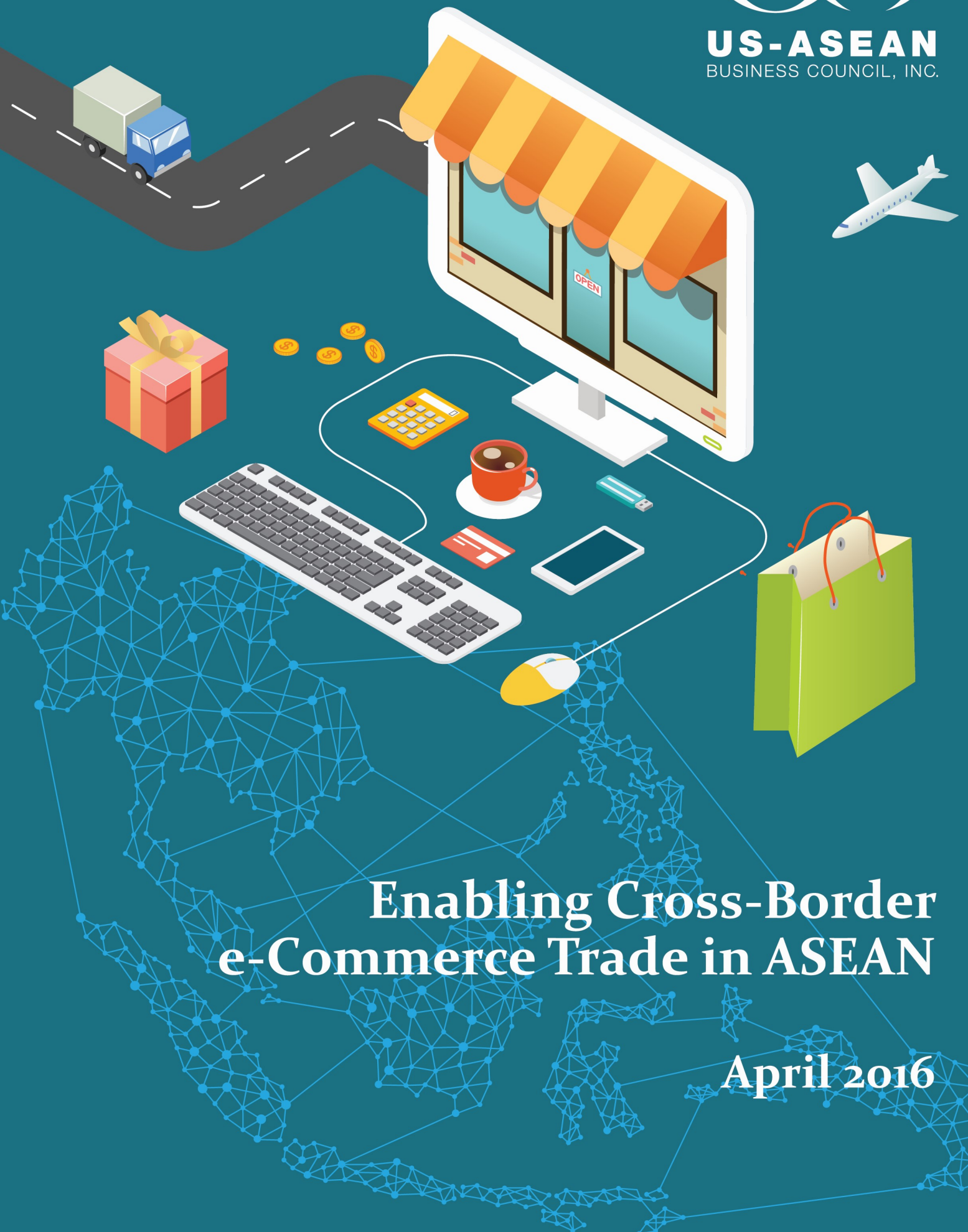




**US-ASEAN**  
BUSINESS COUNCIL, INC.



# Enabling Cross-Border e-Commerce Trade in ASEAN

April 2016

For over 30 years, the **US-ASEAN Business Council** has been the premier advocacy organization for US corporations operating within the dynamic Association of Southeast Asian Nations (ASEAN). Worldwide, Council Members generate over \$6 trillion in revenue and employ more than 13 million people. Members include the largest US companies that have been working in Southeast Asia for over 100 years. The Council has offices in: Washington, DC; New York, NY; Bangkok, Thailand; Hanoi, Vietnam; Jakarta, Indonesia; Kuala Lumpur, Malaysia; Manila, Philippines; and Singapore.

