UNCTAD, and reworded as appropriate by the EU-ABC.

IV. Advantages of Reducing Barriers to Trade and Investment in ASEAN

Through its economic integration process under the banner of the AEC, ASEAN has undoubtedly made great strides towards its goal of establishing the region as one of the pre-eminent trading blocs in today's global economy. The series of framework agreements that the AEC has put in place form a sound foundation for the opening up of intra-ASEAN trade. The removal of nearly all tariffs in the region is very much welcomed by the business community. Nonetheless, by wide consensus, much more remains to be accomplished. The EU-ABC hopes that the post-2015 AEC Agenda will include concrete measures aimed at further reducing NTBs in the region, and ensuring the full implementation of all elements of the AEC.



Source: WTO, Integrated Trade Intelligence Portal, as of 01/06/2015.

Note: the data is based on the regulations existing or under preparation as of 01/06/2015. Restrictions that do not derive from the law are not considered

One consequence of the rapid expansion in international trade has been, unfortunately, an increase in the amount of non-tariff barriers to trade within the ASEAN region. From 2010 to 2015, the region has seen an increase of almost 30% in the number of NTBs recorded by the WTO[2]. Even so, ASEAN has been heading in the right direction, with the past year seeing a decrease in the number of NTBs recorded[3]. Despite moves towards greater trade facilitation under the AEC process, a reduction in import substitution barriers and even the signing of free trade agreements, many Member States have introduced unilateral restrictions to trade that are increasingly complex and numerous. The intent and scope of these trade restrictions differ greatly across industries, and across countries. As markets develop, the various restrictions introduced along the way often accompany an apparent intention to further protect domestic companies in key industry sectors, to the detriment of consumers.

The reduction, and eventual elimination, of NTBs will, therefore, largely depend on how committed Member States are on engaging in the process of greater economic integration and the opening up of markets. Deeper capacity building needs to be implemented alongside efforts leading to freer trade flows: increased transparency and efficiency of border management; increased investments in infrastructure, transportation and logistics services; and improved business environments, all with the expectation of ASEAN truly becoming a "single market and

[2] Data calculated and tabulated by author. Data source: WTO, Integrated Trade Intelligence Portal. Retrieved from: https://i-tip.wto.org/goods/Forms/MemberView.aspx?data=default

[3] From June 2014 to June 2015, the number of NTBS dropped from 2740 to 2323, representing a 17% decrease in the number of NTBs recorded. Data source: WTO, Integrated Trade Intelligence Portal. Retrieved from: https://i-tip.wto.org/goods/Forms/MemberView.aspx?data=default

production base" as envisaged in the AEC's blueprint[4]. Regional and multilateral cooperation in these areas are essential for implementing any reforms necessary to capture the gains from greater economic integration – the main driving force behind the AEC.

Crucially, gains from reducing inefficiencies created by NTBs are more substantial than gains from the reduction in tariff barriers. A study published in 2013 indicated that a reduction in just two key NTBs (e.g. customs procedures and logistic services) by every country to a level of halfway that of international best practices, would increase global gross domestic product (GDP) by 5% and trade by 15%, compared to the gains from tariff elimination at 0.7% in GDP and 10.1% for trade[5]. Moreover, the welfare gains from a reduction of NTBs are more widespread than gains from tariff reductions as almost everyone benefits, from companies and governments, to individual consumers, as it eliminates resource waste and deepens investments; whereas eliminating tariffs tend to only reallocate resources.

The following is a non-exhaustive list describing how reductions in trade restrictions would generate greater benefits to the ASEAN region.

Uniform application of customs procedures would reduce heterogeneity in the application of regulations, and encourage development of better policies for infrastructure and industry growth

A uniform interpretation of customs regulations and procedures, greater inter-agency coordination, reconciliation of data and automated processing systems would greatly increase transparency and predictability in the enforcement of regulations and procedures. These measures would directly reduce many of the current inconsistencies present that inhibit and complicate the free flow of trade, and would improve confidence in trade growth. In particular, the lack of uniform standards significantly adds to costs for SMEs seeking to operate in multiple foreign markets. Many SMEs would be constrained by the additional fixed costs of complying with varying country regulations and additional paperwork, than under a uniform system. As SMEs represent the largest percentage of all Member States' economies, a uniform interpretation of customs regulations and procedures on an ASEAN wide basis would considerably improve trade and economic growth.

Limiting the introduction of certain technical requirements would increase investment and promote the greater flow of goods in ASEAN, without incurring detrimental effects to consumer and environmental health and safety protection

It is widely acknowledged that alleviating excessive Technical Barriers to Trade (TBT)[6] and Sanitary and Phytosanitary (SPS)[7] measures would produce significant gains to domestic markets by boosting investment and facilitating trade. Consumers will benefit from increased choice and lower prices, with higher economies of scale[8]. Furthermore, the gains would outweigh any potential risks as the additional technical requirements imposed often do not add to consumer

[4] Art.6 ASEAN Economic Community Blueprint.

[5] Enabling trade: Valuing Growth Opportunities. (2013). *World Economic Forum in collaboration with Bain & Company, and the World Bank*

[6] Technical Barriers to Trade (TBT) refer to the technical regulations, standards, testing and certification procedures that create unnecessary obstacles to trade, and fall short of achieving legitimate policy objectives such as the protection of human health and safety, or protection of the environment. See: https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm

[7] Sanitary and Phytosanitary (SPS) measures refer to necessary actions to protect and improve human, animal or plant health and conditions, so long as such measures are not applied in a manner that constitutes an arbitrary means or unjustifiable discrimination against members where the same conditions prevail, or as a disguised restriction to international trade. See: https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm

[8] *Non-tariff measures to trade: Economic and Policy Issues in Developing Countries.* (2012). UNCTAD.

safety and protection of the environment or public health. Limiting the introduction of country-specific technical requirements that add to compliance costs without enhancing consumer protection, will likewise facilitate the free flow of goods within the region. Efforts to increase harmonisation of standards across Member States, and bringing them in line with international standards, would positively contribute to the attractiveness of the region for foreign investment; optimise output productivity; enhance export competitiveness; and reduce shipment delays arising from additional local certification and testing requirements. The reduction of TBTs and SPSs through improved mutual recognition and harmonisation of standards in ASEAN would further reduce complexity of customs regulations and procedures, and enhance transparency and consistency of decision making.

Uniform customs procedures would reduce monetary and time costs, and improve anti-smuggling efforts by governments

Companies often mitigate shipment delays with the added costs of holding additional inventory, in order to avoid lost revenues or reputational damage by being under stocked. The additional cost involved is often passed on to consumers via higher prices. A uniform customs procedure across the region would considerably streamline supply chains, decrease the time and monetary costs to companies, and more importantly improve the value of goods for consumers, particularly for time sensitive products. Moreover, standardising customs procedures with automated processes and reconciliation of data would expedite customs clearances, boost investors' confidence in the system, and critically assist government efforts in combating smuggling and corruption at customs borders. The work being undertaken to establish an ASEAN Single Window is welcomed in this respect.

Reducing import restrictions would improve consumer welfare, and lessen trade in counterfeit goods, or contraband goods

A more open market with reduced restrictions in import quotas, export limitations, and abolition of voluntary export constraints that indirectly shield domestic companies from foreign competition, would benefit consumer choice and enhance consumer protection. Although welfare gains from a reduction in import restrictions are much harder to quantify then productivity gains, the elimination of certain import bans on goods would directly hinder the growth of black or grey market activities. Furthermore, it crucially reduces potential instances of consumer health and safety risks arising from the poor quality control of counterfeit goods. Concomitantly, a reduction in black market sales should lead to an increase in government revenues as goods sold on the white market contribute to goods and services tax revenues and excise duties. Additionally, as markets progressively open up, it will become increasingly important to have in place regulations protecting intellectual property rights of imported goods, goods in transit, and goods in free trade zones, through measures such as information based risk assessments.

