EU-ASEAN
BUSINESS COUNCIL

Review & Upgrading of The ASEAN Trade In Goods Agreement: An Opportunity to Drive Sustainable Economic Integration

September 2022

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Executive Summary

The move to upgrade the ASEAN Trade in Goods Agreement (ATIGA), the lynchpin of ASEAN Economic Integration as far as goods are concerned, is very much welcomed. Some twelve years after the ASEAN Trade In Goods Agreement (ATIGA) was signed, ASEAN has now committed to conduct a review and upgrade of the Agreement.[1] In announcing the launch of formal negotiations on the upgrade, the ASEAN Economic Ministers stressed the need "for ASEAN to accelerate economic recovery from the COVID-19 global pandemic" and that **the upgrade "seeks to ensure that ASEAN remains relevant, modern, forward-looking, and more responsive to regional and global developments and able to contribute to increasing the efficient utilisation of ATIGA for businesses to benefit from regional integration."**

> "The upgraded ATIGA should deepen the ASEAN economic integration with more comprehensive, modern, trade facilitative and stronger commitments than those offered by ASEAN to Dialogue Partners, including in RCEP, to enhance the competitiveness of ASEAN as a single market and production base and its attractiveness as a preferred production and investment hub"
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> Dato' Lim Jock Hoi, Secretary-General of ASEAN, 16 March 2022

These are commendable aspirations, and it is certainly true that as a more than decade old trade agreement ATIGA is in need a review, upgrade and modernisation. The world has moved on significantly since ATIGA was signed by the ASEAN Member States in February 2009. Industry has evolved, in some cases beyond recognition from a decade ago. Technology and the digital economy now play are much more important role in trade in goods. Customs procedures are more sophisticated with automation playing a bigger and bigger role. Tariffs are less of a concern, but non-tariff barriers to trade are more prevalent than ever and industrial advances mean that standards and conformity issues are now vital than ever.

Additionally, new areas have come to the fore which ATIGA, in its current form, does not address but which any upgrade should cover. In many cases other Agreements that ASEAN collectively, or its member states individually have entered to are far more advanced on trade in goods issues than ATIGA is. That cannot, and should not, be right.

ATIGA is the backbone of ASEAN economic integration. This is not to devalue of the role of services in the region's ambitions to create a single market and production base; rather it reflects the continuing importance that the production and movement of goods plays in the region's growing economy. ATIGA is the reason why ASEAN has made praiseworthy progress on tariff liberalisation with over 98% of tariff lines at zero now across Southeast Asia for qualifying goods[2].

However, significant elements of the current ATIGA have not been fully implemented or have been largely ignored by the ASEAN Member States, to the detriment of their economies, businesses and citizens.The lack of significant progress on eliminating Non-Tariff Barriers to Trade, despite the provisions and clear deadlines enshrined in ATIGA, represents a failure by ASEAN to deliver on its oft-repeated promises, with vested national interests prevailing over the greater common good. When looking at the impact of ATIGA on Intra-ASEAN trade in goods, ERIA noted that ATIGA "can play a potentially bigger role by addressing NTBs and barrier effects of NTMs in the region" and that "whatever the reason for the rise in NTBs and NTMs, addressing them should be a priority for ATIGA."[3] Notwithstanding the progress on tariff liberalisation, there still remains room for further improvements to bring the ATIGA on par with other Agreements that Member States have subsequently entered into.

The passage of time, changes in how the world and region have developed and innovated, presents an opportunity to upgrade ATIGA in order to add new, and much needed, impetus to the ASEAN Economic Community (AEC) project and also to include new elements into ATIGA that help the region meet other pressing needs, such as ensuring a sustainable, investor friendly, and environmentally progressive future. It is hoped that this valuable opportunity will not be missed. Upgrading ATIGA will require new political commitment from the Member States, changes in policy and implementation, and renewed emphasis in a number of key areas. Failing on this, will mean that the upgrade of ATIGA runs the risk of being meaningless in terms of advancing both regional economic integration and creating an environment to allow both SMEs and MNCs to grow in the region to the benefit of all.

Recommendations

Existing or New Provisions	Applicable of ATIGA	Recommendation
Existing Provisions	Chapter 1, Article 3 – Classification of Goods	• ASEAN-wide accepted ruling system at the AHTN level be implemented and included in the review of ATIGA to deal with differences over assigning of HS Codes to particular products under the ASEAN Harmonised Tariff Nomenclature.
	Chapter 1, Article 11 – Notification Procedures	• Incorporate the provisions of the 2018 Guidelines for the Implementation of ASEAN Commitments on Non-Tariff Measures on Goods (the NTM Guidelines).
	Chapter 1, Article 13 – ASEAN Trade Repository	• Include compulsion for Member States to ensure that the ATR is maintained, up-to-date and relevant. • Expand incorporate "informed compliance".
	Chapter 2 - Tariff Liberalisation	• Specific measures should be explicitly included in this Chapter on the tariff free treatment of reused, recycled, repaired and remanufactured goods to speed up movement to a Circular Economy in ASEAN. • Remaining tariffs on some goods in some Member States should be further eliminated to bring the ATIGA on par with other Agreements that have been entered into subsequently.
	Chapter 3 – Rules of Origin	• There are a slew of changes needed in this Chapter including: ◦ Providing a definition of Certificates of Origin; ◦ Simplifying the Rules of Origin; ◦ Increasing the waiver threshold (below which a CoO is not needed), ◦ Provisions to ensure a sunset clause for the use of paper Form-Ds ◦ Appropriately upgrading the Rules of Origin in line with AHTN 2022 (the seventh edition of Harmonized System nomenclature implemented with effect from 1st January 2022) and the related correlation tables
	Chapter 4 – Non-Tariff Measures	• NTM Guidelines be incorporated into ATIGA, bringing legal force to each of the principles of the Guidelines, in particular Principle 4 which deals with non-discrimination and impartiality. • Re-write Article 42 to include new, independently measurable and meaningful deadlines for the elimination of NTBs in every ASEAN Member State. • Move to have an independent panel of experts who can review submissions of possible NTBs, not just from Member States but also from the business community • Include provisions to compel Member States to report on the usage of the NTM Toolkits that have been developed for the region.
	Chapter 5 – Trade Facilitation	• Include specific and enforceable deadlines for the further expansion of the ASEAN Single Window to include all documentation needed for the import or export of goods. • Include a provision for simplified clearances for low value shipments. • Include a commitment to move full paperless systems for customs and other documentary requirements. • Include provisions to enhance dialogue and consultation with the private sector. • Include more specificity Enin the Chapter on enhancing trade facilitation in the region.

Existing or New Provisions	Applicable of ATIGA	Recommendation
Existing Provisions	Chapter 6 – Customs	• Wholesale replacement of the text with new provisions as set out in Annex 2 to this paper • Include provision for the development of an ASEAN-wide AEO programme or a firm deadline for the proposed MRA on AEOs. Including an enumeration of the benefits companies should obtain from becoming an AEOs, preferably going beyond those mentioned in RCEP("RCEP-plus"). • Including provisions on e-commerce clearances building on the WCO Framework of Standards on Cross-Border E-Commerce[4].
	Chapter 7 - Standards, Technical Regulations, & Conformity Assessment Procedures	• Chapter needs to be updated to reflect the reality of the situation and also to incorporate objectives set out in the AEC Blueprint 2025. • Incorporate measures to adopt and mutually recognise internationally accepted standards and procedures such as those set out by ISO, IEC and UN-R. This should be incorporated into ATIGA along with the specific commitments on the timing of harmonisation in specified sectors, and naming the specific international standard setting bodies whose standards would be accepted across the region (e.g. ISO, Codex, etc.).
	Chapter 8 – Sanitary & Phytosanitary Measures	• Amend text to ensure closer alignment with existing WTO provisions and to include food safety elements explicitly within the definitions.
New Provisions	Intellectual Property Chapter	• Include a new Chapter to ensure protection of IP and enhance enforcement measures for goods. • Suggest any new chapter be based on the provisions in RCEP.
	E-Commerce Chapter	• Include a new E-Commerce Chapter covering e-commerce goods to include: ◦ Provisions setting out RoO for e-commerce goods and therefore access to preferential tariff rates; ◦ Provisions on the expedited clearance of e-commerce goods at ports of entry ◦ Recognition of electronic authentication and signatures; ◦ Non-imposition of restrictions on numbers of e-Commerce goods; ◦ An agreement on the way forward for simplified collection of any VAT/GST liable on e-commerce goods imported into a member state, ideally with such taxes to be collected at the point of purchase. ◦ Measures related to consumer protection and consumer rights (including on the return of the goods) should also be included, as should a commitment to establish and ASEAN-wide Memorandum of Understanding between the AMS, e-Commerce Platforms and Brand Owners to help prevent the sale of counterfeit and copycats online. ◦ Clear rules around data governance and the easiest possible flow of data across borders to enable the future growth of the e-Commerce sector.