**Headquarters**

1101 17<sup>th</sup> Street, NW Suite 411  
Washington, DC 20036  
Tel: 202.289.1911  
USASEAN.org

# Table of Contents

---

Executive Summary	3
Part One: ASEAN’s Cross-Border E-Commerce Potential and Benefits	5
Part Two: ASEAN’s Regulatory Environment and Existing Initiatives Facilitating Cross-Border E-Commerce	8
Part Three: Ways to Further Enable ASEAN Cross-Border E-Commerce	11
<b>Prioritize Cross-Sectoral E-Commerce Policy Coordination</b>	12
1. Embrace Cross-Sectoral Policy Coordination .....	12
<b>Facilitate the Movement of Goods across Borders</b>	12
2. Simplify and Strengthen Border Clearance Procedures .....	12
3. Improve Physical Infrastructure and Connectivity to Facilitate Last Mile Delivery .....	14
<b>Enhance the Regulatory Environment for ASEAN Businesses and Consumers</b>	14
4. Ease Business Regulations to Create a Level Playing Field for SMEs .....	14
5. Encourage an Open, Safe, Secure, and Interoperable Payments Ecosystem .....	15
6. Encourage the Establishment of Online Platforms and Marketplaces .....	16
7. Liberalize Services Critical to Supporting Cross-Border e-Commerce.....	16
<b>Build a Secure, Trusted, and Facilitating Online Environment</b>	17
8. Facilitate Cross-Border Data Flows .....	17
9. Support Growth-Focused Data Protection.....	18
10. Enable Strong Cyber Security Defenses .....	18
<b>Empower ASEAN Businesses and Consumers</b>	19
11. Improve Internet Access.....	19
12. Facilitate Trade in Digital Products.....	19
Conclusion	20

## Executive Summary

---

- The opportunities for cross-border electronic commerce (e-Commerce) in ASEAN are tremendous. ASEAN is a fast-growing economic bloc with high consumer confidence that is rapidly adopting, and in some instances spearheading, 21<sup>st</sup> century technology. By 2020, ASEAN's middle class is expected to reach 400 million people.<sup>1</sup> According to the World Bank's *World Development Indicators*, the number of Internet users in ASEAN grew at a rapid 16% annually between 2008 and 2013.<sup>2</sup>
- Cross-border e-Commerce has the potential to revolutionize the way businesses and consumers engage in commercial transactions. Small and medium-sized enterprises (SMEs) in particular benefit from cross-border e-Commerce as it enables them to reach beyond a local customer base and access global markets in a way that was previously unimaginable. ASEAN's growing middle class also benefits by being able to choose from a wide range of goods more conveniently and more cost effectively.
- A number of existing and newly announced ASEAN initiatives – particularly those espoused in the *ASEAN Economic Community Blueprint 2025*, *ASEAN ICT Masterplan 2020*, and prioritized projects under the *2010 Master Plan on ASEAN Connectivity (MPAC)* – support specific aspects of the cross-border e-Commerce value chain. They include efforts to promote digital trade and use of electronic payment, simplify customs procedures by facilitating data exchange among customs authorities of ASEAN Member States, improve Internet access, develop ICT infrastructure, enable transport connectivity, and harmonize e-Commerce laws.
- Despite positive trends and existing ASEAN initiatives, more needs to be done for cross-border e-Commerce in the region to flourish. Cross-border e-Commerce is altering and challenging ASEAN's existing regulatory environment and some ASEAN Member States are creating regulations to slow these flows rather than collaborating to develop new policies that facilitate the seamless flow of information, services and goods related to cross-border e-Commerce. ASEAN's response to and management of the booming cross-border e-Commerce volume can make or break this new growth opportunity.
- The US-ASEAN Business Council (US-ABC) applauds ASEAN's intent to intensify cooperation on e-Commerce through the development of an "ASEAN Agreement on e-Commerce."<sup>3</sup> We believe that ASEAN can obtain significant growth benefits by including a strategic focus on cross-border e-Commerce, and prioritizing regional policy coherence in the post-2015 ASEAN Economic Community agenda based on comprehensive multi-stakeholder dialogue – including with the private sector.
- US-ABC and its members stand ready to support ASEAN's formulation of a regional strategy for facilitating cross-border e-Commerce trade. In aid of these efforts, we offer the following twelve policy recommendations:

---

<sup>1</sup> "ASEAN 2015: Seeing Around the Corner in a New Asian Landscape," The Nielsen Company, 2014.

