



26 June 2007

## **BUSINESSEUROPE POSITION ON THE EU-ASEAN FREE-TRADE AGREEMENT (FTA)**

### **SUMMARY**

BUSINESSEUROPE calls for:

- An ambitious EU-ASEAN FTA covering goods, investment, services and trade rules.
- A pragmatic approach to the framework of the agreement including region-to-region principles and ambitious bilateral commitments.
- Industrial goods: full coverage and full reciprocity.
- Services: ambitious liberalisation of as many sectors as possible.
- Investment: strong rules to foster and protect investments.
- Agriculture: reduced tariff and non-tariff barriers for EU exports.
- Strong rules for customs, intellectual property, competition and procurement.

BUSINESSEUROPE supports the EU-ASEAN negotiations on trade and investment leading to an ambitious agreement which facilitates economic integration between the parties. BUSINESSEUROPE is willing to work with the Commission to move these negotiations forward.



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### **INTRODUCTION**

The European Union and the members of the Association of Southeast Asian Nations (ASEAN) are important economic partners. Bilateral trade and investment flows are of critical economic importance for both ASEAN and the EU, which is ASEAN's third largest trading partner. ASEAN countries are also among the most dynamic markets in the world.

BUSINESSEUROPE believes that the economic potential of EU-ASEAN links can be further extended, and sees a future EU-ASEAN free-trade agreement, in conformity with WTO rules, as a key opportunity to enhance trade and improve framework conditions for investment, moving towards a more integrated economic relationship.

### **THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS**

ASEAN was founded in 1967 and currently encompasses ten Southeast Asian countries (Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Burma/Myanmar, Philippines, Singapore, Thailand and Vietnam). ASEAN has a combined GDP of € 693 billion and a population of around 558 million.

However, ASEAN remains a very heterogeneous region with large economic disparities and development gaps between its richer and poorer members. For instance, average per capita income ranges from € 78 in Burma/Myanmar to € 4,051 in Malaysia and € 21,570 in Singapore. Recent progress in ASEAN's integration will contribute to making ASEAN a more stable, prosperous and competitive regional economic area allowing for free movement of goods, services, investments and capital. However, there are still many challenges.

Customs procedures often differ between member countries and there is a range of non-tariff barriers that make intra-ASEAN trade difficult, notably an absence of mutual recognition agreements in many sectors. Intra-regional trade stands at a low level, accounting for only around 20% of total ASEAN trade, a figure that has barely grown in the last decade.

ASEAN's trade policy regime is based on a moderate openness, but significant restrictions remain on foreign direct investment (FDI) and establishment, impacting in particular on trade in services.



## **EU ECONOMIC RELATIONS WITH ASEAN**

In 2006 the EU's top trading partners – outside of EFTA – were the USA, China, Russia and Japan. The ASEAN countries taken together account for more trade with the EU than Japan, making ASEAN potentially the EU's fourth largest trading partner. The EU is ASEAN's second largest export market after the US and just ahead of Japan. EU trade relations with ASEAN are increasingly based on intra-company trade. For investment, the EU is the largest source of Foreign Direct Investment (FDI) in ASEAN. Companies from ASEAN countries are now starting to invest in the European Union.

## **BUSINESSEUROPE SUPPORTS AN EU-ASEAN FREE-TRADE AGREEMENT**

To improve market access for European companies and ensure non-discriminatory treatment for them in ASEAN and third-country markets, the priority for BUSINESSEUROPE remains the multilateral approach in the framework of WTO. European business is strongly committed to an ambitious conclusion of the Doha Development Agenda as soon as possible.

However, BUSINESSEUROPE supports a WTO-compatible FTA with ASEAN that is ambitious in terms of product coverage and liberalisation. The fundamental criteria for the agreement should be that it is based on economic criteria and on reciprocity.

Against this background, BUSINESSEUROPE supports an EU-ASEAN free-trade agreement, which would ensure comprehensive liberalisation of trade in goods and services and an improvement in business conditions, including investment beyond what could be accomplished in the WTO framework (WTO+).

Furthermore, ASEAN and/or individual ASEAN members have been actively involved in negotiating economic agreements with countries around the world. Any EU-ASEAN FTA should ensure, as a minimum, a level playing field for EU companies in ASEAN equal to that enjoyed by its main competitors, without discrimination.

## **ARCHITECTURE OF THE AGREEMENT**

Regional trade agreements can be more effective than bilateral agreements as they facilitate trade between the region's members as well as between the regions party to the FTA. A region-to-region agreement would also be more cost-effective as one single agreement would ensure access to ASEAN members. However, European business has doubts about the feasibility of an ambitious region-to-region agreement, considering ASEAN's limited integration and the previous EU experiences of negotiations with economic blocs such as Mercosur or the Gulf Cooperation Council (GCC), which have so far failed to produce the expected results for companies.