Eliminating stringent local content regulations could encourage development of practical investment and infrastructure policies for industry growth

Stringent local content requirements combined with import restrictions that are intended to encourage local sourcing and production can, at times, have the inverse effect of deterring foreign investors, especially when regulations are enforced in environments lacking proper industry development and a mature supply chain. Companies making decisions on where to expand their production bases may be daunted by the higher costs and suboptimal production rates, thus eliminating the comparative advantages of otherwise producing locally. Prioritising specific policies and loosening particularly stringent barriers, would encourage the development and improvement of local industry standards to one more harmonised regionally and internationally, and overall enhance industry growth.

Pursuing clearer policy requirements and a less restrictive foreign investment negative list promotes investor confidence and increases the inflow of foreign direct investments

A company's ability and willingness to invest and expand in a country is strongly influenced by the local government's policy choices. Enforcing clearer guidelines on import licenses and contract procurement requirements, which enable competitive bidding and lower instances of non-transparent administrative policies, would improve investor confidence. Likewise, revisions to foreign investment negative lists to encourage market access and activities by foreign companies in key industry sectors would significantly enhance a country's attractiveness for foreign direct investment, as investor confidence is bolstered. The positive correlation between ease of doing business and FDI inflow is evident[9], and a good indicator of a government's ability to introduce regulations which facilitate economic trade growth.

[9] See for example the World Bank's *Doing Business* Reports.

V. Key Concerns

Some of the most successful trade policies are those that are able to regulate the market while facilitating market interactions for small and ordinary business; enabling companies to make clear and predictable decisions with warranted rules and regulations in place. Whilst significant advances have undoubtedly been made to remove tariffs barriers over the years within ASEAN, a large majority of businesses perceive the growing number of NTBs in the region as an impediment to the efficient usage of supply chains in the region[10]. Moreover, incremental efforts in revising restrictive and discriminatory trade policies will only have minimal effects on trade volume until a "tipping point" is achieved[11].

Below is a non-exhaustive list of key trade barriers faced by companies trading with and within ASEAN.

Import restrictions

Measures regulating a country's imports are needed, and are typically founded on sound policy goals that set requirements to ensure a certain level of standards for consumer and environment health and protection. Yet these measures may become restrictive, adding a layer of complexity that hinders the free flow of goods with a negative impact on trade volumes equivalent to, or greater than, tariffs. Import quotas, embargoes, bans, antidumping measures, countervailing charges, non-automatic licensing and non-transparent administration of licenses, and state monopolies with unproductive redistributive policies, all represent various measures that can inhibit international trade, and serve to give a price advantage to the domestic market over foreign competitors. Furthermore, outright prohibition of imports for certain products

Text box: Impact of State-Owned Enterprises (SOE) on Trade

Commonly intended as a means to organise market structures, and to provide better services where natural monopolies occur, SOEs can conversely be used to regulate markets and implement redistributive policies that are non-productive, thus leading instead to suboptimal levels of trade and welfare effects to a country. Empirical studies† have demonstrated that significant market access restrictions are placed on foreign competition where SOEs are used to transfer income to local producers or to limit local production.

Moreover, an indirect but significant consequence of SOEs is their ability to deter the introduction of new products into the local market, incentivising instead the sales of counterfeit products in parallel markets. These potentially harm consumer health and safety due to the low or, lack off quality control for such products. SOEs also tend to nurture inefficient practices such as cronyism and corruption.

Reforms addressing the monopolies SOEs hold over specific industry sectors will help improve a country's import-export competitiveness, and introduce a greater variety of products that mitigate, and overall improve living standards, by reducing social waste and lowering prices.

† Adapted from *Non-tariff measures to trade: Economic and Policy Issues in Developing Countries.* (2012). UNCTAD

[10] Unpublished data taken from the ASEAN Outlook for European Business 2015 report; Please note that this data was taken from the ASEAN Outlook for European Business 2015 report set to be published in August 2015.
[11] Enabling trade: valuing growth opportunities. World Economic Forum in collaboration with Bain & Company and the World Bank Report. (2013).

encourages black market growth, resulting in sales of goods in an unregulated market that would otherwise have been legal and taxable. Consequently, these measures can end up forestalling sound economic growth policies, limit the quality and choices of goods and services available to consumers, and may even compromise consumers' health and safety protection in extreme instances.

Pre-shipment inspections (PSIs) likewise result in additional formalities and costs without necessarily translating into improved import conditions. Moreover, multi-faceted cost benefit analyses by companies deciding on where to expand production bases are often binary, such that one location is either profitable to serve a particular market, or is unprofitable due to the various import restrictions and difficulties present.[12]

Measures regulating a country's imports need to be prioritised in order to avoid deterring investments away from the country. The gradual elimination of import restrictions is necessary as it would encourage economies of scale; in turn offering greater product differentiation and variety, improve local industry's competitiveness, enhance government regulation over black market activities and, overall, boost economic development and growth. With the modern world economy characterised by global supply chains, it will be imperative for companies to increasingly rely on imports of intermediary products, in order to improve their competitiveness both domestically and internationally.

Text Box: Uneven application of customs controls adds to costs without improving import conditions

Although Pre-shipment Inspections (PSIs) can provide assurance on the quality and quantity of imports, and thus promote international trade, they can conversely result in additional costs for importers and reduce the competitiveness of countries when improperly implemented, hence distorting optimal trade levels.

For instance, PSI services are generally costly as inspectors are paid a percentage of the import value inspected. This system incentivises PSI companies to "overcorrect" invoices deemed undervalued, in order to maximise their revenue, making PSI burdensome and expensive for importers. Moreover, PSIs are often introduced where customs administration is weaker, in order to streamline import procedures. Unfortunately, this has the unintended consequence of deterring efforts to improve customs controls as governments tend to see them as strategic substitutes to customs control, and a tool to combat tariff evasions.

The implementation of efforts to streamline customs procedures, such as PSIs therefore need to be introduced alongside the proper checks and balances in order for such systems to be fully appreciated and reduce the creation of new problems, or fail to have a positive impact†.

†Adapted from Economic and Policy Issues for Developing Countries. 2013. UNCTAD.

Non-transparent and heterogeneous customs procedures

Various factors affect a company's logistics and supply chain costs. One commonly cited trade barrier is the non-transparent and inconsistent application of customs procedures. Companies trading within and with the ASEAN region often face multiple regulatory regimes that impede the

[12] *Ibid.*

free flow of goods and services. Studies have shown that improving a country's logistics performance index reduces the average bilateral trade costs ten times more than an equivalent reduction in tariff barriers[13].

Customs procedures can be standardised and made more efficient through the more consistent interpretation of HS tariff codes that facilitate the use of preferential treatments set out in trade agreements; and reduce the length and complexity of customs procedures, with clear wording to assist customs officers in making predictable and transparent decisions. Critically, the additional costs arising from having to interpret the various regulatory regimes weighs heavier for SMEs, as many are significantly hindered by the upfront investments required to adapt to the non-standardised legal, regulatory, and technical requirements of the various ASEAN Member States.

Likewise, more consistent application of customs procedures, such as regularising adjustments to customs valuations, or eliminating duplication of procedures, will result in more punctual shipments, and decrease lead times for companies, allowing companies to save time and monetary costs. The impact of such improvements will be particularly marked for time sensitive shipments.

Regional and multilateral cooperation in this area is crucial for the ASEAN Member States to identify best practices and reforms that would assist one another in the smooth transfer of goods throughout the region. A more transparent, streamlined and standardised set of customs procedures across ASEAN would greatly assist in the establishment of an ASEAN Single Window and foster the deeper economic integration necessary for the realisation of a "single market and production base" that is one of the prime objectives of the AEC.

Regulatory Requirements

Non-standardised and streamlined customs procedures tend to lead to excessive documentation and administrative requirements when moving goods throughout the region. A company's decision to expand and invest in a country is strongly dependent on its ability to take advantage of the country's supply chain security and efficiency. Avoiding excessive regulatory requirements – which may pose as health and safety, or environmental regulations for instance - can reduce additional layers of complexity, decrease shipment lead times, and reduce costs without adversely impacting consumer protection.

Wider introduction of best practices and enhanced inter-agency coordination will reduce duplication of administrative procedures and avoid overtly frequent inspections, so providing a saving for Governments, as well as to businesses. Moreover, as most shipments have low duty collections, numerous customs procedures are a cost to Governments and a burden to importers without adding value to supply chain security.