<sup>2</sup> "Southeast Asia at the crossroads: Three paths to prosperity," McKinsey Global Institute, November 2014.

<sup>3</sup> "ASEAN 2025: Forging Ahead Together," Jakarta: ASEAN Secretariat, November 2015, p. 24.

Prioritize cross-sectoral e-Commerce policy coordination

- 1) Embrace cross-sectoral policy coordination that touches the entire value chain of cross-border e-Commerce, including its supporting sectors;

Facilitate the movement of goods across borders

- 2) Simplify and strengthen border clearance procedures;
- 3) Improve physical infrastructure and connectivity to facilitate last mile delivery;

Enhance the regulatory environment for ASEAN businesses and consumers

- 4) Ease business regulations to create a level playing field for SMEs;
- 5) Encourage an open, safe, secure, and interoperable payments ecosystem;
- 6) Encourage the establishment of online platforms and marketplaces;
- 7) Liberalize services that facilitate cross-border e-Commerce including logistics/express delivery services, distribution services, and payment gateway services;

Build a secure, trusted, and facilitating online environment

- 8) Facilitate cross-border data flows;
- 9) Support growth-focused data protection;
- 10) Enable strong cybersecurity defences;

Empower ASEAN businesses and consumers

- 11) Improve Internet access; and
- 12) Facilitate trade in digital products.

## Part One:

### ASEAN's Cross-Border E-Commerce Potential and Benefits

#### ASEAN's Cross-border e-Commerce Potential

The use of the Internet as a platform for international sales, sourcing, and exchange will play an increasingly important role in supporting economic growth in ASEAN. Cross-border e-Commerce is creating new industries, altering traditional ones, and changing the international trade landscape.

The opportunities for cross-border e-Commerce in ASEAN are tremendous. The region is experiencing rapid economic growth; the Organization for Economic Cooperation and Development (OECD) projects that ASEAN's GDP will grow 5.2% annually for the next five years after already growing 5% annually for the past five years.<sup>4</sup> Consumer confidence is high, with Indonesia, the Philippines, Thailand and Vietnam among the top 10 most confident countries globally, according to Nielsen.<sup>5</sup> High consumer confidence translates into a desire by ASEAN consumers to spend online, with more than 60% of Internet users in each of the ASEAN-6 economies making online purchases between December 2015 and January 2016.<sup>6</sup>

**Figure 1: Online users and shoppers in the ASEAN-6**

	Online users				Online shoppers (between Dec 2015 and Jan 2016)		
	No. of active Internet users (million)	% total population	% using Internet daily	% active social media users	Number of online shoppers (million)	% online population	% using mobile to buy
<b>ASEAN-6</b>	245.8	44%	62%	41%	182.61	74%	68%
<b>Indonesia</b>	88.1	34%	48%	30%	70.0	79%	74%
<b>Malaysia</b>	20.62	68%	77%	59%	15.27	74%	62%
<b>Philippines</b>	47.13	46%	46%	47%	29.42	62%	62%
<b>Singapore</b>	4.65	82%	84%	64%	3.22	69%	53%
<b>Thailand</b>	38	56%	86%	56%	29.94	79%	70%
<b>Vietnam</b>	47.3	50%	78%	31%	34.76	73%	62%

Source: "Digital in 2016." We are Social. January 2016.

ASEAN accounts for less than 1% of global e-Commerce, even though it makes up 3-4% of global GDP, which indicates the enormous potential that e-Commerce holds for the region.<sup>7</sup> According to UBS, with e-Commerce constituting only 0.2% of ASEAN retail sales in 2013, as compared to 8.0% and 8.7% in China and the United States respectively. If the ASEAN e-Commerce market were to emulate China and the United States, this could translate to a US\$49 billion opportunity by 2020.<sup>8</sup> Over the past four years, the ASEAN e-Commerce market has grown approximately 15% each year. AT Kearney estimates e-Commerce will grow 25% a year in the near future.<sup>9</sup>

<sup>4</sup> "Economic Outlook for Southeast Asia, China and India 2016: Enhancing Regional Ties." OECD. 2016.