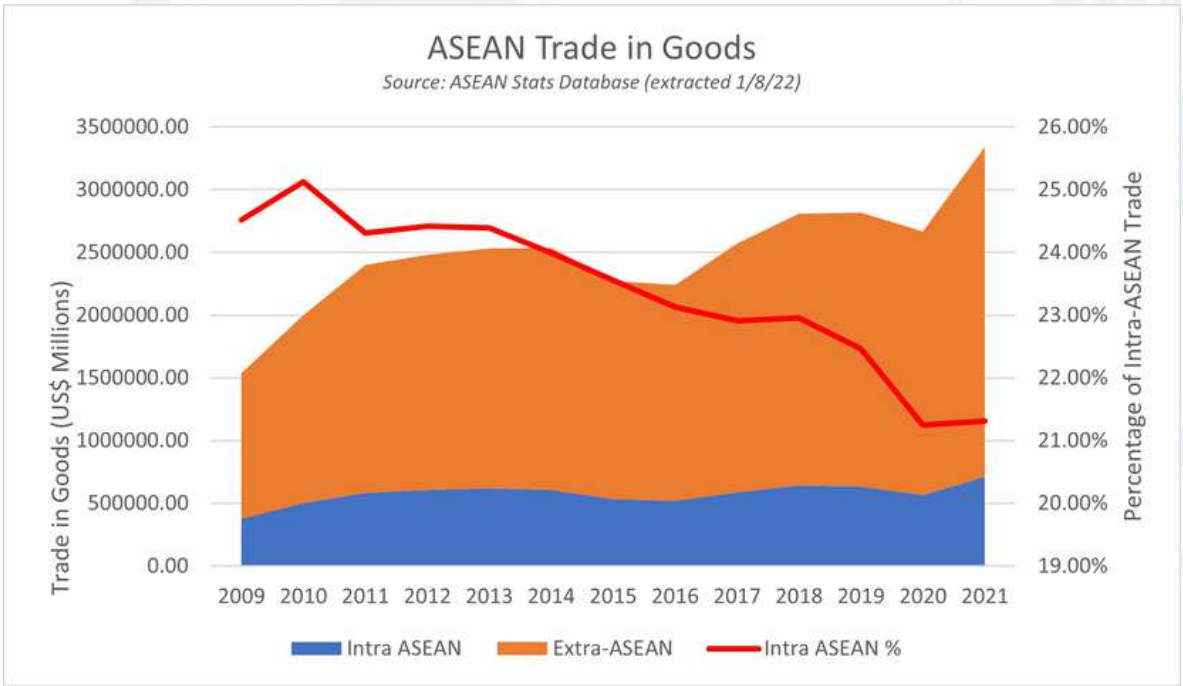
Existing or New Provisions	Applicable of ATIGA	Recommendation
New Provisions	Trade & Sustainable Development Chapter	• New Chapter to help ensure speedy movement on the development of the Circular Economy and helping ASEAN achieve UN SDG goals. Measures to include are: ◦ Firm and enforceable commitments on clearer and better facilitation of trade in used / recycled products ◦ The eligibility of second hand or recycled products for FTA treatment – perhaps through specific set of Rules of Origin for them ◦ Firm and enforceable commitments on harmonising standards for recycled or repurposed goods ◦ Commitments to promote the use of more efficient, cleaner or renewable energy sources for the production of manufactured goods ◦ Commitments not to reduce levels of protection for the environment as means of increasing advantage in trade in goods. ◦ Commitments to meet their nationally determined targets under the Paris Agreement ◦ Commitments to review and ultimately adopt best practices in designing, implementing and operating carbon pricing or carbon tax mechanisms ◦ Commitments to prevent the trade in endangered species and to protect bio-diversity ◦ Encouragement to support trade in forest products, including timber, solely from sustainably managed forests ◦ Commitments on labour rights and the prevention of the use of forced or slave labour in the production of goods.
	Small & Medium Enterprises	• Include a new Chapter in ATIGA specifically on the support, information sharing and cooperation to assist SMEs to grow their businesses, using Chapter 14 of RCEP as the base text.
	Informed Compliance & Enhancement of ASSIST	• Include provisions in either Chapter 1 (General Principles) or Chapter 5 (Trade Facilitation) to establish a system of "informed compliance" and to put in place enforceable provisions over the use of ASSIST by Member States and the publication of cases and statistics.

State of Play on the AEC & ASEAN Trade in Goods

The AEC is stalling. As a project, on paper, it is an excellent, well-thought-out plan to bring the 10 member states of ASEAN closer together, boost sustainable economic development, turn ASEAN into a conjoined economic powerhouse, and drive intra-ASEAN trade upwards whilst helping to insulate the region against global trade shocks. However, as things stand, the full benefits that could and should flow from the AEC are not being realised as key elements of it have not been achieved.

There is a sense that ASEAN is, to some extent, resting on its laurels. That is understandable to a degree. The region had a relatively good COVID-19 pandemic: governments in the region put in place swift and expansive support mechanisms to protect their economies, jobs and businesses; recovery has come quickly as borders reopened and commerce rebounded; and levels of FDI to the region have been maintained and indeed grown as a proportion of global FDI. Furthermore, the region remains a bright spot for future economic growth with its basic fundamentals to support that remaining in place (relatively young well-educated populations; growing middle classes and urbanisation rates; improving connectivity; world's third largest workforce etc. etc.). European business continues to rank ASEAN as the region of best economic opportunity going forward: in the lastest ASEAN-EU Business Sentiment Survey conducted by the EU-ABC, 63% of respondents ranked the region so, nearly 6 times as many as those said that China was the region of best economic opportunity. But how long the advantages that ASEAN presently enjoys, particularly in a world that is becoming afflicted by conflicted, geo-political tensions, and extreme weather conditions driven by climate change, is a moot point.What is clear is that driving ahead harder and faster on economic integration will help the region remain competitive and less reliant on external partners.

As noted above, in some areas the AEC has been an undoubted success: tariff liberalisation in ASEAN under the provisions of ATIGA has been brilliant, so long as your goods qualify and the cost and effort of getting the necessary Certificate of Origin is undertaken. There is room for further optimisation in tariff liberalisation. In other areas, much work remains to be done, but rather than doing what has been promised, ASEAN has become adept at both developing new ideas, frameworks, master plans, consolidated strategic action plans etc etc., rather than concentrating on completing the tasks already at hand. This is particularly true when it comes to areas like tackling and eliminating non-tariff barriers to trade and the harmonisation of standards.



If the key measure for the impact of ATIGA are increases in intra-ASEAN flows of goods and increasing the proportion of intra-ASEAN trade in goods compared to its total trade in goods, then ATIGA has failed. Between its signing in 2009 and 2020 the volume of trade in goods has remained essentially flat, and the proportion of intra-ASEAN trade in goods versus the regional total trade in goods has fallen from close to 25% to 21% (in fact it has declined every year since 2010 to 2020, and only rose marginally in 2021). ASEAN's external trade has been booming, whilst intra-ASEAN trade has been stagnating, despite the moves to create a "single market and production base".

There are undoubtedly a multitude of reasons for this, but key amongst them are surely overly complex and burdensome customs procedures; the rise in non-tariff measures and non-tariff barriers to trade; the lack of true harmonisation of standards across the region; and rules of origin that are often to complex or too troublesome for many, particularly MSMEs, to navigate. All of these are areas covered by ATIGA. All are areas where improvements can and must be made.

In the following sections we make suggestions for both improving the existing provisions of ATIGA and possible new additions to the Agreement which would help to modernise it and improve the landscape for the trade in goods (and therefore for attracting investments) going forward.

Policy & Emphasis Changes Needed in the Upgrade of ATIGA

As the AEM and the Secretary General of ASEAN have noted, in undertaking the review and upgrade of ATIGA the ambition should be high – at least as high as for existing ASEAN external trade deals, with RCEP surely the minimum benchmark – or higher. ATIGA needs to become an "RCEP-Plus" Agreement. However, to achieve this, and to really drive ASEAN economic integration forward, a number of policy and emphasis changes are needed with ASEAN. These must include:

- A recommitment, with real intent and ambition, to tackle non-tariff barriers to trade in ASEAN;
- An emphasis on helping SMEs grow, expand their reach beyond their borders, by including provisions aimed specifically at assisting them and lower the bureaucracy of cross-border trading within ASEAN
- Incorporation of sustainability policies and moves towards a circular economy within the new ATIGA
- Acknowledgement of the importance of the movement of e-Commerce goods within ASEAN through incorporation of special provisions to support this growing segment
- Clear commitments to move to paperless customs procedures and further simplification of customs procedures, particularly for low value shipments.
- As a policy position, accept that IP protection needs to be included in ATIGA as a tool to further help the fight against illicit trade in ASEAN, and to give investors more faith that their investments will be protected.

ASEAN Economic Ministers are requested, as a bare minimum, to commit to these changes in policy and emphasis, and to instruct officials to work on these elements, in close collaboration with the private sector through the Joint Business Council. As part of the EU-ABC Annual Business Sentiment Survey 2022, we asked respondents for their views on what new provisions, if any, should be included in the upgrade of ATIGA. 28% of respondents said there should be an E-Commerce Chapter. 24% of respondents said there should be binding provision to eliminate NTBs, and 23% said that there should be an upgraded Customs Chapter.