Harmonising and standardising regulatory requirements across Member States would significantly decrease costly administrative burden as companies would no longer require diverse sets of documentation to meet differing rules that hinder supply chain efficiency. This would boost trade volumes substantially as imports would no longer be hindered by cumbersome local requirements. Implementation of a common *de minimis* would likewise contribute significantly to more efficient customs clearances throughout ASEAN.

[13] Arvis J,F. et al. (2013). Trade Costs in the Developing World, 1995-2010. Poverty Reduction and Economic Management Network, International Trade Department. The World Bank.

Restrictions on foreign investments and ownerships

Investment-related policy measures that prevent a foreign company from wholly owning critical operations often have the consequence of deterring deeper investment initiatives in the country. Foreign companies mandated to form joint ventures or similar partnerships with local firms may often feel stifled in their ability to make critical company decisions, and may feel uncomfortable disclosing confidential information or sharing intellectual property rights. Such measures similarly tend to deter companies from freely transferring technology or expertise, being less inclined to share valuable assets with partners.

Text Box: Restrictions on Foreign Ownership limit the extent of investments

Sensing volatility in restrictions on foreign investments – whereby a company can be easily nationalised, forced to decrease its ownership, or be mandated to locally incorporate and have the company's shares publicly traded, with the next revision of laws - strongly deter foreign investors from making long-term structural investments. Instead, companies will chose to focus on making short/mid-term activities that do not significantly contribute to the sustainable development of the industry, or country's economy.

Restrictions on foreign investments and ownership vary across industries and counties, but are present in almost every ASEAN Member State, albeit at differing levels. Several Member States maintain negative investment lists that restrict foreign investors in specific industry sectors or activities. Cases include tiered licensing systems, caps on foreign equity, restrictive requirements on establishing a foreign owned subsidiary and industry subsectors completely closed to foreign companies. These measures systematically restrict FDI, disadvantage consumers, and hinder more sustainable economic growth.

Revisions easing restrictions on foreign negative investments have the ability to boost a country's attractiveness for foreign investments, and encourage deeper and longer term investments that are more beneficial to a country's sustainable economic development than short/mid-term investments. Likewise, amending laws that allow for the proliferation of restrictions on foreign investments would give confidence to investors'. The EU-ABC would like to commend here Vietnam's recent announcement to reform their policies in this respect and strongly encourage similar revisions by other ASEAN Member States that continue to maintain foreign investment negative lists.

Lack of mutual recognition and harmonisation of standards

Technical regulations are often present to ensure the quality of products and improve consumer protection. However, there are various instances wherein requirements for consumer health and safety protection have been applied in a manner that creates inefficiencies to trade, largely arising from the lack of mutual recognition and harmonisation of standards. Setting local requirements that are non-aligned with international or regional standards tend to deter investment inflows, adding to time and monetary costs without clear consumer benefits. For example, mandatory local testing and certification standards by local labs, on top of international certification requirements, add little value to consumer protection. Moreover, the array of products that require local testing and certification are plenty, yet testing facilities in many cases remain limited, causing extended waiting periods for approval, further logistical complexity for companies, and lead to suboptimal levels of trade. The testing bottle neck may lead to rent-

seeking opportunities to speed-up certification processes, particularly where law enforcement is weak. The upward revision of local requirements likewise make complying to local standards, which can end up being well beyond international or regional standards, difficult and costly, reducing trade volumes, and even detracting from efforts at harmonising standards across the region.

Each ASEAN Member State currently has its own definition of product and service requirements, as well as testing and certification requirements, leading to increased costs in compliance with the varying regulatory regimes, and shipment delays that negatively affect consumers. The additional costs needed to adapt to the varying regulatory regimes represent a significant burden and barrier for SMEs hoping to expand to other countries. The common understanding and standardisation by all Member States on the most relevant regulatory processes - labelling, testing, and certification requirements to accepted international standards, along with the progressive mutual recognition by all Member States on testing and certification performed and issues by another Member State - would greatly facilitate compliance with import-export standards, improve supply chain efficiency, and forge a stronger, clearer pathway to the realisation of the ASEAN Single Window.

Text Box: Lack of harmonisation on formalities required for the issuance and acceptance of Certificates of Origin (CoO) hinders the use of FTAs preferential tariff rates

The formalities necessary for the acceptance of a CoO in order to utilise the preferential tariff rates as agreed under an FTA differs from country to country, often preventing importers from taking advantage of the FTA and thus adds to import costs within the region.

A requirement that particularly hinders the acceptance of CoO is the requirement of a Free on Board (FOB) price stated on the CoO. In general, most ports do not require the declaration of a FOB, nor is it relevant for the issuance of a CoO. Nonetheless, for the ports that do require it declared, this additional requirement represents a significant barrier to companies with imports that necessitate confidentiality. Additionally, the differing interpretation of tariff codes limit the use of preferential tariff rates.

Greater capacity building is needed to facilitate efforts for the harmonisation of CoO requirements; standardise import procedures (i.e. timeline for CoO submission, customs processing of supporting documents, etc) and further align to a common Rules of Origin calculation.

VI. Country-by-country Overview

Brunei

Restrictions on foreign investment and ownership

Implementation of the country's FDI policies, particularly with regards to limits on foreign equity participation, partnership requirements, and the identification of sectors under Brunei's negative investment list, can be difficult to predict. A lack of transparency and predictability, in the application of FDI policies is likely to deter competitive bidding, and reduce investor confidence. Operations in key economic sectors such as oil and gas, energy generation and distribution, telecommunications, and transportation are monopolised by state-owned enterprises[14].

Import restrictions and customs procedures

Non-automatic licensing applies to a wide variety of goods, including basic items such as salt, sugar, and rice. Likewise, food importers are required to submit customs declaration forms at least five days prior to arrival of shipments, with all food products requiring date markings to be registered with the Director General of Health prior to importation[15]. Such regulations can greatly restrict the free movement of goods, particularly for perishable products wherein the respective value is inversely correlated to shipment time. Both importers and consumers would benefit from the elimination of such excessive customs procedures that lead to increased cost of products.

[14] 2015 National Trade Estimate Report on Foreign Trade Barriers. Office of the United States Trade Representative. (March 2015). Retrieved from: https://ustr.gov/sites/default/files/2015%20NTE%20Combined.pdf
[15] *Ibid.*

Cambodia

Non-transparent and heterogeneous customs procedures

The absence of a clear and standard application of regulations leads to unpredictable customs processes. The development of a more robust framework would ensure consistent valuation of goods; avoid undue delays in clearances; and, improve consistency of customs officers' decisions. For example, the automation of customs procedures where necessary and possible, would almost instantly realise the clear and standard application of regulations. Improvements reducing the heterogeneity of customs procedures would significantly increase investor confidence in the country.

Import restrictions

While the underlying objective of ensuring consumer protection by the Cambodian Import-Export Inspection and Fraud Repression Directorate General (CAMCONTROL)[16] is laudable, differences in the on-the-ground application of non-automated licensing for a wide array of products makes the system inefficient, non-transparent and restrictive for international trade. Nevertheless, the EU-ABC strongly commends the recent reforms announced by CAMCONTROL, and the various concrete steps it has taken thus far towards such reforms.

Restrictions on legal practice by foreign entities

The Cambodian Bar Association has been actively lobbying the Royal Cambodian Government to enforce the prohibition on foreign counselling entities from providing legal services for profit in Cambodia, so long as these foreign entities are not members of the Cambodian Bar Association. Existing regulation discriminates against foreign lawyers and law firms from offering legal services not in collaboration with Cambodian lawyers[17]. Moreover, registration of foreign membership with the Cambodian Bar Association is limited by complex and restrictive registration requirements.

Other barriers to trade

The current direction of the Cambodian government in setting up various anti-smuggling units and anti-corruption mechanisms is deeply encouraging, and the EU-ABC continues to support such efforts in reducing such barriers to trade. Enforcement of measures addressing the issue, however, remain inconsistent and would enjoy more success with greater capacity building.

