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ASEAN PATH

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VIETNAM INTO ASEAN PERSPECTIVES & CHALLENGES

by Kristy Newby, Jérôme Buzenet and Hoang Phong Anh

ASEAN PATH is a series of white papers prepared by DFDL's experts aiming to assess, in more depth, compelling issues arising from the regional economic integration under the auspices of the Association of Southeast Asian Nations ("ASEAN") Economic Community Blueprint. The articles are based on an in-depth legal analysis of the local and ASEAN legal framework from the perspective of a practitioner assisting foreign and ASEAN investors in their investments and operations throughout various ASEAN Member States. All articles will be accessible on our website: www.dfdl.com.

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VIETNAM AND ASEAN

Since 1986, after the launch of the Doi Moi (Open Door) policy, economic and political reforms have significantly transformed the investment landscape of Vietnam. While Vietnam’s political system remains embedded in a socialist framework, the authorities continue to affirm their commitment to economic liberalism and international integration via the implementation of structural reforms necessary for the modernization of the economy and to produce more competitive, export-driven industries.

Vietnam’s membership of ASEAN (since July 1995) and ratification of the ASEAN Free Trade Area have contributed to rapid changes in Vietnam’s trade and economic regime. In addition, Vietnam’s entry into a bilateral trade agreement with the US in 2001 and full membership of the World Trade Organization in 2007 have contributed to trade liberalization, with strong growth in export turnover to the US and within ASEAN.

Despite global economic challenges, 2013 was a positive one for the Vietnamese economy with GDP registering growth of approximately 5.4 percent, although this growth was lower than the government’s target of 5.5 percent, it was an improvement on the 5.3 percent growth in 2012 ^[1].

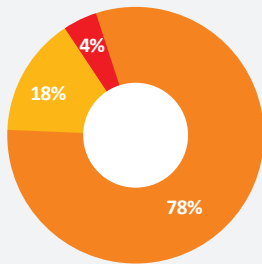
Foreign direct investment (FDI) enterprises accounted for 67% of Vietnam’s total export revenue in 2013, with an export growth rate of 22.4% versus 3.5% for domestic enterprises and FDI enterprises being responsible for 44.2% of industrial production ^[2]. During the first 5 months of 2014, FDI from ASEAN countries into Vietnam has been valued at more than US\$ 1 billion (via 48 projects) and ASEAN countries currently have more than 2,100 projects in Vietnam with a capital investment of US\$47 billion.

Based on the American Chamber of Commerce in Singapore Survey, Vietnam is considered one of the most attractive countries in ASEAN for FDI:



VIETNAM & ASEAN

Company Expansion Plans



■ Expand ■ Remain about the same ■ Contract

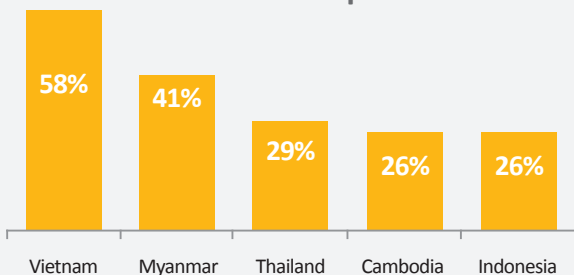
Major strengths (% satisfied)

Availability of low cost labor (59%)
Personal security (55%)
Sentiment towards US (55%)

Major concerns (% dissatisfied)

Corruption (70%)
Infrastructure (65%)
Laws & Regulations (59%)
Tax Structure (57%)
New business incentives offered by Gov’t (49%)
Ease of moving your products through customs (46%)
Housing costs (45%)

Target Countries for Business Expansion



Importance of ASEAN markets

- 58% of respondents report that ASEAN markets have increased in importance to their companies over the past two years.
- The majority of respondents (70%) expect ASEAN’s importance to their companies to continue to increase over the next two years.
- 83% regard ASEAN integration as important to helping their companies do business in the region.