<sup>5</sup> "Nielsen Global Consumer Confidence Survey", Q4 2015. Nielsen. 2015

<sup>6</sup> "Digital in 2016." We are Social. January 2016.

<sup>7</sup> "Lifting the barriers to e-Commerce in ASEAN." AT Kearney & CIMB ASEAN Research Institute. March, 2015.

<sup>8</sup> Assuming annual growth of 5% in retail sales in the region. "ASEAN eCommerce: Is ASEAN at an inflection point for eCommerce?" UBS. 2015.

<sup>9</sup> "Lifting the barriers to e-Commerce in ASEAN." AT Kearney & CIMB ASEAN Research Institute. March, 2015.

**Attractive Demographics**

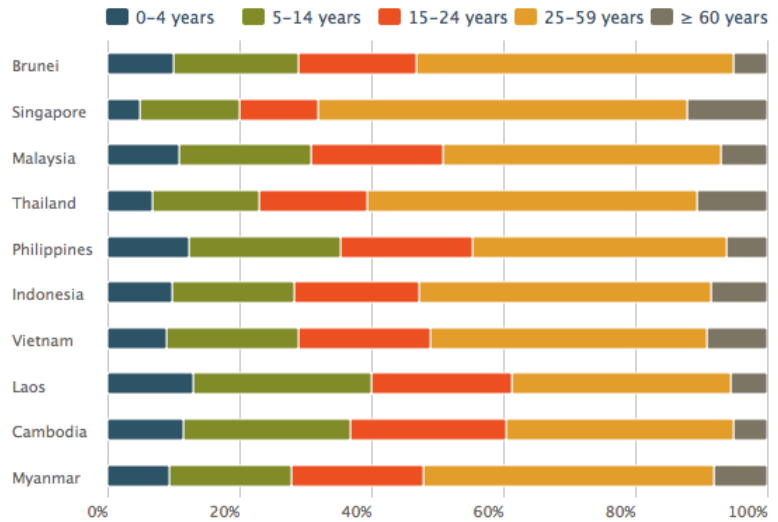
More than 40% of ASEAN’s population is 24 years old or younger, ensuring a steady stream of people entering the workforce that will continually expand the region’s consumer base over the next few years.

From 2004 to 2014, ASEAN’s middle class (those with more than US\$3000 in annual disposable income) grew from 50 to 300 million.<sup>10</sup> By 2020, the size of ASEAN’s middle class will grow to reach 400 million.<sup>11</sup> In Indonesia alone, on average 5 million people join the country’s middle class every year.<sup>12</sup>

**Already Wired**

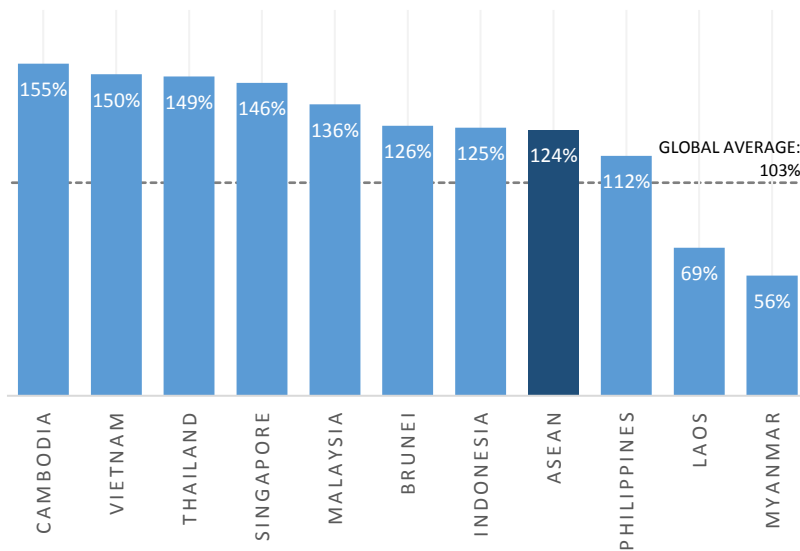
ASEAN is quickly embracing the digital age. According to the World Bank’s *World Development Indicators*, the number of Internet users in ASEAN grew at a rapid 16% annually between 2008 and 2013.<sup>13</sup> With 171 million accounts, Facebook usage in ASEAN surpasses that of Western Europe and is on par with North America.<sup>14</sup>

**Figure 2: Age distribution in the ASEAN countries**



Source: United Nations

**Figure 3: Mobile penetration rates in ASEAN countries**



Source: "Digital, Social & Mobile in Southeast Asia in 2015." We Are Social. November 2015.