[16] CAMCONTROL was established with the objective to ensure the quality and safety of products and services for the protection of consumers' health and safety; ensure the protection of consumers' economic interests; ensure the compliance of regulatory requirements related to trade; and to provide the service of commercial inspection as a third party. Retrieved from: http://www.camcontrol.gov.kh/about_us.php?action=submenu&sid=4

[17] As stated under Art. 44 of the Code of Ethics for Lawyers Registered in the Bar Association of the Kingdom of Cambodia.

Indonesia

Increased restrictions on foreign investment and ownership

The EU-ABC commends the Government's efforts in making the investment regime clearer and more objective for foreign investors. In particular, the permit application process has greatly improved over the past few years. Nevertheless, the most recent amendments to Indonesia's Investment Negative List (DNI) fail to lift existing restrictions, and instead further limit foreign ownership.

Various industry sectors and activities are affected, from agri-food to energy, from resources exploration to services. In some sectors the foreign equity allowed has dropped from 100% to as low as 33%. Broad definitions of industry sectors or sub-sectors have been used to extend the application of foreign investment restrictions on the provision of services. As an example, foreign providers of logistics services have to constrain their activities to within provincial capitals with

Text box: Examples of changes on restrictions to foreign investment and ownership†:

- Import and distribution as main distributors (now 33%, previously 100%)
- Storage, warehousing (now 33%, previously 100%)
- Cold storage (now Java, Bali and Sumatra: 33%, from 100%; East Indonesia/ Kalimantan, Sulawesi and Papua: 67%, previously 100%)
- Horticulture which includes cultivation, seeding and processing (now 30%, previously 95%, amended to be in line with the existing law)
- Data communication system services (now 49%, previously 95%)
- Content services and call centres and other value added telephony services now have a specific maximum foreign capital ownership of 49%, rather than being categorised as requiring a partnership (without a specific maximum foreign capital ownership level, but deemed as permitting up to 100% foreign ownership)
- Internet interconnection services (network access point) (now 49%, previously 65% - unless integrated with wired/wireless/satellite telecommunication services in which case the maximum is still 65%)
- Power plants 1-10 MW (now have a specific maximum foreign capital ownership of 49%, rather than being categorised as requiring a partnership (without a specific maximum foreign capital ownership level, but deemed as permitting up to 100% foreign ownership)
- Offshore oil and gas drilling (now 75%, previously 95%)
- Foreign equity on postal services – broadly defined to include courier and express delivery and other logistics services – limited to a maximum of 49% minority ownership for international deliveries to international ports and airports, and licenses are granted only to local entities. All other logistics services (now 49%, previously 95%)

† Retrieved in part from: Herbert Smith Freehills. (May 21, 2014). [Legal briefings] Indonesia Revises its Negative Investment List for New Foreign Direct Investments. Retrieved June 17, 2015, from file:///C:/Users/Research/Downloads/20140521%20%20Indonesian%20Investment%20EBulletin%20%20Indonesia%20revises%20its%20negative%20investment%20list%20for%20new%20foreign%20direct%20investment%20(1).htm

international airports and seaports[18], whilst e-Commerce activities are completely closed to foreign investors.

The new Insurance Law passed by Indonesia's House of Representatives in September 2014 places further restrictions on foreign ownership of insurance companies. The new law does not make any changes with respect to the limit of foreign ownership in joint ventures, but does call for new regulations to be issued after consideration of changes to the limit, causing a great deal of uncertainty among existing long-term investors. The Law also introduces more stringent local shareholder rules for joint ventures. Companies who are currently not in compliance with these regulations have to either conduct an initial public offering (IPO) or transfer the ownership to Indonesian nationals within five years of the Law coming into effect[19]. The Law requires the establishment of separate Shariah and regular life insurance companies when the Shariah portion of business in the combined company exceeds a certain threshold. This may have the unintended effect of dis-incentivising growth of Shariah life insurance products. Additionally, reinsurance companies operating in Indonesia are required to cede all common lines of vehicle, cargo, home and life insurance to domestic reinsurers, with non-life reinsurance to be offered to two locally licensed reinsurers before being offered to a foreign reinsurer, as part of the local capacity optimisation measure[20]. Existing restrictions in other key business sectors such as banking and other non-bank financial services remain largely unchanged however, further restrictions are currently under debate in Parliament.

Overall, Indonesia's regulations on foreign investments and ownership continue to force foreign companies to conduct businesses with local partners, either through a joint venture or from local sources. Liberalisation of ownership rules would have the effect of encouraging more and deeper investments, greater transfer of skills into the local workforce, and greater foreign participation in infrastructure upgrading in the country.

Lack of mutual recognition and harmonisation of standards:

a) Local testing requirements

Under the Indonesia National Standards (SNI) regulations[21], a wide range of products are required to be tested locally by labs appointed by the Ministry of Industry (MOI). The large number of products that require testing, combined with the limited number of testing facilities - there are only four labs approved by the MOI – translates into significant delays in approval and overall shipment time. The number of requirements that are not in line with international standards further increases the cost of trade in the country, with a consequential negative impact on consumers and investments. Additionally, mandatory testing is required on a per-shipment basis for imports, even if the goods are from the same, previously tested batch, resulting in higher costs and lead-time for companies. This requirement is particularly burdensome, given that pre-shipment inspections must be performed in the export country by a surveyor affiliated with Surveyor Indonesia.

[18] Under Regulation No. 15/2013 by the Governor of Bank Indonesia
[19] Retrieved from Milliman. (November 12, 2014) http://sg.milliman.com/uploadedFiles/insight/Periodicals/asia-ealert/indonesia-insurance-bill-09-14.pdf
[20] Letter No.S-77/D.05/2014 on the Optimization of Local Capacity (December 8th, 2014). Retrieved from: http://www.bakermckenzie.com/files/Publication/ef6f79f2-4b3a-4c6b-8400-8958ce0c79c0/Presentation/PublicationAttachment/c8197900-bc5d-4e6a-aabc-97ef477cf811/al_jakarta_optimizationlocalcapacity_dec14.pdf
[21] As stated in Regulation No.61/2013 of the Ministry of Trade

Text box: Sectors that are now confirmed closed, but were previously open or unregulated†

- Onshore/on land oil and gas drilling (now closed, previously 95%)
- Oil and gas well operation and maintenance (now closed, previously not specifically regulated)
- Oil and gas design and engineering service (now closed, previously not specifically regulated)
- Electricity utilisation and installation (now closed, previously 95%)
- Installation of offshore oil and gas upstream production (now closed, previously unregulated)
- Onshore pipe line installation for oil and gas (now closed, previously unregulated)
- Horizontal or vertical tank (now closed, previously unregulated)
- Installation of onshore oil and gas storage and marketing (now closed, previously unregulated)
- Inspection and testing of electrical power installations (now closed, previously unregulated)
- Oil and gas technical inspection service (now closed, previously unregulated)
- Implementation of Alternative Trade (now closed, previously unregulated)
- Retail sale via mail order houses (POS) or via internet (now closed, previously unregulated)
- Textiles retail (now closed, previously unregulated)
- Games and toys in retail store (now closed, previously unregulated)
- Cosmetic retail (now closed, previously unregulated)
- Footwear retail (now closed, previously unregulated)
- Electronics retail (now closed, previously unregulated)
- Food and beverages retail (now closed, previously unregulated)
- Futures trading (now closed, previously unregulated)
- Manufacture of crumb rubber (now closed, previously 95%)
- Retail of motorcycles and commercial vehicles (now closed, previously unregulated)
- Passenger land transport on scheduled routes (cross border transport) and unscheduled routes (tourism transport specific destination transport, specific area transport) (now closed, previously unregulated).

† Retrieved from: Herbert Smith Freehills. (May 21 2014). [Legal briefings] Indonesia Revises its Negative Investment List for New Foreign Direct Investments. Retrieved June 17, 2015, from file:///C:/Users/Research/Downloads/20140521%20%20Indonesian%20Investment%20EBulletin%20%20Indonesia%20revises%20its%20negative%20investment%20list%20for%20new%20foreign%20direct%20investment%20(1).htm

b) Local certification

The EU-ABC recognises and, naturally accepts, the necessity of a Halal Law from a religious and social welfare standpoint in Indonesia. A recent revision to the country's Halal Law[22] mandates a strict separation of manufacturing facilities between halal and non-halal products as part of the country's consumer protection regulations. Application of the Law, however, severely hinders production of goods as they lead to significant additional costs for companies, with the separation extending beyond just the machinery and equipment used to requirement which applies to *all* food, beverage, drugs, cosmetics, chemicals – organic and agricultural, and biotech products - sold in Indonesia, being extended to include non-food related products such as automotive parts, microchips, etc.