The subsequent sections of this paper take a look at where both the existing provisions of ATIGA need to be revised and modernised, and also at new provisions that should be included.

Revisions of Existing Provisions

Detailed suggestions for the revision of existing ATIGA provisions are set out in Annex 1 of this paper.

There are areas where the existing provisions of ATIGA need to be strengthened, enforced better, and provide clearer mechanisms for handling differences of opinion or approach by the Member States. Enhanced transparency is also key. There are, equally, areas where the text needs to be updated to reflect the passage of time. Areas where, in our view, improvements can and should be made are:

- Chapter 1, Article 3 - Classification of Goods: ironing out differences over assigning of HS Codes to particular products under the ASEAN Harmonised Tariff Nomenclature.
- Chapter 1, Article 11 – Notification Procedures: Not been used particularly well by the Member States. The focus should be on notification on non-tariff measures. This should be made clearer in the title of the Article and the article itself should incorporate the provisions of the 2018 Guidelines for the Implementation of ASEAN Commitments on Non-Tariff Measures on Goods (the NTM Guidelines)[5]
- Chapter 1, Article 13 - ASEAN Trade Repository: wording needs to reflect the passage of time and also provide a degree of compulsion for Member States to ensure that the ATR is maintained, up-to-date and relevant. Expanding it to incorporate "informed compliance" should also be considered[6].
- Chapter 2, Tariff Liberalisation: this section needs a wholesale updating to reflect the passage of time and the achievements made so far on tariff elimination the region. Including provisions on recycled, reused and remanufactured goods would be beneficial to the region in its attempts to establish a circular economy. Further elimination of remaining tariffs on some goods in some Member States will also bring the ATIGA on par with other Agreements that have been entered into subsequently.
- Chapter 3, Rules of Origin: There are a slew of changes needed in this Chapter including providing a definition of Certificates of Origin, simplifying the Rules of Origin, increasing the waiver threshold (below which a CoO is not needed), and provisions inserted to ensure a sunset clause for the use of paper Form-Ds, amongst others. With the implementation of AHTN 2022 (the seventh edition of Harmonized System nomenclature) with effect from 1st January 2022, it is also important to appropriately upgrade the Rules of Origin under ATIGA.

- Chapter 4, Application of Non-Tariff Measures: by far the biggest disappointment in ATIGA and on the AEC has been the lack of progress on the elimination of NTBs and the lack of transparency on NTMs. This whole chapter needs to be strengthened, and compulsory (but realistic) timelines put in place.
- Chapter 5, Trade Facilitation: too many broad and bland statements in this sector. It could be enhanced by more specificity and increased measures on transparency.
- Chapter 6, Customs: This chapter should be reviewed to put in place firm commitments on the full paperless and simplification of customs procedures across ASEAN. It should also include new provisions such as the incorporation of the ASEAN Low Value Shipment Programme. Any new Customs Chapter should include provisions already in RCEP, but also move beyond them ("RCEP-plus"). An ASEAN-wide AEO programme should be the goal, with MRAs on AEO programmes a minimum requirement. The Chapter should also clearly enumeration the benefits of AEO programmes (RCEP-plus).
- Chapter 7, Standards, Technical Regulations and Conformity Assessment Procedures: Another significant disappointment has been the slow pace of progress on harmonising standards across the region, and the lack of implementation on mutual recognition agreements. This article needs to be updated to reflect the reality of the situation and also to incorporate objectives set out in the AEC Blueprint 2025.
- Chapter 8, Sanitary & Phytosanitary Measures: There is a need for closer alignment with existing WTO provisions and to include food safety elements explicitly within the definitions.

New Provisions Needed in an Upgraded ATIGA

Since the entry into force of ATIGA over a decade ago, ASEAN collectively, and some of its members individually, have negotiated, signed and entered in to force many new Free Trade Agreements and other related agreements with external trading partners (e.g. the EU-Singapore FTA, EU-Vietnam FTA, CPTPP, RCEP etc.). Many of these Agreements include provisions and requirements that go beyond those currently contained in ATIGA. Coupled with the exhortation of the ASEAN Secretary General to ensure that the new ATIGA has "stronger commitments than those offered by ASEAN to Dialogue Partners", those provisions in existing ASEAN+ agreements only serve to highlight the need to significantly upgrade ATIGA to ensure its relevance and also to help with the preservation of the centrality and co-operation of ASEAN as it seeks to move forward with its own economic integration agenda. There is also an opportunity to embed sustainable economic development at the core of ATIGA.

The EU-ABC, therefore, suggests that ATIGA should be broadened in scope to at least include Chapters on E-Commerce, Intellectual Property protection and sustainable development, particularly with regard to ASEAN's push to develop a Circular Economy, and a new Chapter on support for SMEs. Arguments have been brought forward at various ASEAN working level meetings not to include such chapters, the argument being that such issues have no place in a trade in goods agreement. That is a spurious and misplaced position to take and risks missing an opportunity to make serious advancements in key areas that would benefit all of the region.

IP Protection Chapter

ASEAN has a significant and unfortunately growing problem around illicit trade, particularly in the area of counterfeit and copycat goods. It is an issue that extends to a broad range of products from alcoholic beverages through car parts, luxury goods, pharmaceuticals, and toys to tobacco and related products. The EU-ABC has previously estimated that the illicit trade business in the region is worth over US$35bn per annum. Anyone who has walked through a variety of night markets in the region will have seen the plethora of counterfeit goods. Even more are available online through various e-Commerce marketplaces. The growth of e-commerce in ASEAN has only served to exacerbate the problem.

With the advancement in technology and the freer flow of trade in the region, it is critical to place emphasis on the protection and enforcement of intellectual property rights to ensure that ASEAN continues to advance its innovations and protect companies operating in the region. Measures to enhance enforcement, consistency of approach, and defining responsibilities for ensuring against intellectual property infringements should be considered for inclusion.

ASEAN Member States, collectively through the RCEP agreement, and individually (through other agreements such as CPTPP, EU-Singapore FTA, EU-Vietnam FTA etc.) have already signed up to, and in most cases implemented, already well-advanced IP protection measures. There is no obvious reason as to why the region should not include similar provisions in the upgrade of ATIGA.

RCEP would be the obvious starting point for such a chapter in ATIGA given that all 10 of the ASEAN Member States have already signed up to the provisions in that Agreement. The IP Chapter in RCEP states that "the objective of this Chapter is reduce distortion and impediments to trade and investment by promoting deeper economic integration and cooperation through the effective and adequate creation, utilisation, protection, and enforcement of intellectual property rights"[7]. The Chapter goes on to stress that protection and enforcement of IP rights contribute to the promotion of technological innovation, transfer and dissemination of technology to the mutual advantage of producers and users in a manner that is conducive to social and economic welfare. Those reasons should be good enough to include such a provision in ATIGA.

Whilst IP Chapters in broader based Free Trade Agreements often go beyond pure trade in goods issues, there is no reason why a more restrictive "goods only" chapter could not be included in the upgrade of ATIGA.

E-Commerce

As the EU-ABC has previously noted, the e-commerce industry in Southeast Asia is booming[8]. Numerous studies have been undertaken on the growth and impact that ecommerce has had, and will continue to have, in the region. Most notably, the ones that were conducted over the period of the COVID-19 pandemic have revealed that e-commerce opportunities have penetrated nearly every corner of Southeast Asia.By 2025 it is estimated that the e-Commerce industry in ASEAN will be worth around US$217.5bn with around 443 million users. Most of that industry is accounted for by trade in goods, not services[9].

ASEAN already has a number of initiatives in the Digital/E-Commerce area, including the ASEAN Digital Integration Framework Action Plan (2019-2025), and the ASEAN Agreement on Electronic Commerce and its associated Work Programme. But that should not preclude relevant provisions being included in ATIGA. Indeed, doing so would strengthen ASEAN's commitment to ensuring a safe, business and consumer friendly e-commerce environment in the region.

There is precedent with many pre-existing Agreements involving ASEAN Member States having Electronic Commerce Chapters within them. These include RCEP and CPTPP, amongst a fairly substantial list.

With trade and trade related transactions becoming increasingly digitised and automated, and with consumers and businesses increasingly making goods purchases over e-commerce platforms, there is a need to at least include in ATIGA provisions relating to trade facilitation for e-commerce goods. These should include expedited clearances at ports of entry; recognition of electronic authentication and signatures; non-imposition of restrictions on numbers of e-Commerce goods; and an agreement on the way forward for simplified collection of any VAT/GST liable on e-commerce goods imported into a member state, ideally with such taxes to be collected at the point of purchase. Measures related to consumer protection and consumer rights (including on the return of the goods) should also be included, as should a commitment to establish and ASEAN-wide Memorandum of Understanding between the AMS, e-Commerce Platforms and Brand Owners to help prevent the sale of counterfeit and copycats online. A detailed recommendation on this was made the EU-ABC in its e-Commerce paper earlier this year[10].