Rapidly expanding mobile device usage helps explain growing connectivity in ASEAN. Mobile penetration in ASEAN reached 124% in November 2015, higher than the global average of 103%.

Although smartphone penetration rates in ASEAN are low, they are rapidly growing as availability and affordability increase. 57% of Internet users in ASEAN use smartphones to make online purchases compared with 44% in the rest of the world, indicating growing receptivity and opportunity for cross-border e-Commerce in ASEAN.<sup>15</sup>

<sup>10</sup> "ASEAN Fact #5: ASEAN to become one of largest consumers in emerging world." Frontier Strategy Group. February 16, 2015.

<sup>11</sup> "ASEAN 2015: Seeing Around the Corner in a New Asian Landscape," The Nielsen Company, 2014.

<sup>12</sup> Razdan, Rohit, Mohit Das and Ajay Sohoni. "The evolving Indonesian consumer." McKinsey & Company. November 2013.

<sup>13</sup> "Southeast Asia at the crossroads: Three paths to prosperity," McKinsey Global Institute, November 2014.

<sup>14</sup> "ASEAN eCommerce: Is ASEAN at an inflection point for eCommerce?" UBS. 2015

<sup>15</sup> "Politics and e-commerce in emerging markets: Three things to watch." R&C Trendwatch. PricewaterhouseCoopers. July, 2015.

### Benefits of Cross-Border E-Commerce

Cross-border e-Commerce has positive effects on the overall economy. It promotes stronger and more inclusive economic growth by empowering small and medium-sized enterprises (SMEs), particularly those in developing economies, to reach global markets. It also has the potential to revolutionize the way that businesses and consumers engage in commercial transactions. Cross-border e-Commerce has also been an important growth driver of the region's rapidly developing start-up and venture capital ecosystems, which are becoming the new engines of economic growth and wealth creation in many ASEAN Member States. It creates new employment opportunities in software, telecommunications, logistics and other services that support the e-Commerce value chain.

#### *Benefits to ASEAN Small Businesses*

An important metric for the success of the ASEAN Economic Community in transforming the region into a Single Production Base is level of SME involvement in cross-border business activities as part of a regional supply chain. While SMEs have traditionally been on the margins of international trade, cross-border e-Commerce helps even the smallest firms to leapfrog traditional costs associated with international trade. Cross-border e-Commerce is particularly empowering for SMEs and businesses from developing and emerging economies. A report by eBay that studied SMEs in 18 countries across four continents showed that technology-enabled SMEs had higher trade activity and overall growth compared to traditional SMEs. In addition, the report found that technology-enabled SMEs in developing and emerging economies performed well compared to similarly sized technology-enabled SMEs in advanced economies.<sup>16</sup>

Cross-border e-Commerce tools enable ASEAN businesses to reach beyond a local customer base and access global markets in ways that were previously unimaginable. Data analytics allow ASEAN SMEs to glean new insights on consumer needs and behavioural trends, allowing them to better serve these needs and create more meaningful go-to-market strategies. These tools have also made possible marketing campaigns that appeal to consumer preferences in real-time, making ASEAN SMEs more effective in reaching customers. E-Commerce also lowers operating costs for ASEAN SMEs, reducing the capital needed to create and sustain a business. For example, a website is cheaper to develop and maintain than a brick-and-mortar store and accessible to more people. As SME revenue increases, SMEs can afford to expand their businesses, invest in local communities, and hire more employees. This cycle of growth moves more people into the middle class, and creates new consumers for their products and services that will improve their quality of life and benefit the economy.