BUSINESSEUROPE believes that the approach for the negotiations should reflect the effective economic integration between ASEAN members and their level of development. Given the situation of the three least developed members of ASEAN (Laos, Cambodia and Burma/Myanmar), it may be more appropriate that they are not required to take part in the FTA negotiations, at least in their initial phase.

Furthermore, the specific case of Myanmar, which is subject to EU economic sanctions, should be addressed carefully. A political solution must be found to allow the EU to conclude an agreement with ASEAN without the Myanmar issue upsetting the EU's relationship with the entire region.

Against this background, BUSINESSEUROPE would support a pragmatic approach to negotiations with ASEAN which includes an overarching regional umbrella agreement covering the principles and as many horizontal commitments as possible with the ASEAN region, and which includes bilateral negotiations when necessary, so that ASEAN members can negotiate specific offers on goods, services and investment.

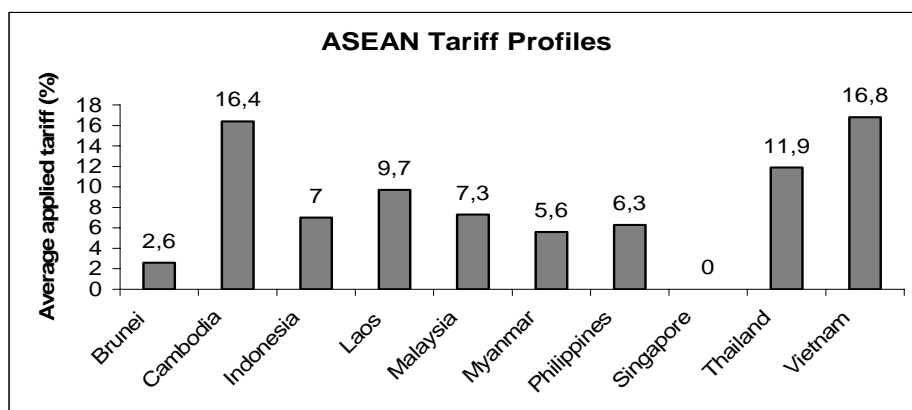
**MAIN ECONOMIC ISSUES FOR AN AGREEMENT WITH ASEAN**

The starting point for negotiations with ASEAN must be reciprocity and should include the broadest product coverage possible in both services and goods. Against this background, the agreement should include the following key elements<sup>1</sup>:

**Industrial goods**

The agreement should ensure that free trade in all goods would be achieved through reduction of tariffs and elimination of non-tariff barriers. Negotiations should cover liberalisation of all tariff lines, addressing Europe's economic needs and with full symmetric elimination of duties as the final goal.

Tariff levels differ between ASEAN countries, depending basically on their level of development. The EU-ASEAN FTA is good opportunity to move towards approximation of ASEAN's tariff structures with a view to an ASEAN customs union with a common external tariff (CET).



WTO Trade Profiles 2006 (all data 2005 figures except Cambodia 2003)

<sup>1</sup> See BUSINESSEUROPE (UNICE) Strategy on an EU approach to FTAs (7 December 2006)



Bilateral trade with the EU is heavily affected by non-tariff barriers (NTBs) which should be effectively tackled and eliminated in ASEAN. Effective standstill on NTBs as from the start-up of the negotiations should be agreed. Most NTBs result principally from the administrative burden and the number of procedures and authorisations that European companies face in ASEAN member states. The EU-ASEAN FTA should ensure progress in internal harmonisation of ASEAN standards.

The EU and ASEAN should work more closely towards enhancing a more transparent framework for technical regulations and standards, and using global harmonised standards. An efficient NTB mediation mechanism as proposed in the WTO DDA negotiations could be instrumental to remove new NTBs.

Export restrictions and taxes must be eliminated between the EU and ASEAN members without phase-out periods. For instance, Vietnam and Malaysia operate an extensive regime of highly significant export taxes which unfairly undermines the competitiveness of European industries.

### **Agricultural goods**

BUSINESSEUROPE insists that an agreement with ASEAN covers agricultural goods, addressing the reduction of tariffs and differing forms of restrictions such as the unjustified and discriminatory advertising restrictions in place in Thailand and other countries or the extremely high levels of tariffs for EU spirits. Negotiations must be compatible with the WTO provisions requiring coverage of 'substantially all trade'. However, agriculture should not be allowed to block the conclusion of ambitious agreements.

### **Services**

A major offensive interest for the EU, and a key area for negotiations with ASEAN, would be liberalisation in the services sector, which by international standards is still quite protected in most of the ASEAN member states.

AN EU-ASEAN FTA should be substantial as set out in GATS Article V and should cover all modes of supply. A negative list approach, whereby the EU obtains full market access and all services are automatically liberalised unless specifically provided otherwise, remains the preferred approach for BUSINESSEUROPE. An FTA between the EU and ASEAN must ensure comprehensive liberalisation of key services sectors.