Provisions in existing ASEAN Agreements and Frameworks, where appropriate, could be incorporated into ATIGA either by cross reference or through wholesale lifting of texts.

Such an E-Commerce Chapter should also include clearer guidance on how to claim tariff preferential treatment on e-commerce goods, as well clear rules around data governance and ensuring the freest possible flow of data.

Trade & Sustainability Provisions

Provisions relating to both the environment and to sustainable development are increasingly normal in trade agreements. There is no reason why such provisions should not be included in the upgraded ATIGA. Such provisions have been included in a raft of Agreements that various ASEAN Member States have entered into with others, including the EU-Singapore FTA, EU-Vietnam FTA, and the CPTPP. ASEAN itself has a number of measures and plans that cover these areas, including the ASEAN Framework for the Circular Economy (and the associated implementation plan that is currently under development), the ASEAN Plan of Action on Energy Cooperation, and the ASEAN Minerals Cooperation Action Plan.

Including provisions on sustainable development and environmental protection into ATIGA will help ASEAN demonstrate its seriousness about making advancing on both issues, as well as placing the region in a better position when it comes to possible future agreements with external partners such as the European Union. Measures that should be considered for inclusion are:

- Firm and enforceable commitments on clearer and better facilitation of trade in used / recycled products/ recyclates
- The eligibility of second hand or recycled products for FTA treatment – perhaps through specific set of Rules of Origin for them
- Firm and enforceable commitments on harmonising standards for recycled or repurposed goods
- Commitments to promote the use of more efficient, cleaner or renewable energy sources for the production of manufactured goods
- Commitments not to reduce levels of protection for the environment as means of increasing advantage in trade in goods
- Commitments to meet their nationally determined targets under the Paris Agreement
- Commitments to review and ultimately adopt best practices in designing, implementing and operating carbon pricing or carbon tax mechanisms
- Commitments to ensure equal access of products / goods / feedstock in terms of carbon credits allocation / accreditation based on their country of origin
- Commitments to prevent the trade in endangered species and to protect bio-diversity
- Encouragement to support trade in forest products, including timber, solely from sustainably managed forests
- Commitments on labour rights and the prevention of the use of forced or slave labour in the production of goods

Small & Medium Enterprises

RCEP contains a chapter on Small and Medium Enterprises (Chapter 14 of the Agreement)[11] which both recognises the key role that SMEs play in the economies of every country and one the need to encourage them to use trade agreements to allow them to grow their businesses. Whilst not long, the RCEP SME Chapter contains key commitments around informing SMEs of the commitments and advantages of RCEP and also, just as importantly, of trade and investment related laws and regulations, encouraging efficient and effective implementation of trade facilitative rules, encouraging the use of e-Commerce, promoting innovation, and the sharing of best practice, amongst others.

We constantly hear from governments in the region on the need to do more support SMEs in ASEAN. Including an equivalent, or preferably enhanced, provisions in the review of ATIGA is a must if governments are truly serious about wanting to help SMEs.

Informed Compliance & ASSIST

The EU-ABC has made regular recommendations and presentation to a range of ASEAN bodies on the need for the development of an "informed compliance" database across the region. Informed Compliance includes "Advance Rulings" but goes beyond that narrow scope, to include guidance and understandings on a range of regulatory and rules issues have an impact on the movement of goods, including decisions, advisory opinions, commentaries or case studies. Such published guidance can be suitably redacted to remove any commercially sensitive information. Examples of such an approach can be found in the UK (Public Notices), US (Informed Compliance) and WCO (Advisory Opinions, Commentaries, Case Studies etc). A provision to include this suggestion should be included in the upgrade of ATIGA, either within a revised Chapter 1 (General Principles) where the present ATR requirements reside, or within Chapter 5 (Trade Facilitation).

The ASEAN Solutions for Investment, Services and Trade (ASSIST – see: https://assist.asean.org/en/home) should also be given prominence in an upgrade of ASSIST, with the current timelines for responses from ASEAN Member States given legal standing within the text. The potential for ASSIST to provide advice and clarity for businesses across the ASEAN region should not be underestimated. Unfortunately, ASSIST is not being used widely enough by businesses, and those few cases that have been filed on it have not be responded well (or even at all in some cases) by the Member States. Embedding ASSIST, and the timelines for responses from Member States, into ATIGA should both raise its profile and prevent Member States from misusing the system. Detailed measures on ASSIST could again be included in any revamp of Chapter 1 or Chapter 5 of ATIGA.

We further recommend that ASSIST responses be published as part of "informed compliance" and as a means of promoting greater understanding amongst companies of key responses that will impact on the movement of goods. Our specific recommendations on ASSIST are:

- ASEAN Member States should do much more to encourage businesses in their countries to utilise the tool.
- Concerns and resolutions about potential Non-Tariff Barriers raised through ASSIST should also be brought to the attention of CCA/ATF-JCC and added to the Matrix of Actual Cases and subjected to a systemic and comprehensive review on NTMS at the ASEAN level.
- There should be "response standards" set for ASEAN Member States where a complaint is submitted. This should include strict time limits for ASEAN Member States to respond to filings, structure and content of the responses from Member States etc.
- There should be a transparent escalation process. Where responses have fallen short, these should be escalated to the regional level and be subjected to an ASEAN wide review and decision. Where cases continue to be unresolved, these should be escalated to the Ministerial level.
- Data on filings and responses should be publicised – listing the number of complaints filed, against whom, response time information, and whether the response was accepted by the complainant.
- Responses, where accepted, should be made binding on the ASEAN Member State with their compliance to be verified by CCA/ATF-JCC and information on the compliance publicised. At the very least, the underlying principles of the responses, as accepted, should be published and be used by authorities and importers around the region as strong guidance; and, where appropriate enshrined into relevant national legislation.

Annex 1: Suggested Revisions to Existing ATIGA Provisions

Classification Of Goods (Chapter 1, Article 3 Of ATIGA)

The implementation of the ASEAN Harmonised Tariff Nomenclature (AHTN) was a welcome development, as have been the various reviews of the AHTN. However, it remains a fact that there are differences in the classification and the application of HS codes between ASEAN Member States for the exact same product. A specific example of this is in the automotive sector, as seen in the classification of light truck tyres. Due to a unique Indonesian SNI regulation (stands for Indonesian National Standard) concerning product certifications as governed by the Ministry of Industry, the light truck tyres are assigned to the same product category as the passenger car schedule tyres. Hence, the HS Code of 4011.10 has been used by the Indonesian Customs authority, whereas other ASEAN Member States (and more generally globally) classify this product as 4011.20, following the truck and bus tyre product category. This results in a mismatch in the CoO, with Indonesia requiring that the CoO reflects its classification, but other importing nations accepting only 4011.20. Another recent case arises from Sports Utility Vehicle (SUV) tyres which Malaysian Customs ruled to be classified as HS Code 4011.90 while the product categorisation is clearly still within the scope of passenger car tyres under 4011.10 for the rest of ASEAN Member States (and also more generally globally). The result is that the CoO is rejected due to the different HS Code of the exporter compared to the importer, The result is that the CoO is rejected, and the product is then liable for tariff duties when it should be exempted under ATIGA. Similar issues are reported by other companies in other markets and for other products.

At present there does not seem to a mechanism or procedure either in ATIGA itself or in its annexes to settle such discrepancies, nor any process or procedure for the private sector to convey such disputes to a body for a clear adjudication or decision. This should be rectified. We therefore suggest that an ASEAN-wide accepted ruling system at the AHTN level be implemented and included in the review of ATIGA.

Additionally, goods that have been deemed to be originating (and qualifying and have the necessary CoO) by the authorities in the exporting ASEAN Member State should be entitled to preferential treatment, even if the authorities in the importing Member State disagree with the applied tariff. The importing authority can insist on using the AHTN code that they believe is correct but should then apply the preferential tariff rate applicable to that code.

Tariff Liberalisation (Chapter 2 of ATIGA)

With the significant and commendable progress made on tariff elimination within ASEAN much of the current text is redundant. However, there is a need to maintain this Chapter, revising it to ensure that there is no roll back on existing tariff liberalisation. There should also be a publicly accessible to ASEAN listing all of the tariff lines that are presently at zero, and identifying those few remaining ones that are not zero and the rates that apply to them. Ideally, there should also a schedule showing how those few remaining ones will be progressively phased out. This phase out is particularly important for goods where Member States have, in subsequent Agreements, offered better preferential tariffs to non-ASEAN countries. This would be consistent with the direction from the ASEAN Secretary General to ensure that the new ATIGA has "stronger commitments than those offered by ASEAN to Dialogue Partners".

To help the region achieve its goals and ambitions under the Circular Economy Framework, specific measures should be explicitly included in this Chapter on the tariff free treatment of reused, recycled, repaired and remanufactured goods.