#### *Benefits to ASEAN Entrepreneurs*

Creating a regulatory environment that is friendly to cross-border e-Commerce will help ASEAN's entrepreneurs launch start-ups and attract investment. Since 2014, ASEAN's rapidly growing start-up and venture capital communities have attracted millions of dollars of investment capital. Some of the biggest investment deals in the region have involved e-Commerce. According to Techlist, in 2014 investors put US\$151 million into ASEAN e-Commerce start-ups, including third-party logistics provider aCommerce in Thailand, GrabTaxi in Malaysia, and Luxola in Singapore.<sup>17</sup> In 2015, this trend continued, with e-Commerce and marketplace start-ups dominating Southeast Asia's funding rounds.<sup>18</sup>

#### *Benefits to ASEAN Consumers*

While cross-border e-Commerce helps SMEs expand their customer base, ASEAN's growing middle class also benefits by being able to choose from a wider range of goods more conveniently and more cost effectively. Consumers no longer have to travel great distances or through congested areas to compare prices or merchandise, and they benefit from greater product choice and lower costs. This is especially important to those living in rural areas with limited retail options.

<sup>16</sup> "Small Online Business Growth Report: Towards an Inclusive Global Economy," eBay. January 2016.

<sup>17</sup> "Luxola raises \$10 million to doll up women (and men) in Southeast Asia", *Tech in Asia*. Terence Lee. March 2014.

<sup>18</sup> "Singapore is still Southeast Asia's startup hub, but neighbors are encroaching," *Tech in Asia*. Paul Bischoff. May 2015.



## Part Two:

### *ASEAN's Regulatory Environment and Existing Initiatives Facilitating Cross-Border E-Commerce*

---

#### ASEAN Regulatory Environment for Cross-Border E-Commerce Trade

Even as e-Commerce creates new benefits for ASEAN small businesses, entrepreneurs and consumers, it is also altering and challenging ASEAN's existing regulatory environment. As volume rises, increased focus will be placed on regulating cross-border payments, managing risk associated with low-value shipments, and protecting personal data. Some ASEAN Member States are creating regulations that slow trade flows, such as increasing inspection rates of low-value shipments, imposing local data storage requirements, or reducing the interoperability of electronic payment instruments. We encourage ASEAN Member States to develop new policies that facilitate the seamless flow of information, services and goods relating to cross-border e-Commerce.

#### ASEAN's Existing Initiatives Facilitating Cross-Border E-Commerce

A number of existing and newly announced ASEAN initiatives – including those espoused in the *ASEAN Economic Community Blueprint 2025*, *ASEAN ICT Masterplan 2020*, and prioritized projects under the *2010 Master Plan on ASEAN Connectivity (MPAC)* – support specific aspects of the cross-border e-Commerce value chain. They include efforts to promote digital trade and use of electronic payment, simplify customs procedures by facilitating data exchange among customs authorities of ASEAN Member States, improve Internet access, develop ICT infrastructure, enable transport connectivity, and harmonize e-Commerce laws. All of these efforts enhance ASEAN's competitiveness and support the growth of ASEAN SMEs. Once fully implemented, these initiatives will help address specific obstacles that cross-border e-Commerce traders generally face.

#### ASEAN Economic Community Blueprint 2025

With the formal establishment of the ASEAN Community at the end of 2015, ASEAN adopted the *ASEAN Community Vision 2025* and the three *ASEAN Community Blueprints*. The *ASEAN Economic Community Blueprint 2025* notably articulates a “new emphasis on the development and promotion of micro, small and medium enterprises (MSMEs) in its economic integration efforts”<sup>19</sup> and the intent to “embrace the evolving digital technology as leverage to enhance trade and investments”<sup>20</sup> in the next decade.

We especially applaud ASEAN's intent to intensify cooperation on e-Commerce through the development of an “ASEAN Agreement on e-Commerce,”<sup>21</sup> and hope that this will take the form of an overarching regional framework for facilitating the entire cross-border e-Commerce value chain. We believe that ASEAN can obtain significant growth benefits by including a strategic focus on cross-border e-Commerce, and prioritizing regional policy coherence in its post-2015 ASEAN Economic Community agenda. This strategic focus could also strengthen ASEAN's ability to maximize benefits for the region in negotiating a chapter on e-Commerce in the *Regional Comprehensive Economic Partnership (RCEP)* talks with ASEAN's six FTA partners. Such a chapter could create a baseline for regional harmonization of e-Commerce laws in the ASEAN Economic Community.

#### The ASEAN ICT Masterplan 2020

The *ASEAN ICT Masterplan 2016-2020 (AIM 2020)*, launched at the end of 2015, demonstrates strong recognition by ASEAN Member States that ICT, and in particular the Internet, has become a core part of the ASEAN economy and should be seen not as “a single sector of focus,” but rather a “horizontal

---

<sup>19</sup> “ASEAN 2025: Forging Ahead Together,” Jakarta: ASEAN Secretariat, November 2015, p. 24.