In addition, overseas manufacturing facilities have to be certified by the Indonesian authorities before goods produced from them can be imported into the country; implying that even if the overseas manufacturing facility meets the local halal standards, its products are still prohibited from entering Indonesia without proper certification from Indonesian Halal authorities whose Halal standards will often vary from other countries. The wide array of products covered under the regulation combined with the stringent revised requirements severely hinders the free flow of trade.

Text box: Indonesia's National Standards (SNI) and the Automotive Industry

In recent years, Indonesia has taken an increasingly stringent direction regarding SNI regulations, requiring local testing for a wide array of products, including various automotive parts with the possibility of expanding the current list to cover a much wider range of components. Confining products to local standards hinder exports for the local industry since the products do not comply with the international standards. Additionally, the exclusive use of local standards also limit FDI as the industry is not be able to market their products locally or has to produce them to two different standards, increasing the product cost for both the foreign investing company, as well as the local industry.

The country should work towards improving mutual recognition and alignment with international standards such as the United Nations Economic Commission for Europe (UNECE) or EU approved (E-marked) products with the view to enhancing consumer safety. A better alignment with international automotive standards would improve Indonesia's integration with the global automotive value chain and could invigorate the automotive industry in the country. It is also recommended that the government expands the number of certified test labs, in order to reduce processing time caused by the current low capacity.

c) Onerous labelling requirements

Recent regulations introducing the prohibition of using stickers as labels; requirements for label size to be proportional to the packaging of product; and approval of labels by the Ministry of trade prior to usage, represent significant increases to companies' production costs and restricts the products from being re-exported to other neighbouring markets. The wide array of products covered[23] under the new regulations exacerbates the restrictiveness of these regulations

[22] As with the passing of Law No.33 of 2014, also known as the Halal Product Assurance Law.

[23] Products covered under the new regulation include, i) electronic goods for home appliances, telecommunication, and informatics; ii) construction/ building mateirals; iii) motor vehicle (spare parts and others); iv) list of other types of goods and additional and expanded list to current regulated goods. As stated in Annex I to V in Regulation of Minister of Trade No.10/2014 and No.67/2013.

Non-transparent and heterogeneous customs procedures

Development of a well-defined legal framework would assist with consistent and predictable application of procedures by customs officials. Cases reported include: unexplained delays in customs clearances; inconsistent valuation of customs charges; and, unstated documentation requirements. The variations in procedures exacerbates the level of uncertainty surrounding customs compliance. Furthermore, requirements for obtaining and maintaining a green a lane customs clearance status for companies should be set out clearly, giving companies certainty when, and how, green lane status can be utilised.

Import licensing

Non-automatic import licensing is present for a broad range of products (e.g. electronics, telecommunication, cosmetics, food and beverages, children toys, footwear, textiles); and, even if a company obtains a license to import such goods, it is still required apply for an import license for each individual product. Often approval for such licenses are not guaranteed. The number of products covered by non-automatic import licensing has increased over the years, from 500 different types of products in 2008, to over 800 by 2013[24].

The growth of import licenses has led to the possibility of overlapping or contradictory requirements. Importers are required to obtain an import license either for importing goods for distribution, or for importing goods for their own manufacturing. Companies are not allowed to apply for both[25]. The regulation further requires the importing company to demonstrate a "special relationship" with the exporting company which has to be officiated by the Indonesian embassy in the exporting country before the import of products from more than one section of the tariff codes[26]. As a consequence, companies may face situations wherein such a regulation becomes an unintended import ban.

Non-competitive local content requirements

Regulations on local content requirements can also affect trade. Decree 41/2009 of the Ministry of Communication and Information Technology imposes a minimum of 50% of total capital expenditure for network development such as components and services used, to be sourced locally. In addition, the Ministry of Communication and Information Technology has announced it intends to implement a policy requiring all 4G network and 4G enabled devices to have a minimum of 40% local content by 2017. Such a policy can be seen as non-competitive and contrary to the spirit of ATIGA, which allows for a minimum of 40% *regional* content for originating goods to qualify for preferential tariff rates[27].

Other barriers to trade

Some other issues continue to exist in Indonesia which complicate the business environment, and can act as a further brake on trade and investment. The Anti-Corruption Commission has been successful in its first years of operation but now appears to be bogged-down in issues with the

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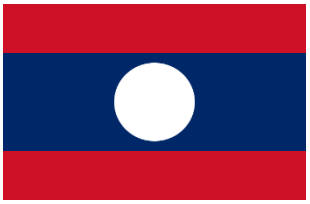
[24] As implemented with the twice extension to the Ministry of Trade Decree (56/2008) on "Import of Certain Goods".
[25] Market Access Database – Trade Barriers. *European Commission. (November 7th, 2013)* Retrieved from: http://madb.europa.eu/madb/barriers_details.htm?barrier_id=135445&version=4
[26]HS Tariff Codes refers to the "Harmonised Commodity Description and Coding System" or more commonly known as the "Harmonised System" that serves as a multipurpose international product nomenclature developed by the World Customs Organisation (WCO). The system is used by over 200 countries and economies as a basis for their customs tariffs and collection of international trade statistics. Over 98% of merchandise in international trade is classified using HS terms. The HS Codes thus serves as a universal economic code for goods and is an indispensable tool for international trade. What is the Harmonised system?, World Customs Organization. Retrieved from (http://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx)
[27] Art. 28.1 and 28.2 of the ASEAN Trade in Goods Agreement.

public prosecutor office. Also there is an apparent lack of coordination within government which can result in complex or duplicated processes, and opaqueness in the interpretation of some regulations.

Additionally, restrictions on the import of alcoholic beverages and distilled spirits remain in place, with imports of such items controlled solely by state-owned enterprises. This approach can lead to a distortion of trade and the development of parallel markets, which in turn can have adverse implications for consumer safety and health.

Laos



Infrastructural limitations

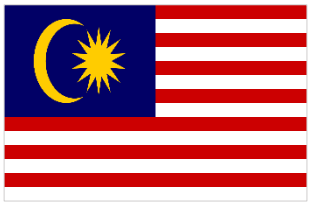
Restrictions to foreign investments in Laos are largely infrastructural. The country suffers from limited access to capital markets, shortage of skilled workers, poor levels of basic infrastructure, as well as an underdeveloped judicial system and a lack of capacity causing administrative bottlenecks[28]. The country was ranked 145 out of 175 countries on the Corruption Perception Index[29] in 2014, a drop in its rank compared to the previous year[30].

Foreign investment and ownership

Overall, the Laotian government has taken highly encouraging steps to create a business climate conducive for foreign investment inflows since the introduction of the New Economic Mechanism policy in 1986, with only a handful of industry sectors remaining not accessible to foreign companies, such as medical, postal, telecommunications, transportation, media and land leasing[31]. Foreign ownership is allowed up to 100% and over the years investment has been largely concentrated in the energy and hydropower sector. The 2010 Law on Investment Promotion further seeks to encourage investment opportunities by implementing business registration requirements that apply equally to both foreign and domestic investors. Although the EU as a whole does not maintain any bilateral agreements with Laos, the country presently has bilateral investment agreements with France, Germany, Denmark, Netherlands, Sweden, and the United Kingdom[32].