Certificates Of Origin & Rules Of Origin (Chapter 3 Of ATIGA)

The EU-ABC has previously highlighted a number of concerns and contradictions within ASEAN related to Rules of Origin (RoO) and Certificates of Origin (CoO) under ATIGA, and in particular disputes between countries over the HS classification used for certain products. There are a number of rules and provisions in Chapter 3 and its various Annexes that leave room for interpretation and different ASEAN authorities have their own interpretation of how

such rules should be implemented. In practice, it is common for this to result in an inability to issue a Form D, and as a result Forms D's being unnecessarily rejected. A clearly defined process for how importers and exporters can resolve such issues in a timely manner to reduce these types of practical challenges should be introduced, with any decisions or related advance rulings being made public.

Definition of CoO

A glaring omission in the definitions under Article 25 of ATIGA is the lack of one for Certificate of Origin.This needs to be corrected. The World Customs Organisation has a definition which could be easily incorporated into ATIGA.

Regional Value Content Calculation (Article 29) & Accumulation (Article 30)

There is need to make the calculation of regional value content and the use of cumulation rules as simple and as practical as possible. Doing so will increase understanding of them, increase usage of ATIGA, and reduce costs and bureaucracy for traders and shippers. The provisions of Chapter 3 of RCEP provide an excellent example of how a Rules of Origin provision, and the associated value content calculations and cumulation provisions should look in any upgrade of ATIGA.

Waiver of Certificate of Origin (Annex B, Rule 15)

It is our view that the threshold below which a CoO is not required and goods automatically qualify for tariff-free entry (but not free of applicable duties or excise taxes) into the receiving ASEAN Member State should be gradually raised from the current level of US$200 (two hundred United States Dollars) to US$1,000 (One Thousand United States Dollars). Such a move would benefit primarily MSMEs within ASEAN, allowing them easier and cheaper access to neighbouring markets and thus providing a timely boost to intra-ASEAN trade volumes. Exporters of low-value goods face disproportionate costs in obtaining CoOs from their issuing authorities. Additionally, MSMEs are less likely to be in a position to understand and comply with more complex customs procedures associated with full declarations and the use of CoOs.

A phased increase in the waiver threshold would allow for ASEAN Member States to adjust their processes and revenue planning over a period of time, whilst clearly demonstrating a desire to improve trade facilitation in the region.

E-Certificates of Origin

Under Annex 8 of ATIGA (Operational Certification Procedures for Rules of Origin under Chapter 3) there are currently no provisions for the use or acceptance of electronic CoOs (e-CoO) or electronic Form D's (e-Form D), despite the ASEAN Member States now having implemented e-Form D's. This clearly needs to be addressed in any revision of ATIGA and its associated Annexes. A new rule on the treatment of e-Form D should be included, and such a rule should also include provisions relating to a situation whereby a partnering country is ready to issue an e-Form D/CoO but its counterpart is still only prepared to accept manual ones. Clarity needs to be provided on the validity of the respective forms in such a situation, particularly where the requirement for a manual form could lead to delays in its provision and thus cause the imported goods to fail to enjoy a preferential duty rate.

Ideally a provision would also be included for the cessation of the use of physical Form-Ds, with a clear cut off date.

Validity Period for CoOs/Form D

Due differences in the language in Annex 8 Rule 13(1) and Rule 14(a) of ATIGA there are situations where ASEAN Member States might have dual interpretations on the validity period for a CoO/Form D. For example, under 13(1) a country may have the assumption that the CoO/e-CoO should be submitted at the time of import and could implement domestic laws to the effect that the Coo/e-CoO be provided immediately or in a very short space of time after importation. However, Rule 14(a) clearly states that the CoO has a validity of 12 months and must be submitted to the relevant customs authorities within 12 months. This difference can lead to confusion for importers and exporters and may lead to a good that should qualify for the preferential tariff rate not doing so.

Treatment of Minor Discrepancies on Coos (Rule 16 of Annex B)

We understand that a list of minor discrepancies that could be considered to be acceptable was developed at the 10th meeting of the CCA in 2013. It would be helpful if that list of minor discrepancies could be updated and the conditions made clearer to aid exporters and importers in having greater clarity in this area. At the moment there is significant latitude for interpretation between different Customs authorities and within customs authorities, leading to a degree of uncertainty. Whilst we would strongly recommend all exporters and importers to ensure the highest degree of accuracy in their submissions, mistakes will happen. Having clearer examples of what would constitute a minor but still acceptable discrepancy would aid all parties involved.

Review of Form D/CoO

We would recommend that the standard Form D template be reviewed and revised to ensure that it is more business friendly and better equipped to accommodate modern supply chain needs.There is scope for simplifying the Form D and remove some information that is not strictly required for the purposes of demonstrating the origin of the good. Simplification would, in particular, aid MSMEs looking to export their products to other ASEAN member states.

Self-Certification

There is no express mention of the ability of traders and shippers to issue Certificates of Origin under the ASEAN-wide self-certification scheme. This, and the rules governing the scheme, should be included in this Chapter.

Another timely upgrade to the Rules of Origin would be in the context of the implementation of AHTN 2022 (the seventh edition of Harmonized System nomenclature) with effect from 1st January 2022. It is important that the necessary upgrades to the Rules of Origin under ATIGA are in line with AHTN 2022 and transposed according to the correlation tables issued by the World Customs Organisation (WCO). Assessing and interpreting the origin of covered goods based on the updated AHTN 2022 will ensure that the goods in question will benefit from the same treatment and interpretation by all Member States.

Non-Tariff Measures (Chapter 4 Of ATIGA)

There is immense frustration in the private sector at the lack of measurable and transparent action on the implementation and enforcement of Articles 42 (Elimination of Other Non-Tariff Barriers) and 44 (Import Licensing Procedures) of ATIGA and, indeed, on the general handling of NTMs and NTBs. The timelines and procedures set out in these Articles have plainly not been met, and the ASEAN institutions set up to monitor and ensure the working of these provisions, in particular the Co-ordinating Committee for the Implementation of the ATIGA (CCA) have clearly failed in their work to eliminate.

There has been a significant increase in the number of Non-Tariff Measures across ASEAN. Whilst some of these can be attributed to increasing regulatory maturity by some ASEAN Member States and a need to protect to public health and safety, many are most likely to be Non-Tariff Barriers. NTMs that purposefully restrict the operation of markets by imposing import quota limitations, price controls, or the need to comply with specific national technical standards that are contradictory to accepted international standards or require expensive and often burdensome additional requirements are almost certainly NTBs. Many ASEAN Member States have such provisions.

The joint report from the EU-ABC and ASEAN BAC on NTBs in ASEAN (See: "*Non-Tariff Barriers in ASEAN and their elimination from a business perspective*"[12]) set out a number of recommendations that ASEAN should be looking to follow in this regard. The EU-ABC has also set out further recommendations for tackling the issue of NTBs in subsequent reports in 2021.[13]

The provisions of Chapter 4 of ATIGA need to be strengthened. Those that are past their "best before" date should be removed. It is essential that the NTM Guidelines be incorporated into, bringing legal force to each of the principles of the Guidelines, in particular Principle 4 which deals with non-discrimination and impartiality. At the moment the Guidelines are only partially being applied across the region, and then in an inconsistent manner. Greater clarity on their implementation, and a more consistent approach, particularly around areas such as

regulatory impact assessments and consultations with the private sector, will give businesses more confidence that ASEAN and its member states are serious when it comes to easing trade restrictions and giving more credence to their concerns.

There is an absolute need to re-write Article 42 completely, impose new, independently measurable and meaningful deadlines for the elimination of NTBs in every ASEAN Member State. To avoid future frustrations for the private sector these deadlines should be achievable and realistic. Equally, there is a need to review and revise the working arrangements of CCA and the ASEAN Trade Facilitation Joint Consultative Committee and their oversight of the elimination of NTBs. Moving to have an independent panel of experts who can review submissions of possible NTBs, not just from Member States but also from the business community and others, would be a significant advance and would remove the need for unanimity amongst the ASEAN Member States for a decision on what is and is not an NTB: this is a mechanism which has clearly held up the removal of the alleged NTBs as the imposing Member State is very unlikely to admit that one of its measures is indeed an NTB.

Provisions to compel Member States to report on the usage of the NTM Toolkits that have been developed for the region should also be included in this section.

Finally, ASEAN has developed the ASSIST Portal to enable companies, trade associations and law firms to seek clarifications on rules and regulations and to also raise concerns about possible NTBs. It is rarely used, and poorly executed by the ASEAN Member States when it is used. ATIGA should be amended to include legally binding deadlines for the submission of responses to complaints through the ASSIST Portal, and also to ensure that responses, and subsequent clarifications on those responses, are published.

Trade Facilitation (Chapter 5)

This chapter deals with general principles connected with trade facilitation in ASEAN and a requirement to establish an ASEAN Trade Facilitation Work Programme which should set out "*all concrete actions and measures with clear targets and timelines of implementation necessary for creating a consistent, transparent and predictable environment for international trade transactions that increases trading opportunities and help businesses, including small and medium sized enterprises (SMEs), to save time and costs*". The principles set out in the Chapter are to be applauded. Unfortunately, implementation and execution of them has been lacking in many areas.