<sup>20</sup> “ASEAN 2025: Forging Ahead Together,” p. 24.

<sup>21</sup> “ASEAN 2025: Forging Ahead Together,” p. 24.

enabler of all sectors.”<sup>22</sup> As the ASEAN economy transitions to a digital one, AIM 2020 aims to facilitate this transformation through the development of human capacity, facilitating the emergence of a single integrated market, and building a digital environment that is safe and trusted. AIM 2020 lists specific initiatives and action points that governments will fulfil within the 2016-2020 timeframe. Provisions for the promotion of digital trade, addressing emerging or growing digital divides in ASEAN, enhancing cyber security and developing regional data protection principles directly support the cross-border e-Commerce development agenda.

#### ASEAN Single Window

The ASEAN Single Window (ASW) is a regional mechanism intended to facilitate the free flow of shipment data electronically between ASEAN Member States in order to reduce customs processing times and increase transparency. ASEAN aimed to launch the ASW by the end of 2015 by linking their National Single Windows (NSW). Currently, seven out of ten ASEAN Member States have implemented NSWs – Indonesia, Malaysia, Singapore, Thailand, Vietnam, Brunei, and the Philippines – and five will be part of the initial ASW. Full NSW implementation and integration into the ASW will greatly simplify customs procedures and help traders achieve more timely, efficient and predictable supply chains.

#### ASEAN Transport and Transit Agreements

Within ASEAN is a strategic road transport corridor that connects Southeast Asia with India and China. Without a regional transport and transit system, goods moving through this corridor face separate border clearance procedures and different regulatory requirements for goods, paperwork, vehicles, and operators. For cross-border e-Commerce retailers, a simplified and harmonized regional transport and transit system would open up new and more efficient delivery options and optimize transportation and distribution networks.

ASEAN is working on initiatives to simplify and harmonize cross-border transport and transit procedures. The *ASEAN Framework Agreement on the Facilitation of Goods in Transit* (AFAFGIT) entered into force in 2000. Of its nine protocols, four have been signed, ratified by, and entered into force for all ASEAN Member States. Four protocols have been signed but not ratified, while Protocol 2 has yet to be signed.<sup>23</sup>

Protocol	Description	Status
1	Designation of Transit Transport Routes and Facilities	Signed, pending ratification
2	Designation of Frontier Posts	Not yet signed
3	Types and Quantity of Road Vehicles	Signed, ratified, and implemented
4	Technical Requirements of Vehicles	Signed, ratified, and implemented
5	ASEAN Scheme of Compulsory Motor Vehicle Third-Party Liability Insurance	Signed, ratified, and implemented
6	Railways Border and Interchange Stations	Signed, pending ratification
7	Customs Transit System	Signed, pending ratification
8	Sanitary and Phyto-sanitary Measures	Signed, ratified, and implemented
9	Dangerous Goods	Signed, pending ratification

Source: “ASEAN Integration Report,” Jakarta: ASEAN Secretariat, November 2015.

The ASEAN Customs Transit System (ACTS), part of Protocol 7, aims to expedite customs clearance of transit goods. It is modelled after the European Union’s Common Transit System. ACTS will facilitate communication between traders and customs authorities on the electronic submission of transit declarations and completed transit movements. ACTS will also facilitate the exchange of transit movement data between customs authorities in order to strengthen customs enforcement. ACTS testing will be carried out in Malaysia, Singapore, and Thailand in 2016.

<sup>22</sup> “The ASEAN ICT Masterplan 2020,” Jakarta: ASEAN Secretariat, 2015.

<sup>23</sup> “ASEAN Integration Report,” Jakarta: ASEAN Secretariat, November 2015.