[28] UNCTAD, Investing in Laos, 2010.
[29] Transparency International. 2014 Results. Retrieved from: http://www.transparency.org/cpi2014/results
[30] Laos was ranked 140 out of 177 countries on the Corruption Perception Index 2013. Transparency International 2013 Results. Retrieved from: http://www.transparency.org/cpi2013/results
[31] 2015 National Trade Estimate Report on Foreign Trade Barriers. Office of the United States Trade Representative. (March 2015). Retrieved from: https://ustr.gov/sites/default/files/2015%20NTE%20Combined.pdf
[32] United States Department of State: 2014 Investment Climate Statement – Laos. (June 2014). Retrieved from: http://www.state.gov/documents/organization/229132.pdf

Malaysia



Import restrictions

Volumes of imported vehicles are strictly controlled by the "Approved Permits (AP)" system[33] which essentially limits the right to import and distribute vehicles to permit holders. The system is administered in a non-transparent manner and effectively serves to cap the total number of imported vehicles at 10% of locally assembled cars in the preceding year. Despite a previous commitment to phase out the AP system by 2020, a 2014[34] revision to the National Automotive Policy has set it back with a proposed six-month, in-depth study to assess the impact of the termination to the program's *bumiputera*[35] beneficiaries.

Restrictions on the import and distribution of alcohol remain, lending to a distortion of trade and motivating the growth of parallel markets.

"In pursuit of the transformation agenda, we [Malaysia] will focus on:

- *Promoting investments both domestic and foreign in high value added activities and niche areas;*
- *Liberalising the services sector and promoting the development of key sectors in order to enhance its contribution to the economy;*
- *Creating an environment for innovation, research and development;*
- *Reducing regulatory barriers in order to improve the environment for businesses;*
- *Enhancing entrepreneurial skills and promoting the development of SMEs;*
- *Attracting skilled talent from abroad to sustain growth of a knowledge based and innovative economy; and*
- *Promoting regional growth and inclusiveness"*

~ Preface by Minister Mustapha Mohamad, Malaysian Minister of International Trade and Industry for the OECD Investment Policy Reviews: Malaysia 2013†.

†OECD Investment Policy Reviews: Malaysia 2013. (2013). OECD.

Certification by the local authorities is required for certain products, which results in longer lead-times for customs clearances and increased costs. The certificate must be obtained prior to importation and the products imported should be in accordance to Standards Malaysia[36]. Additionally, several products requiring the *Sirim* mark are further restricted with the lack of readily available pool of suppliers.

[33] The Approved Permit system was initially designed to encourage *bumiputeras* to enter the automobile and motorcycle distribution and service sectors. The Approved Permit confers permit holders the right to import and distribute vehicles.
[34] National Automotive Policy (NAP) 2014. Retrieved from: http://www.maa.org.my/pdf/NAP_2014_policy.pdf
[35] The term *bumiputera* is a term used to refer to the Malay race and indigenous people of Malaysia.
[36] Standards Malaysia, is the national standards and accreditation body of Malaysia.

Restrictions on foreign investment and ownership

Malaysia has increasingly sought to liberalise foreign investment restrictions throughout various services sub-sectors. Major advancements have been made since 2009, including the removal of the Guidelines of the Foreign Investment Committee, which once used to govern all foreign acquisitions in Malaysia but now only oversees certain property investments.

However, foreign investments in certain industries still remain restricted. For example, in the reinsurance sector Malaysia implements a tiered system for the provision of reinsurance, requiring all options offered by local or Labuan based insurers to be exhausted, prior to offering the services to an 'offshore' or foreign insurer. Partnerships between foreign insurers and foreign banks are also prohibited, regardless of whether the insurer is locally incorporated[37].

Other notable restrictions on foreign equity limits include: 30% on domestic banks; 70% on insurance companies (the most restrictive among Member States, bar Thailand) and investment banks; and a 30% *bumiputera* requirement for all retail. Foreign investors in banking and distribution services are also required to be locally incorporated, although administration of licenses have been non-transparent and limited at different periods of time.

Regulatory requirements

Excessive manual inspections at the border between Malaysia and Singapore, and an IT system that is often affected by technical problems causing customs procedures and processing of declarations to be delayed due to inefficiency and system downtime, leads to additional monetary and time costs, and hinders the smooth transfer of goods between the two countries.

Likewise, Malaysia's *de minims* baseline has not been revised since 2002, and does not extend to road transport modes. Revision would encourage smoother transit of goods across borders.

[37] 2015 National Trade Estimate Report on Foreign Trade Barriers, Office of the United States Trade Representative.

Myanmar

Restrictions on foreign investment and ownership

Myanmar has in the past year taken encouraging steps to attract greater foreign investment inflows. The number of activities previously prohibited to foreign investors has been reduced nearly by half, whilst the number of activities permitted with a 100% foreign ownership has also increased[38]. In the past year, Myanmar has sought to grant operational licenses to foreign banks, a move the EU-ABC commends and believes is a crucial step for the liberalisation of the country's financial service sector[39]. However, certain key economic sectors such as insurance, telecommunications, electricity generation, and extraction and production of petroleum and natural gas, remain under the monopoly of SOEs, and may hinder the country's short and long term growth. Other industry sectors that still face foreign investment and ownership restrictions include services of air navigation, air and railway transportation, as well as manufacturing and packaging activities.

Lack of mutual recognition and harmonisation of standards

Under the current system, Myanmar requires all cargo trucks arriving into the country to be off loaded and reloaded onto a Myanmar registered truck or trailer at all cross-border checkpoints. The practice is burdensome and causes additional logistics costs and complexity.

Nonetheless, the country's commitment to the WTO's Trade Facilitation Agreement is highly encouraging, and the EU-ABC urges Myanmar to likewise engage in the implementation of the ASEAN Framework Agreement on facilitation of Goods in Transit in order to bolster smooth movement of goods, and for Myanmar to take advantage of its strategic location within the region.

Import restrictions

Import licenses are only granted to local companies which forces foreign investors to include one citizen of Myanmar in the Board of Directors of the company or to partner with local companies, in order to be allowed to make imports into Myanmar.

Moreover, the importation of distilled spirits is prohibited, with the exception of hotels importing for sale on their own premises. This prohibition represents a major trade barrier and encourages the development of black market activities for such products.

Regulatory requirements and approval period

Foreign investors are required to obtain from the respective ministry individual recommendation letters for each and every economic activity their firm intends to perform[40], prior to obtaining a license for operation. For example, a foreign logistics and transportation companies aiming at

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[38] As stated in the New Notification in August 2014 released by the Myanmar Investment Committee. Myanmar revises scope of prohibited and restricted activities for foreign investment. (September 2014). *Allen & Overy LLP.* Retrieved from: http://www.allenovery.com/SiteCollectionDocuments/Myanmar%20-%20Myanmar%20revises%20scope%20of%20prohibited%20and%20restricted%20activities%20for%20foreign%20investment.pdf

[39] Peel, M. and Mclannahan, B. AMyanmar opens door to foreign banks. (

[40] As stipulated under the Foreign Investment Law (FIL) 1988, and subsequent revision in 2013. Myanmar Investment Commission, Notification no. 1/2013.

investing in air freight forwarding services, cargo handling services and marketing and selling of air transport services would have to obtain individual recommendation letters for each of said activities from the Ministry of Transport, prior to obtaining an approval for operation licenses from the government. The objective for such a procedure remains unclear, while the process itself is lengthy, and acts as a deterrent to large scale investments.

The regulations requiring all international transfers of money to be approved by the Central Bank of Myanmar prior to the transaction and loans, either bank or inter-company, to receive previous approval from the Bank of Myanmar hinder ease of doing business, particularly affecting financial transactions for investments, and could be successfully replaced by improved banking infrastructures.

Philippines

Regulatory requirements

A large number of products are required to pass pre-shipment inspections, and to apply per shipment for an Import Commodity Clearance pass with the Bureau of Product Standard. The process is lengthy, adds to costs, and is particularly burdensome for time sensitive shipments as product quality and price value may be harmed. Furthermore, customs clearances are only allowed after sequential approval of manifests by the incoming airline, followed by submission from the freight forwarder. Such a procedure substantially creates congestions and reduces opportunities for pre-clearances prior to arrival, resulting in shipment delays of at least 24 hours.

For agricultural products, the Philippines Department of Agriculture requires importers to obtain an SPS permit and to provide it to the exporter prior to shipment. These measures complicate export procedures, increase shipment lead-times, and adds to costs, as well as prevent the transhipment of products to the Philippines, originally intended for other markets. The measure likewise restricts products from being resold to third parties should the original importer reject the shipment. Additional costs also arise from processing fees with the country's standard administrative charges for customs clearance significantly higher than international or regional levels.