There are many aspects of Article 47 (Principles of Trade Facilitation) where adherence to the principles has been less than ideal from the perspective of businesses. Transparency on the "rules and procedures relating to trade" could be significantly improved: the full development of the ASEAN Trade Repository (as foreseen in Article 13 of ATIGA) would significantly help in that regard, but progress on it is slower than anticipated despite the support being provided by the EU's ARISE and ARISE+ projects. The ATR needs to be accelerated and a firm commitment contained in a revised ATIGA to fully maintain it and ensure that it is completely up-to-date.

Advances have been made on communications and consultations with the private sector, but there is undoubted scope for further consultation, particularly from ASEAN working groups dealing with trade facilitation related topics such as CCA, and ACCSQ (and its various sub-groups). Longer, more meaningful sessions with ATF-JCC would also be welcomed. Greater dialogue, rather than a show and tell exercise is needed. Unfortunately, the current arrangement for meetings with the private sector have become little more than a tick-box exercise: dialogue is absent, with Member States often mute, the private sector responding and a formulaic response being provided by the ASEAN Secretariat. That does not constitute dialogue or a consultation.

On "simplification, practicability and efficiency" there is clearly plenty of scope to make further progress, particularly on customs procedures (see below) and automation. "Non-discrimination" is another area where progress has been lacking, as is demonstrated by the continuing prevalence of NTBs in the region.

There are also contradictions in this section of ATIGA when compared to other sections. Article 47(f) deals with harmonisation of standards, but it appears to run contrary to some of the provisions of Chapter 7.

Overall, Chapter 5 needs to be strengthened further to move away from bland and broad general statements and to impose more stringent and meaningful objectives that can be enforced on each ASEAN Member State to ensure

that they collectively and individually take steps to fully implement the provisions of the various ASEAN Economic Community Blueprints and the Consolidated Strategic Action Plan for AEC 2025. Making this Chapter deeper but narrower in scope would be one solution to help ensure that provisions contained within it are actually implemented.

Including specific and enforceable deadlines for the further expansion of the ASEAN Single Window to include all documentation needed for the import or export of goods is a must. Whilst there is commendable intent on further developing and expanding the ASW, progress remains frustratingly slow.

Customs (Chapter 6)

This chapter should be reviewed to put in place firm commitments on the full automation and simplification of customs procedures across ASEAN. It should set out specific procedures to be followed, and specific requirements for importers/exporters to follow (e.g. required data sets). A commitment to extend the ASEAN Single Window to move beyond the simple transmission of e-Form D's to encompass the full range of required documentation and licences should also be included, with clear timelines for doing so.

Including a commitment to adopt the ASEAN Low Value Shipment Programme, as suggested by the Joint Business Councils, should also be included in any revision of this chapter. Moving forward on this would help to significantly save time and costs for exporters and shippers. A recent study done by express courier companies for movements in Singapore showed that removing the need to include HS Codes for low value shipments could lead to significant time savings. The study found that on average, it took 106% more time to complete a customs declaration with an HS Code for a low value shipment, than it did to not include the HS Code.

More generally on Customs we hope that certain Customs provisions that are now frequently included in Free Trade Agreements, including FTAs that some ASEAN Member States have entered into, could also be incorporated into ATIGA going forward. These are set out in Annex 2 to this report.

Furthermore, the provisions at "Article X.9" in Annex 2 (Authorised Economic Operators) could be further amended incorporate either and ASEAN-wide MRA on AEOs (as is currently being worked on) or indeed the concept of an actual ASEAN-wide AEO system. A clear statement or enumeration of the benefits that flow from AEO status should be included also in the Agreement: this would encourage companies to go through a process to become 'ASEAN Certified AEOs'.Such a move would be in the interests of customs authorities as it would drastically increase compliance standards in a relatively short space of time.

Finally, any Customs Chapter should also include provisions on the handling and clearance of e-Commerce goods, inline with the WCO Framework of Standards on Cross-Border E-Commerce[14].

Standards, Technical Regulations And Conformity Assessment Procedures

Chapter 7 of ATIGA deals with crucial area of the harmonisation of standards, technical regulations and conformity assessments across ASEAN.

Article 71 makes it clear that the objective of the Chapter is to "*establish provisions on standards, technical regulations and conformity assessment procedures to ensure that these do not create unnecessary obstacles to trade in establishing ASEAN as a single market and production base," and yet clear differences in such areas still exist across the region in multiple areas.Furthermore, Article 74 of Chapter 7 says that ASEAN Member States "shall, as the first and preferred option, adopt relevant international standards when preparing new national standards or revising existing standards" whilst Article 76 states that "Member States shall ensure that conformity assessment procedures are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary technical barriers to trade and that conformity assessment procedures that have to be complied with by suppliers of products originating in the territories of other Member States are not more stringent than those accorded to suppliers of like products of national origin*".

Despite these clear provisions, and the fact that ATIGA has been enforced for over 10 years now, there are still many instances across ASEAN where member states impose their own local standards that are distinct from accepted international norms, and/or their own testing procedures and regimes that need to be complied with

(even when products have been tested to the same or better standards in their origin country) and which then serve, as a result, to restrict access to their markets and add significant costs to manufacturers.

Whilst we recognise that the ASEAN Consultative Committee on Standards and Quality (ACCSQ) is working across a number of sectors with a view to putting in place harmonised standards and conformity assessment procedures for the region, progress has been extremely slow and needs to be accelerated as well as needs to ensure the enforcement and adherence to the harmonisation across the ASEAN countries. ASEAN Member States should be looking, wherever possible, to simply adopt and mutually recognise internationally accepted standards and procedures such as those set out by ISO, IEC and UN-R. This should be incorporated into ATIGA along with the specific commitments on the timing of harmonisation in specified sectors, and naming the specific international standard setting bodies whose standards would be accepted across the region (e.g. ISO, Codex, etc.).

Institutional Provisions (Chapter 10)

The ASEAN Solutions for Investments, Services and Trade (ASSIST) platform, that was envisaged under Article 88 of ATIGA, is now in place. Unfortunately, it is being underutilised by the private sector despite various upgrades. There remains a continued lack of information about ASSIST, and a mistrust of businesses about using it, despite the best efforts of the ARISE+ to publicise it and to include new features such as anonymity. Member States need to do more to promote its use to trade associations and chambers of commerce within their own countries, and to encourage their companies to utilise ASSIST to file complaints and/or queries against other ASEAN Member States when they come across unclear, opaque or discriminatory rules and regulations. Equally, ASEAN Member States need to commit to more timely and more open responses to those cases that are then filed through ASSIST and to openly commit to non-retaliatory action against organisations to that do use the system. ASSIST itself is a good platform, and one that could and should help the region tackle issues such as Non-Tariff Barriers to trade and discriminatory practices.

The provisions of Article 89 and 90 of ATIGA are too weak when it comes to enforcing the provisions of the Agreement. Despite some clear breaches of ATIGA over the years, the Enhanced Dispute Settlement Mechanism has never been used, and there appears to be a clear reluctance amongst ASEAN Member States to do so, choosing instead to use other fora. It might be time for a more radical approach to be taken to ensure that ATIGA is enforced and abided by, such as the setting up of an apolitical and objective body, empowered by the ASEAN Leaders, that can review compliance and implementation and identify failings. Enabling the private sector to use such a body to raise concerns should also be considered.

Annex 2: Suggested Wording for Customs Chapter

CHAPTER [XX]
CUSTOMS AND TRADE FACILITATION

Article X.1
Objectives

1. The Parties recognise the importance of customs and trade facilitation matters in the evolving global trading environment. The Parties shall reinforce cooperation in this area with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of promoting trade facilitation while ensuring effective customs control.

2. To this end, the Parties agree that legislation shall be non-discriminatory and that customs procedures shall be based upon the use of modern methods and effective controls to combat fraud and to promote legitimate trade.

3. The Parties recognise that legitimate public policy objectives, including in relation to security, safety and fight against fraud shall not be compromised in any way.

4. The Parties commit to customs procedures and requirements which are consistent with the WTO Agreement on Trade Facilitation, or better.

Article X.2
Customs Cooperation and Mutual Administrative Assistance

1. The Parties shall cooperate on customs matters between their respective authorities in order to ensure that the objectives set out in Article X.1 (Objectives) are attained.

2. The Parties shall develop cooperation, inter alia:

(a) exchanging information concerning customs legislation, its implementation, and customs procedures; particularly in the following areas:

(i) simplification and modernisation of customs procedures;

(ii) enforcement of intellectual property rights by the customs authorities;

(iii) facilitation of transit movements and transhipment;

(iv) relations with the business community; and

(v) supply chain security and risk management.