Naturally, certainty should be ensured for existing and new services, to avoid potential confusion on the scope of the services subject to regulatory provisions through additional commitments such as reference papers. In this approach, it is of the utmost importance that the classification or description of services used by the parties in their commitments is clearly defined.



## **Investment**

Barriers faced in ASEAN countries include the restrictions on foreign investment introduced by the Thai government and those imposed by the positive discrimination policies in Malaysia (Bumiputera policy).

An agreement with ASEAN should guarantee free access to ASEAN markets, non-discrimination and national treatment, greater transparency and full pre- and post-investment protection, including free transfer of all investment-related capital flows.

Negotiations with ASEAN on investment must seek to entitle EU companies to operate in a manner that will enable them compete effectively in ASEAN member states. EU provisions on investment should be complementary to Member States' bilateral investment treaties (BITs), neither undermining nor creating conflict with them. They must also offer strong protection from unfair treatment and unfair expropriation and provide a mechanism for investor-to-state dispute settlement.

## **Intellectual property rights**

Intellectual property rules are crucial to ensure that companies continue to invest in research and development. All ASEAN members must as a minimum sign up to all provisions of all major international conventions and agree to robust enforcement regimes, which remains an important issue for BUSINESSEUROPE in the negotiations. European business strongly supports the WTO TRIPS agreement. Full implementation and enforcement of TRIPS commitments must be the absolute minimum for FTA negotiations between the EU and ASEAN, with a view to putting in place international IPR standards, which will not only satisfy TRIPS requirements, but also reflect international standards and best practice.

IPR enforcement and border controls still need to be improved, especially with regard to controls on export goods. Enforcement and penalties are a particular problem in Indonesia, for goods, production equipment and machinery. Indonesia for instance has a very high rate of audiovisual piracy in the world. The EU should negotiate strong procedures on enforcement, and provide detailed prescriptions on the legal and procedural reforms necessary to ensure that regimes effectively protect intellectual property.

## **Competition policy**

For BUSINESSEUROPE the fundamental objective of a FTA between the EU and ASEAN is that companies should be able to compete with each other in both, individual markets of ASEAN and EU Member States on a level playing field, taking full advantage of the expansion of international trade. ASEAN member states should where appropriate install meaningful systems to enforce competition policy. Disciplines should include basic principles of transparency, non-discrimination, government subsidies as well as commitments to tackle hard-core international cartels.



## **Public procurement**

In both the EU and ASEAN, public procurement markets represent a substantial proportion of GDP in both goods and services. As a minimum the EU should insist that all ASEAN members sign up to the disciplines of the WTO Government Procurement Agreement (GPA), considering that currently only Singapore is a member, which results in certain government entities ignoring the principles of fair competition and transparency.

However, given the complex system of exemptions it contains, an agreement with ASEAN should also include further disciplines to ensure that national treatment and non-discrimination are guaranteed and that national and/or local preferences are eliminated to the greatest extent possible. Provisions on transparency and qualification procedures/decisions are also crucial.

## **Trade facilitation**

Some ASEAN countries have very inefficient and very slow customs procedures, with reports of corruption in many cases. BUSINESSEUROPE supports the standardisation and facilitation of documentation requirements, modernisation of customs procedures and an increase in transparency and efficiency via modern information technologies.

The administrative resources needed to enable goods to physically cross a border constitute a major barrier to trade. An agreement with ASEAN on trade facilitation should be based, as a minimum, on the WCO Revised Kyoto Convention. The provisions of the agreement should be focused notably on:

- minimisation and/or elimination of fees and charges;
- procedures for legal recourse and appeal, complaint or mediation services in the case of disputes with customs;
- establishment of a single administrative window;
- publication of trade regulations, and
- accelerated and simplified procedures for release and customs clearance of goods.

Transit in ASEAN remains an important issue for EU companies, together with a general lack of transparency and slow clearance.

## **Rules of origin**

The EU's FTAs should also include straightforward rules of origin that are clear, transparent, easily implemented, as harmonised with WTO rules as possible, not imposing any additional burden on economic operators.



**Transparency**

The European Union strongly encourages adherence to a certain number of procedural safeguards designed to ensure transparency, objectivity and administrative efficiency in decision-making. These provide companies with predictability and ensure that decisions are neither arbitrary nor abusive.

The FTA between ASEAN and the EU could support similar principles of transparency, objectivity and administrative efficiency, including deadlines for decisions and objective justification for these decisions.

**Dispute settlement**

The agreement with ASEAN should include a binding and effective dispute settlement mechanism, based on the WTO's Dispute Settlement Understanding. BUSINESSEUROPE supports direct access by companies to the mechanism.

**CONCLUSION**

BUSINESSEUROPE supports the EU-ASEAN negotiations on trade and investment leading to an ambitious agreement which facilitates economic integration between the parties. BUSINESSEUROPE is willing to work with the Commission to move these negotiations forward.

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