Nonetheless, the recent reforms initiated by the Bureau of Customs to eliminate processing fees for low-value shipments is highly welcomed by the EU-ABC. The EU-ABC continues to support efforts taken by the Bureau of Customs to expedite customs clearances such as the planned automation of customs procedures where possible and necessary, and likewise encourages the passing of the Customs Modernisation and Tariff Act, in line with the WCO Revised Kyoto Convention, particularly for harmonisation of requirements and regulations on the importation of food and beverages; anti-smuggling and improved transparency measures; for the realisation of the Single Window.

Non-transparent and heterogeneous customs procedures

Clear and consistent application of customs regulations would provide certainty in the valuation of goods, reduce delays in customs clearance, and assist customs officers to make consistent, predictable decisions. This would increase importers confidence and encourager freer flow of goods.

Restrictions on foreign investment and ownership

The recent reduction on the number of activities listed under the 10th Foreign Investment Negative List (FINL)[41] paints an encouraging picture of the country easing restrictions on foreign investments and ownerships. Nonetheless, various requirements promoting the preferential treatment for domestic market and restricting foreign investment and ownership are explicit in the Philippines' Constitution, making it difficult to amend the various laws that allow the easy

[41] Refer to Executive Order No.184 promulgating the Tenth Regular Foreign Investment Negative List (2015).

introduction of sectors and activities with the revision of the FINL, and consequently promote uncertainty among foreign investors[42].

Additionally, limitations to foreign equity, with some as low as 25%, also tend to deter large scale investments in skill and infrastructure upgrading[43], prompting instead a focus on short/mid-term investments without significantly contributing to the development of the industry or country. A revision to the country's FINL would greatly boost economic growth and sustainable development efforts.

Import restrictions

SPS measures do not necessarily indicate a negative trade effect as such measures effectively reduce trade costs by imposing streamlined regulations on safety, quality and information for consumer protection. Excessive SPS measures however, can and do have the perverse effect of constraining trade and reducing consumer protection. For instance, the implementation of a two-tiered system for regulation sales of meat at local "wet markets" is inconsistent with regulations governing supply of frozen meat – largely imported and more in demand than locally produced meat. The additional requirements are onerous and can be used to limit import volume without clear benefits to consumer health and safety.

Text box: Restrictions to Foreign Investments – Defining Public Utility in the Philippines

Under Sec 11. Article 12 of the Constitution of Philippines 1987,

> *"No franchise, certificate or any form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines, or to corporations or associations organized under the laws of the Philippines, at least sixty per centrum of whose capital is owned by such citizen."*

There is no specific regulation or law defining what constitutes a "public utility" which has been left intentionally undefined over the years. The current working definition, which serves as benchmark classifying public utilities services, broadly includes "businesses or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service", and is taken together with a list of public services as described in Sec 13(b) of the Public Services Act‡.

The current working definition restricts foreign ownership and is unconducive for substantial foreign investments in infrastructure and skills upgrading, particularly in specific sectors such as express delivery and logistic services where there is an acute shortage in the supply of trucks and skilled truck drivers that consequently hamper the country's connectivity. A revision to the definition and/or easing of the restrictions on foreign ownership over the various sectors listed, would greatly assist the country in moving up the value chain, and spur long-term economic growth.

‡ Section 13(b), C.A. 147, considers as public services the following: common carrier, railroad, street railway, traction railway, sub-way freight or passenger motor vehicle, freight or carrier service of any class, express service, steamboat or steamship line, ferries, water craft, shipyard, marine railways, marine repair shop, wharfs, docks, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electricity, heat, water, petroleum services, sewage systems, wire or wireless communication systems, wire or wireless broadcasting stations and other similar public services.

[42] See Article 12 of the 1987 Constitution of Philippines. Retrieved from: http://www.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-xii/

[43] *Ibid.*

Singapore

Advance Export Declarations (AED)

As of April 1st 2013, Singapore Customs require advance detailed information on all goods, including non-controlled and non-dutiable goods, exported by sea and air, to be submitted prior to export. While the AED's stated objective to enhance the country's supply chain security through the use of information based risk assessment is laudable, detailed requirements stipulated by the AED become burdensome for export, and leave only a minimal turnaround time before uplift of cargo. For example, traders are required to submit detailed export declarations at 8-digit HS code level for all exports valued above SGD1,000.00. Additional costs are also incurred from developing IT systems and deploying additional staff specifically to fulfil AED requirements.

Other barriers to trade

In relation to land transportation, control checks are duplicated on either side of the border using the same set of invoice data, causing delays in customs clearance and congestion at the Singapore-Malaysia cross border checkpoint. The *de minimis* baseline is also not extended to goods transported by road.

The EU-ABC notes the recent announcement by the Government of Singapore that it intends to hold a public consultation on standardised packaging for tobacco products. The effective protection of intellectual property rights is an essential element of a thriving economy, generating jobs and growth by fostering competition and spurring innovation. The introduction of standardised packaging, regardless of product type, may result in unintended consequences of preventing competition through product differentiation. Consequently, companies may be dissuaded from introducing new products that would have otherwise benefited consumer choice and market competitiveness.

Thailand

Restrictions on foreign investment and ownership

Foreign equity across most industry sectors is capped at 49% as stated under the Foreign Business Act (FBA), with further acts regulating specific sectors such as banking, insurance, and telecommunication[44]. Additionally, services that are not explicitly listed in the FBA schedule (e.g. logistics services) are still limited to a similar 49% foreign equity cap[45]. Removal of these limitations would encourage long term investments, instead of short/mid-term activities with limited contribution to the long term development of the respective industries. For example, long term foreign investments in logistics services and infrastructure may be deterred as a result of the cap which critically impacts the transhipment of goods across the region.

Other restrictions, such as those regulated by specific industry acts, only allow foreign investments through joint ventures. For example, under the Life Insurance Act and Non-Life Insurance Act of 2008, foreign insurers can only operate via a joint venture with an existing Thai insurance company[46].

Regulatory requirements

Inspections and approval from the Thailand Industrial Standard Institute (TISI) are required for a wide range of products, and customs clearance is not possible until the approval has been obtained. Thai Customs have recently reintroduced certain manual procedures for customs clearances, and imposed restrictions on break bulk consolidation of shipments within the Free Trade Zones, further impacting smooth transfer of goods.

Text box: Thailand's National Single Window and dual language customs entry

Thailand's National Single Window application, also known as the Paperless Clearance System was launched in 2008, as an initiative to enhance custom clearance procedures. The current application of the system however requires every import and export customs' entry to be declared and documented in both English and Thai language. Such a practice adds to the customs red tape and breaches the Customs Act, which allows submission of documents in either English or Thai language, and not necessarily in both languages.

Greater adherence in using English for all documentations would greatly facilitate customs clearances, speed up delivery process, and improve productivity for companies exporting and importing into the country.

[44] EU investors are further set at a disadvantaged when compared to investors from the US as a result of the US-Thailand Treaty of Amity and Economic Relations of 1968. Under the treaty, US incorporated companies are exempted from most restrictions on foreign investments stated under the Foreign Business Act (FBA) of 1999. As such, American foreign investors are not restricted from owning majority shareholdings of a locally incorporated company or branch office in Thailand, unlike European companies which are restricted to a 49% cap.

[45] Foreign ownership in logistic services can be extended to a further 75%, but only with the provision of force disclosure of funding from Thai shareholders.

[46] Upon enactment, the two Insurance Acts of 2008 forced existing foreign majority controlled life and non-life insurance company to amend voting share structures to become Thai majority controlled company, and to convert the company into a public company by 2013

Non-transparent and heterogeneous customs procedures

A clear framework of procedures for customs valuations would avoid differing allowances and provide consistency in the "pre-determined freight zone rate" import duty. While such calculations are ostensibly allowed under the Cost Insurance Freight value, it is deemed by the Thai Customs' post-clearance audit team as being non-compliant to customs values.