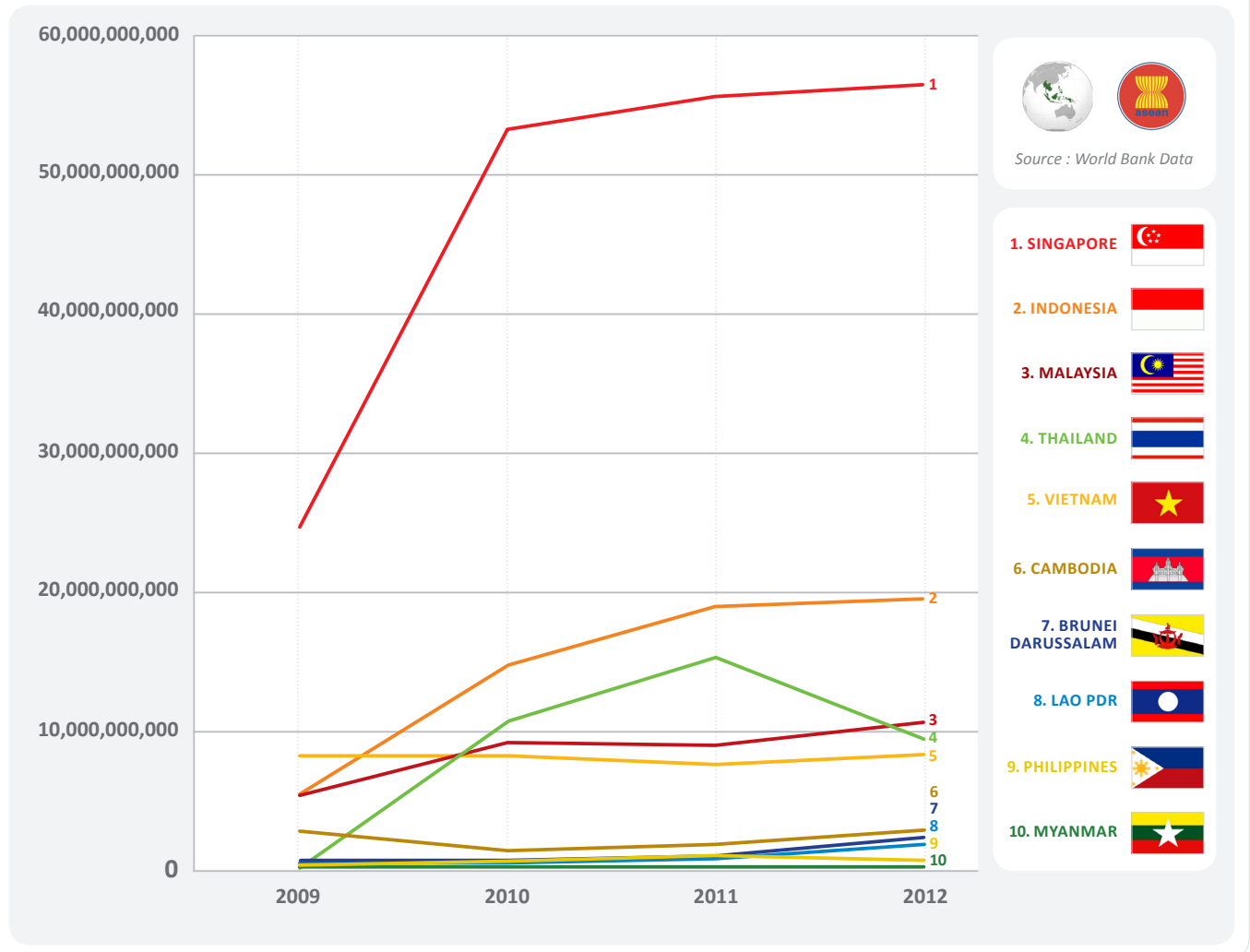
Level of trade and investment in ASEAN

- 67% of respondents indicate their companies’ level of trade and investment in ASEAN has increased over the past two years.
- 91% expect their companies’ level of trade and investment in ASEAN to continue increasing over the next five years.



Source : AmCham ASEAN business outlook survey 2014

ASEAN FDI Inflows 2009-2012 - USD



ASEAN TRADE IN GOODS AGREEMENT

In the mid and long term, the ASEAN Comprehensive Investment Agreement (ACIA) will, most probably, have the biggest impact on FDI and foreign investors. Indeed, the objectives and the scope of the ACIA, if fully developed and implemented, would drive the ASEAN investment integration to a new level by liberalizing and integrating further each ASEAN Member State's investment framework, as well as offering strong protection to foreign investors (both from within and outside ASEAN). However, the intra-ASEAN agreement that has arguably done the most to improve trade within ASEAN is the ASEAN Trade in Goods Agreements (ATIGA) which was signed on 26 February 2009. ATIGA superseded the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area which had been signed in January 1992.

Some key features of ATIGA area:

1. Comprehensive Coverage

ATIGA covers trade-related rules and regulations, including tariff liberalisation, non-tariff barrier liberalisation, rules of origin, trade facilitation, customs procedures, standards and conformance, and sanitary and phytosanitary measures.

2. Elimination of import duties

The overarching objective of the ATIGA is the elimination or reduction of import duties on products traded between ASEAN member states

by 2010 for ASEAN-6 (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, Thailand) and expanded during 2015-2018 to include CLMV (Cambodia, Lao PDR, Myanmar, Vietnam). Import duties are to be eliminated in some sectors, with staggered reduction over time in others. A further smaller number of products are to retain tariff protection to varying degrees. In the event that tariff levels remain, they must be consistent between the ASEAN member states on a sector by sector basis.