(b) working together on the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) of the World Customs Organization (hereinafter referred to as "WCO");

(c) considering developing joint initiatives relating to import, export and other customs procedures including technical assistance, as well as towards ensuring an effective service to the business community;

(d) strengthening their cooperation in the field of customs in international organisations such as the World Trade Organization (hereinafter referred to as "WTO") and the WCO;

(e) establishing, where relevant and appropriate, mutual recognition of trade partnership programmes and customs controls including equivalent trade facilitation measures; and

(f) fostering cooperation between customs and other government authorities or agencies in relation to authorised operator programmes. This collaboration may be achieved, inter alia, by aligning requirements, facilitating access to benefits and minimising unnecessary duplication.

3. The Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the provisions of Protocol YY.

Article X.3

Customs Provisions and Procedures

1. The Parties shall ensure that their respective customs provisions and procedures shall be based upon:

(a) international instruments and standards applicable in the area of customs and trade, including the WTO Agreement on Trade Facilitation, the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, the International Convention on the Harmonized Commodity Description and Coding System, as well as the Framework of Standards to Secure and Facilitate Global Trade and the Customs Data Model of the WCO;

(b) the protection and facilitation of legitimate trade through effective enforcement and compliance of legislative requirements;

(c) legislation that is proportionate and non-discriminatory, avoids unnecessary burdens on economic operators, provides for further facilitation for operators with high levels of compliance, including favourable treatment with respect to customs controls prior to the release of goods, and ensures safeguards against fraud and illicit or damageable activities; and

(d) rules that ensure that any penalty imposed for breaches of customs regulations or procedural requirements is proportionate and non-discriminatory and that their application shall not unduly delay the release of the goods.

2. Each Party should periodically review its legislation and customs procedures. Customs procedures should also be applied in a manner that is predictable, consistent and transparent. Any new laws, regulations and administrative measures shall conform to the provisions of this Agreement. There shall be rollback of any measures which negatively impact the import or export of goods upon entry into force of the FTA.

3. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, each Party shall:

(a) simplify and review requirements and formalities wherever possible with a view to the rapid release and clearance of goods;

(b) not introduce new requirements and formalities which impact the objectives and spirit of this Agreement as per Article X.1; and

(c) work towards the further simplification and standardisation of data and documentation required by customs and other agencies.

Article X.4

Release of Goods

Each Party shall adopt or maintain customs procedures that:

(a) provide for the immediate release of goods within a period that is no longer than necessary to ensure compliance with its laws and regulations. Each Party shall work to further reduce release times and release the goods without undue delay within the maximum time of 4 hours;

(b) provide for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods, to enable the release of goods on arrival; and

(c) allow for the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met. As a condition for such release, each Party may require a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations. Such guarantee shall not be greater than the amount the Party requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee. The guarantee shall be discharged when it is no longer required.

(d) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities.

Article X.5

Simplified Customs Procedures

1. Each Party shall provide for simplified customs procedures that are transparent and efficient in order to reduce costs and increase predictability for economic operators, including for small and medium-sized enterprises. Easier access to customs simplifications shall also be provided for authorised operators according to objective and non-discriminatory criteria.

2. A single administrative document or electronic equivalent shall be used for the purpose of completing the formalities connected with placing the goods under a customs procedure.

3. Each Party shall apply modern customs techniques, including risk assessment and post-clearance audit methods in order to simplify and facilitate the entry and the release of goods.

4. Each Party shall promote the progressive development and use of advanced systems, including those based upon information and communications technology, to facilitate the electronic exchange of data between traders, customs administrations and other related agencies.

Article X.6

Transit and Transhipment

1. Each Party shall ensure the facilitation and effective control of transhipment operations and transit movements through their respective territories.

2. Each Party shall promote and implement regional transit arrangements with a view to facilitating trade.

3. Each Party shall ensure cooperation and coordination between all concerned authorities and agencies in their respective territories to facilitate traffic in transit.

4. Each Party shall allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

Article X.7

Risk Management

1. Each Party shall adopt or maintain a risk management system for customs control.

2. Each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

3. Each Party shall concentrate customs control and other relevant border controls on high-risk consignments and expedite the release of low-risk consignments, and by taking into account the level of compliance of traders. Each Party may also select, on a random basis, consignments for such controls as part of its risk management.

4. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.

Article X.8

Post-clearance Audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.

2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Party shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.

3. The Parties acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

4. The Parties shall use the result of post-clearance audit in applying risk management.

Article X.9

Authorised Operators

1. Each Party shall establish or maintain a partnership programme for operators who meet specified criteria, hereinafter referred to as authorised operators.

2. The specified criteria to qualify as authorised operators shall be related to compliance with requirements specified in the Parties' laws, regulations or procedures. The specified criteria, which shall be published, may include:

(a) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant;

(b) the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;

(c) financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned;

(d) proven competences or professional qualifications directly related to the activity carried out; and

e) appropriate security and safety standards, which shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the security and safety of the international supply chain including in the areas of physical integrity and access controls, logistical processes and handling of specific types of goods, personnel and identification of his or her business partners.

3. The specified criteria to qualify as an authorised operator shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail and shall allow the participation of small and medium-sized enterprises.

4. The partnership programme for operators shall include the following benefits, among others:

(a) low rate of physical inspections and examinations as appropriate;

(b) prior notification in case of selection for physical or other customs control;

(c) priority treatment if selected for control;

(d) rapid release time as appropriate;

(e) deferred payment of duties, taxes, fees and charges;

(f) use of comprehensive guarantees or reduced guarantees;

(g) a single customs declaration for all imports or exports in a given period; and

(h) clearance of goods at the premises of the authorised operator or another place authorised by customs.

Article X.10

Publication and Availability of Information

1. Each Party shall promptly publish, in a non-discriminatory and easily accessible manner, and as far as possible through electronic means, new legislation and general procedures related to customs and trade facilitation issues prior to the application of any such legislation and procedures, as well as changes to and interpretations of such legislation and procedures. This shall include:

(a) relevant notices of an administrative nature

(b) importation, exportation and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;

(c) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;

(d) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

(e) rules for the classification or valuation of products for customs purposes;

(f) laws, regulations and administrative rulings of general application relating to rules of origin;

(g) import, export or transit restrictions or prohibitions;

(h) penalty provisions against breaches of import, export or transit formalities;

(i) appeal procedures;

(j) agreements or parts thereof with any country or countries relating to importation, exportation or transit;
(k) procedures relating to the administration of tariff quotas;

(l) hours of operation and operating procedures for customs offices at ports and border crossing points; and

(m) points of contact for information enquiries.

2. Each Party shall ensure there is a reasonable time period between the publication of new or amended legislation, procedures and fees or charges and their entry into force.

3. Each Party shall make available, and update as appropriate, the following through the internet:

(a) a description of its importation, exportation and transit procedures, including appeal procedures, informing of the practical steps needed to import and export, and for transit;

(b) the forms and documents required for importation into, exportation from, or transit through the territory of that Party; and

(c) contact information on enquiry points.

4. Each Party shall establish or maintain one or more enquiry points to answer within a reasonable time enquiries of governments, traders and other interested parties on customs and other trade-related matters. The Parties shall not require the payment of a fee for answering enquiries.

Article X.11

Advance Rulings

1. Each Party, through its customs authorities, shall issue advance rulings upon application by economic operators setting forth the treatment to be accorded to the goods concerned. Such rulings shall be issued in writing or in electronic format in a time bound manner and shall contain all necessary information in accordance with the legislation of the issuing Party.

2. Advance rulings shall be valid for a period of at least three years from the start date of its validity unless the decision in the ruling no longer conforms to the law or the facts or circumstances supporting the original ruling have changed.

3. A Party may refuse to issue an advance ruling if the question raised in the application is the subject of an administrative or judicial review, or if the application does not relate to any intended use of the advance ruling or any intended use of a customs procedure. If a Party declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

4. Each Party shall publish, at least:

(a) the requirements for the application for an advance ruling, including the information to be provided and the format;

(b) the time period by which it will issue an advance ruling; and

(c) the length of time for which the advance ruling is valid.

5. If a Party revokes, modifies, invalidates or annuls an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. If the Party revokes, modifies, invalidates or annuls an advance ruling with retroactive effect, it may only do so if the ruling was based on incomplete, incorrect, false or misleading information.

Advance rulings cannot be retroactively amended or revoked and are only valid in respect of goods for which customs formalities are completed after the start date of validity of the ruling.

6. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it. The Party may provide that the advance ruling be binding on the holder.

7. Each Party shall provide, upon written request from the holder, a review of the advance ruling or of the decision to amend, revoke or invalidate it.

8. Each Party shall make publicly available information on advance rulings, taking into account the need to protect personal and commercially confidential information.

9. Advance rulings shall be issued with regard to

(a) the tariff classification of goods;

(b) the origin of goods;

(c) the valuation of goods; and

(d) any other matter the Parties may agree upon.

Article X.12

Fees and Charges

1. Each Party shall prohibit administrative fees having an equivalent effect to import or export duties and charges.

2. The Parties' customs authorities shall not impose charges for the performance of customs controls or any other application of the customs legislation during the official opening hours of their competent customs offices.