Import restrictions

The process for obtaining an import license is slow, non-transparent and costly. Certain products also require further registration with designated authorities to be considered from a "certified importer". Varying quality standards, testing requirements and inspections further hinder trade as a result of the absence of mutual recognition and harmonisation of standards.

Text Box: Thailand's Automotive Industry Standards

Automotive manufacturers are required to comply with local standards when supplying to the Thai market. Such a measure means duplications of tests, as products can only be certified by labs appointed by the TISI, and also limits export volume as the local standards are not harmonised with international standards. Consequently, the certification requirement to local standards have limited inflow of foreign investment, without enhancing consumer protection. Moreover, automakers are mandated to undergo separate quality audits by Thai inspectors at all global plants providing parts to manufacturing plants located in Thailand.

It is strongly recommended that Thailand should seek to improve the harmonisation of its standards which would facilitate it becoming a global automotive manufacturing hub.

Customs Penalty and Reward System

The Customs Reward System grants the Director-General of the Customs Department full discretion to "reward" customs officials and third party whistle blowers for reporting or successfully pursuing instances of custom evasion (smuggling) and custom avoidance (false declarations). The current reward sharing system provides for a 55% of the penalty recovered from an offender to be distributed as a reward for the reporting. From this, 30% is given to third party whistle blowers, while the remaining 25% is distributed between custom officials who identified and handled the case.

Moreover, the reward and penalty system under the Customs Act[47] does not distinguish between instances of negligence and intent. As a result, the law assumes a strict criminal liability against importers and their representative for instances such as under declaration of custom duty, even if the under declaration was a result of a simple mistake and/or negligence. Penalties for customs duty evasion includes fines up to four times the actual goods value and/or imprisonment of the offender. Such measures can and do serve as a deterrent for the importation of goods, as well as coming forth with cases of unintentional or administrative errors.

Whilst, the objective of the system to enhance detection of custom evasion and avoidance is commendable, the lack of adequate check and balances may lead to abuses of the system. Although the government has previously shown openness to review the regulation, all efforts intended to revise the system has thus far been unsuccessful.

[47] Customs Act 2469 (1926).

Vietnam

Non-transparent and heterogeneous customs procedures

The introduction of a transparent and standard application of customs regulations would lead to consistency in the valuation of goods, adjustments of import value, and adjustments of import duty based on source country. This would reduce costs for importers, thus benefiting consumers, and encourage investments into the country[48].

Import restrictions

The commercial import of certain products, such as cigars and cigarettes, crude oil, newspapers, journals, periodicals, and almost all recorded sound and picture media, is licensed only to SOEs. The current system hinders competition, discourages expansion of suppliers' network (i.e. large distributors can sell only to wholesalers, while wholesalers can only distribute to smaller retailers, thus restricting the distribution of products along the supply chain) and deters the introduction of new products into the local market. This further restricts competitive trade by foreign companies and incentivise the growth of parallel market activities.

Vietnam has, however, taken a very encouraging step addressing this issue, with the Prime Minister, Nguyen Tan Dung, stating an intention to accelerate the sale of SOE's shares in order to encourage further investment and spur economic growth[49]. The EU-ABC welcomes the move to improve the country's investment outlook.

Restrictions on foreign investment and ownership

Vietnam's investment volume more than doubled since in the previous year, ranking it as the second most attractive investment destination in Asia Pacific in 2014, behind only China[50]. Nonetheless, foreign investment in various industry sectors are limited to joint venture enterprises or business cooperation contracts. Industries closed to foreign investment include construction, operation of international telecommunication networks, the exploitation and processing of oil and gas, air transportation, railway and sea transportation, among others. Foreign equity limitations also vary between subsectors of industries. In telecommunications for instance, foreign equity in

"[The revised laws] are aim to trigger an investment wave from both local and foreign investors… and will make huge changes to significantly improve our business environment and create strong momentum for growth"

~ Minister of Planning and Investment, Mr Bui Quang Vinh.†

†Vietnam bets on easing of business regulation to boost investment. (June 23rd, 2015). The Business Times. Pg.23.

[48] Starting January 1st, 2015 the new Law on Customs provides a legal framework for the National Single Window and institutes a number of positive changes. Including increased electronic filing of custom forms, increased self-certification by traders including classification, origin, and customs valuation.
[49] Vietnam bets on easing of business regulation to boost investment. (June 23rd, 2015). *The Business Times*. Pg.23.
[50] Fingar, C. Vietnam's Inward Investment Surge – will it last? *Financial Times.* (April 21st, 2015) Retrieved from: http://www.ft.com/intl/cms/s/0/cbcd26e4-e837-11e4-9960-00144feab7de .html#axzz3f1vkMFRc

services supplying closed user networks are allowed up to 70% equity, whilst facility based basic services is capped at 49%.

In the financial services sector, foreign banks are permitted only up to 49% equity, and are further restricted to only one office per province. These measures, in addition to the fact that no new joint venture banking license has been approved in the past few years hinder FDI and create obstacles to freer trade.

Vietnam is, however, currently planning a major revision to its investment negative list, with the loosening of regulations in over a hundred industry sectors, that aims to trigger a strong investment wave from both local and foreign investors. The EU-ABC welcomes this significant revision to the country's investment negative list.

Lack of mutual recognition and harmonisation of standards

There has been cases of non-adherence or incorrect usage of HS tariff codes on imports of goods. Furthermore, tariff codes used in the exporting country may be rejected by Vietnamese customs, limiting the application of preferential tariff treatments in free trade agreements that the country is a signatory to.

Inter-agency coordination on custom regulations

An apparent lack of coordination among the various customs agencies and ministries can result in complex or duplicated procedures for custom clearances. Where regulations conflict, they can create obstacles to third party invoicing, e.g. differing methods of calculation for customs charges, with some using weight of goods rather than value of goods.

Other barriers to trade

All money remitted out of Vietnam must be backed up with a contract that matches exactly the invoice and was previously approved by the Central Bank of Vietnam; this limits instances of last-minute adjustment to invoices. Moreover, adjustments to payments by means of credit notes are restricted. Such requirements add to the cost of processing payments and prevents flexibility of commercial financial instruments.

VII. About the EU-ASEAN Business Council

The EU-ASEAN Business Council (EU-ABC) is the primary voice for European business within the ASEAN region.

It is endorsed by the European Commission and recognised by the ASEAN Secretariat. 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 recommendations to policy 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.

The EU-ABC conducts its activities through a series of advocacy groups focused on particular industry sectors and cross-industry issues. These groups, usually chaired by a multi-national corporation, draw on the views of the entire membership of the EU-ABC as well as the relevant committees from our European Chamber of Commerce membership, allowing the EU-ABC to reflect the views and concerns of European business in general. Groups cover, amongst other areas, Insurance, Automotive, Agri-Food & FMCG, IPR & Illicit Trade, Market Access & Non-Tariff Barriers to Trade, and Financial Integration.

For further information about the EU-ABC please send an e-mail to info@eu-asean.eu .

VIII. Glossary of Terms

AEC	ASEAN Economic Community
ASEAN	Association of South East Asian nations
ATIGA	ASEAN Trade in Goods Agreement
CoO	Certificates of Origin
EU	European Union
EU-ABC	EU-ASEAN Business Council
FBA	Foreign Business Act
FDI	Foreign direct investment
FINL	Foreign Investment Negative List
FTA	Free trade agreements
GDP	Gross domestic product
HS	Harmonised system
MNC	Multinational companies
MOI	Ministry of Industry
NTM	Non-tariff measures
NTB	Non-tariff barriers
PSI	Pre-shipment inspection
RoO	Rules of origin
SOE	State-owned enterprises
SME	Small and medium size enterprises
SNI	Indonesian National Standard
SPS	Sanitary & phytosanitary
TBT	Technical barriers to trade
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
WTO	World Trade Organisation

IX. List of Working Group Members

Eurocham Cambodia
Eurocham Indonesia
Eurocham Laos
EU Malaysia Chamber of Commerce & Industry
European Chamber of Commerce in the Philippines
Europe Philippines Business Network
Eurocham Singapore
European Association for Business & Commerce (Thailand)
Eurocham Vietnam
BMW Asia
Diageo
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