3. Most Favoured Nation Treatment

ATIGA provides that if a particular ASEAN member state enters into an arrangement with a non-ASEAN state agreeing to commitments which are on more favourable terms than those it imposes on other ASEAN states, then the other ASEAN states have the right to request that their goods be treated on no less favourable terms than those contained in the non-ASEAN state agreement [3].

4. National Treatment on Internal Taxation and Regulation

In ATIGA each ASEAN member agrees it will not apply internal taxes or other internal charges in excess of those applied, directly or indirectly, to like domestic products in such ASEAN member state. More broadly, a product of the territory of an ASEAN state imported into any other ASEAN state shall be given treatment no less favourable than domestically produced goods [4].

EXPORT - OPPORTUNITIES & CHALLENGES ...

The overarching objective of the ASEAN Economic Community (AEC) is to promote the free flow of goods, services, skilled workers and capital via economic integration into a single market. Economic integration will occur through a range of measures including the tariff reductions stipulated in the ATIGA. Since the early 1990s (with the execution of the pre-cursor agreement to ATIGA) there have been substantial trade tariff reductions throughout ASEAN, with general tariffs declining from an average of 13% to approximately 1%, with positive implications for export volume growth and the opening up of new markets to companies in member states [5].

Deputy Minister of Industry and Trade Do Thang Hai recently stated that the trade turnover between Vietnam and ASEAN has quadrupled in the past decade, climbing to nearly US\$40 billion in 2013 from \$9 billion in 2003 [6]. According to Vietnam Customs' statistics, in 2013, ASEAN was the third largest export market of Vietnam, behind only the U.S. and EU, with exports reaching US\$18.47 billion [7]. In the first quarter of 2014, ASEAN continues to maintain that position. In terms of investment, in 2013, the total newly and additional registered capital of ASEAN into Vietnam was US\$5.05 billion, accounting for 23.3 percent of total newly and additional registered capital in the country. Among investors, Singapore provided one of the largest capital investments (second largest in 2012 and 2013, third in 2011). However, according to Mr Do Thang Hai, the growth of Vietnam's

exports to ASEAN recently started to show signs of slowing down; one of the reasons being because export advantages with traditional markets in close geographic location in the ASEAN region had not been fully exploited.

Vietnamese companies have a significant opportunity for the export of products, such as textiles, garments, rice, seafood and electronic components, and must ultimately take advantage of the reduction in tariffs, fees and charges as provided for in ATIGA. The promise of harmonized customs systems between ASEAN countries allows for the integration of supply chains and movements of goods between member states. ATIGA will open the way for Vietnamese companies to sell goods in a similar manner to the ASEAN market as for the domestic market. However, the full implementation of ATIGA will also bring increased competition to the domestic market, especially when barriers to protect domestic products no longer exist.

Vietnamese businesses need to fully utilize the advantages provided pursuant to the terms of ATIGA and the AEC to promote export and expand investment cooperation with partners in the region. As ASEAN progresses towards the launch of AEC by the end of 2015 there are many opportunities for international and regional investors as economic integration becomes a reality and market connectivity increases.

ASEAN SINGLE WINDOW - TRADE FACILITATION FOR ASEAN

ASEAN Member States agreed to establish an ASEAN Single Window (ASW) to connect the ten national single windows so as to expedite border clearance of goods by providing traders with a single point for submitting clearance documentation and data. The main goals of the AEC Agreement to Establish and Implement the ASW, and the associated Protocol and Technical Guidelines, are to create simpler and faster processing times and a more transparent way of doing business [8].

The ASW currently supports the exchange of the intra-ASEAN certificate of origin (ATIGA Form D) and ASEAN Customs Declaration Document on a pilot basis among seven Member States. Vietnam has taken measures to implement the ASW by passing Decision No. 48/2011/QD-TTG regarding the Pilot National Customs

Single Window (dated 31 August 2011) and the Decree No. 87/2012/ND-CP regarding E-Customs Procedures for Commercial Imports and Exports (dated 23 October 2012). The E-Customs Decree outlines a number of measures which are to be implemented in the formation of the Vietnamese automated cargo and port system and the customs information system. Electronic services for declarations, manifests, invoicing, certificates of origin, payments and goods clearances are now conducted through an updated electronic registry system.

These legislative developments and associated electronic infrastructure developments have provided a more secure and efficient mechanism for communication with other ASEAN member states and should also reduce the cost of doing business for ASEAN traders, thereby encouraging trade and investment in and with ASEAN.



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