3. The Parties' customs authorities may impose charges or recover costs where specific services are rendered, in particular the following:

(a) attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;

(b) analyses or expert reports on goods and postal fees for the return of goods to an applicant;

(c) the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved;

(d) exceptional control measures, where these are necessary due to the nature of the goods or to a potential risk. Fees and charges shall not exceed the approximate cost of the service provided and shall not be calculated on an ad valorem basis;

The information on fees and charges shall be published via an officially designated medium, and if feasible and possible, official website. This information shall include the reason for the fee or charge for the service provided, the responsible authority, the fees and charges that will be applied, and when and how payment is to be made; and

New or amended fees and charges shall not be imposed until information in accordance with the preceding subparagraph is published and made readily available.

Article X.13

Customs Brokers

The Parties agree that their respective customs provisions and procedures shall not require the mandatory use of customs brokers. Each Party shall notify and publish its measures on the use of customs brokers. The Parties shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers.

Article X.14

Customs Valuation

1. Each Party shall determine the customs value of goods in accordance with the Agreement on the Implementation of Article VII of the GATT 1994. Its provisions are hereby incorporated into and made part of this Agreement. Minimum customs values shall not be used.

2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

Article X.15

Pre-shipment Inspections

The Parties shall not require the mandatory use of pre-shipment inspections as defined in the WTO Agreement on Pre-shipment Inspection, or any other inspection activity performed at destination, before customs clearance, by private companies.

Article X.16

Review and Appeal

1. Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against the administrative actions, rulings and decisions of customs or other competent authorities affecting import or export of goods or goods in transit.

2. Appeal or review shall include:

(a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and/or

(b) a judicial appeal or review of the decision.

3. Each Party shall ensure that, in a case where the decision on appeal or review under subparagraph 2 (a) is not given within the period of time provided for in its laws and regulations or without undue delay, the petitioner has the right to further administrative or judicial appeal or review or any other recourse to the judicial authority according to the legislation of the Parties.

4. Each Party shall ensure that the petitioner is provided with the reasons for the administrative decision so as to enable such a person to have recourse to appeal or review procedures where necessary.

Article X.17

Relations with the Business Community

The Parties agree:

(a) on the need for timely and regular consultations with trade representatives on legislative proposals and general procedures related to customs and trade facilitation issues. To that end, appropriate consultation between administrations and the business community shall be established by each Party; and

(b) to ensure that their respective customs and related requirements and procedures continue to meet the needs of the trading community, follow best practices, and remain as little trade-restrictive as possible.

Article X.18

Temporary Admission

1. For the purposes of this Article, the term "temporary admission" means the customs procedure under which certain goods (including means of transport) can be brought into a customs territory conditionally relieved from payment of import duties and taxes and without application of import prohibitions or restrictions of economic character. Such goods must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

2. Each Party shall grant temporary admission, with total conditional relief from import duties and taxes and without application of import restrictions or prohibitions of economic character, as provided for in its laws and regulations, to the following goods:

(a) goods for display or use at exhibitions, fairs, meetings or similar events (goods intended for display or demonstration at an event; goods intended for use in connection with the display of foreign products at an event; equipment including interpretation equipment, sound and image recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings, conferences or congresses); products obtained incidentally during the event from temporarily imported goods, as a result of the demonstration of displayed machinery or apparatus;

(b) professional equipment (equipment for the press, for sound or television broadcasting which is necessary for representatives of the press, of broadcasting or television organizations visiting the territory of another country for purposes of reporting, in order to transmit or record material for specified programmes; cinematographic equipment necessary for a person visiting the territory of another country in order to make a specified film or films; any other equipment necessary for the exercise of the calling, trade or profession of a person visiting the territory of another country to perform a specified task, insofar as it is not to be used for the industrial manufacture or packaging of goods or (except in the case of hand tools) for the exploitation of natural resources, for the construction, repair or maintenance of buildings or for earth moving and like projects; ancillary apparatus for the equipment mentioned above, and accessories therefor); component parts imported for repair of professional equipment temporarily admitted;

(c) goods imported in connection with a commercial operation but whose importation does not in itself constitute a commercial operation (packings which are imported filled for re-exportation empty or filled, or are imported empty for re-exportation filled; containers, whether or not filled with goods, and accessories and equipment for temporarily admitted containers, which are either imported with a container to be re-exported separately or with another container, or are imported separately to be re-exported with a container and component parts intended for the repair of containers granted temporary admission; pallets; samples; advertising films; other goods imported in connection with a commercial operation);

(d) goods imported in connection with a manufacturing operation (matrices, blocks, plates, moulds, drawings, plans, models and other similar articles; measuring, controlling and checking instruments and other similar articles; special tools and instruments, imported for use during a manufacturing process); replacement means of production (instruments, apparatus and machines made available to a customer by a supplier or repairer, pending the delivery or repair of similar goods);

(e) goods imported exclusively for educational, scientific or cultural purposes (scientific equipment, pedagogic material, welfare material for seafarers, and any other goods imported in connection with educational, scientific or cultural activities); spare parts for scientific equipment and pedagogic material which has been granted temporary admission; tools specially designed for the maintenance, checking, gauging or repair of such equipment;

(f) personal effects (all articles, new or used, which a traveller may reasonably require for his or her personal use during the journey, taking into account all the circumstances of the journey, but excluding any goods imported for commercial purposes); goods imported for sports purposes (sports requisites and other articles for use by travellers in sports contests or demonstrations or for training in the territory of temporary admission);

(g) tourist publicity material (goods imported for the purpose of encouraging the public to visit another foreign country, in particular in order to attend cultural, religious, touristic, sporting or professional meetings or demonstrations held there);

(h) goods imported for humanitarian purposes (medical, surgical and laboratory equipment and relief consignments, such as vehicles and other means of transport, blankets, tents, prefabricated houses or other goods of prime necessity, forwarded as aid to those affected by natural disaster and similar catastrophes); and

(i) animals imported for specific purposes (dressage, training, breeding, shoeing or weighing, veterinary treatment, testing (for example, with a view to purchase), participation in shows, exhibitions, contests, competitions or demonstrations, entertainment (circus animals, etc.), touring (including pet animals of travellers), exercise of function (police dogs or horses; detector dogs, dogs for the blind, etc.), rescue operations, transhumance or grazing, performance of work or transport, medical purposes (delivery of snake poison, etc.)).

Article X.19

Institutional Provisions

[placeholder – joint working body in charge of ensuring the proper functioning of this Chapter and of other customs-related provisions of the Agreement, including the enforcement of Intellectual Property Rights by Customs, Rules of Origin and Administrative Cooperation, and Mutual Administrative Assistance in Customs Matters.]

Article X.20

Expedited Shipments

1. Each party should ensure that they provide for the expedited release of shipments, consistent with the WCO Guideline for the Immediate Release of Consignments.

2. Each party should, in particular:

(a) adopt or maintain expedited customs procedures for expedited shipments while maintaining appropriate customs control and selection;

(b) provide a separate and expedited customs procedure for eligible or compliant traders;

(c) provide for information necessary to release an expedited shipment to be submitted and processed electronically before the shipment arrives;

(d) allow submission of a single manifest covering all goods contained in an expedited shipment, if possible, through electronic means;

(e) to the extent possible, provide for low value goods to be cleared with a minimum of documentation;

(f) provide for expedited shipments to be cleared without delay after the necessary customs documents have been submitted;

(g) rules/procedures for expedited shipments apply without regard to a shipment's weight or customs value;

(h) provide that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, low value shipments

Annex 3: 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 formally recognised by the European Commission and accredited under Annex 2 of the ASEAN Charter as an entity associated with ASEAN.

Independent of both bodies, the Council has been established to help promote the interests of European businesses operating within ASEAN and to advocate for changes in policies and regulations which would help promote trade and investment between Europe and the ASEAN region. As such, the Council works on a sectorial and cross-industry basis to help improve the investment and trading conditions for European businesses in the ASEAN region through influencing policy and decision makers throughout the region and in the EU, as well as acting as a platform for the exchange of information and ideas amongst its members and regional players within the ASEAN region.

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, Customs & Trade Facilitation and Pharmaceuticals.

Executive Board

The EU-ABC is overseen by an elected Executive Board consisting of corporate leaders representing a range of important industry sectors and representatives of the European Chambers of Commerce in South East Asia.

Membership

The EU-ABC's membership consists of large European Multi-National Corporations and the nine European Chambers of Commerce from around Southeast Asia. As such, the EU-ABC represents a diverse range of European industries cutting across almost every commercial sphere from car manufacturing through to financial services and including Fast Moving Consumer Goods and high-end electronics and communications. Our members all have a common interest in enhancing trade, commerce and investment between Europe and ASEAN.

To find out more about the benefits of Membership and how to join the EU-ASEAN Business Council please either visit www.eu-asean.eu or write to info@eu-asean.eu .

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[5] See: https://asean.org/wp-content/uploads/2022/03/Guidelines-for-the-Implementation-of-ASEAN-Commitments-on-Non-Tariff-Measures-on-Goods.pdf
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