### Harmonization of ASEAN E-Commerce Laws

ASEAN has also been working to create a unified, regional approach to information management, related infrastructure development, and information security. In 2000, ASEAN Member States signed the *e-ASEAN Framework Agreement*, through which they committed to adopting e-Commerce regulatory and legislative frameworks that would create consumer trust and help move businesses towards the development of e-ASEAN. In 2001, ASEAN published the *e-ASEAN Reference Framework for Electronic Commerce Legal Infrastructure* to help Member States without e-Commerce laws draft them while facilitating cross-recognition of digital certificates and signatures.<sup>24</sup> In 2004, a joint AusAID/ASEAN study was commissioned, culminating in a 2004-2009 project to assist ASEAN in meeting targets set in the *Roadmap for Integration of the e-Commerce Sector* as part of the broader *e-ASEAN Framework Agreement*. The United Nations Conference on Trade and Development (UNCTAD) also assisted Cambodia and the Lao PDR through a series of capacity-building and awareness raising workshops for policy and law makers from 2003-2009. The ASEAN Working Group on E-Commerce and UCT Trade Facilitation also commissioned the *ASEAN e-Commerce Database* in 2008, a study of the state of e-Commerce activities in the region.<sup>25</sup>

---

<sup>24</sup> "E-ASEAN Reference Framework for Electronic Commerce Legal Infrastructure," ASEAN Secretariat. 2001.

<sup>25</sup> "Review of e-commerce legislation harmonization in the Association of Southeast Asian Nations," UNCTAD, 2013.

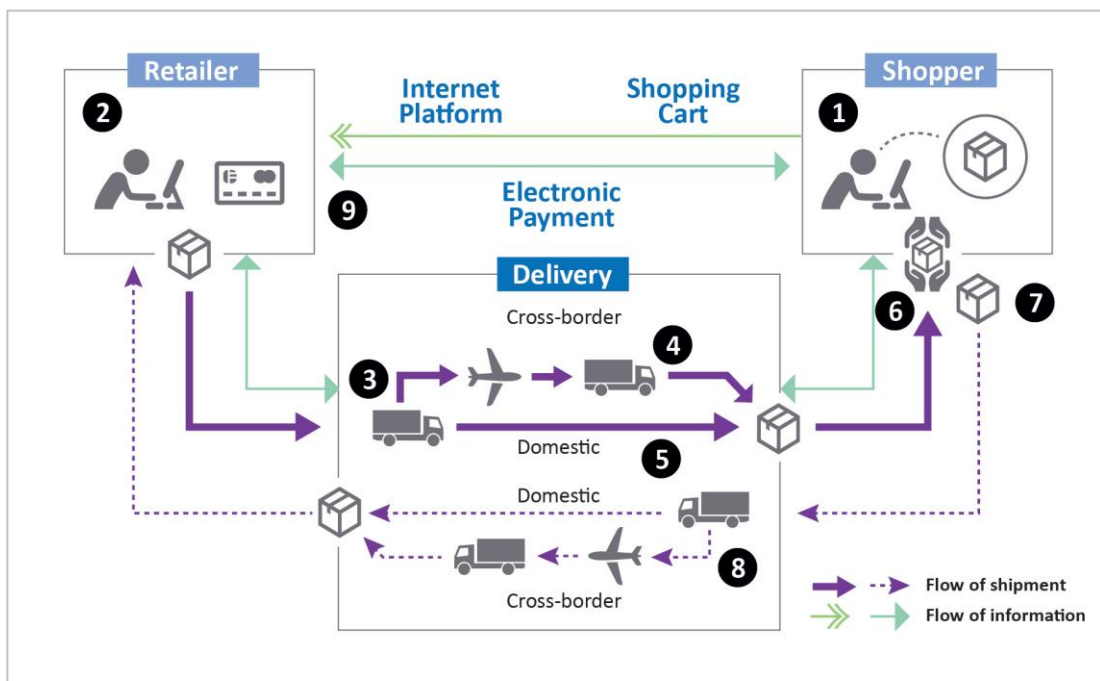
## Part Three:

### Ways to Further Enable ASEAN Cross-Border E-Commerce

Despite positive trends and existing ASEAN initiatives, more needs to be done for cross-border e-Commerce in the region to flourish. According to UBS, total e-Commerce activity constitutes only 0.2% of ASEAN retail sales in 2013, as compared to 8.0% and 8.7% in China and the United States respectively. If the ASEAN e-Commerce market were to emulate China and the United States, this would translate to a US\$49 billion opportunity by 2020.<sup>26</sup> A strong domestic e-Commerce industry will pave the way for local businesses to engage in cross-border e-Commerce.

ASEAN’s response to and management of the cross-border e-Commerce trade can make or break this new growth opportunity. A harmonized regional framework based on comprehensive multi-stakeholder dialogue – including with the private sector – is needed for ASEAN to fully realize the benefits of cross-border e-Commerce. This framework should address sector-specific issues by advancing best practices and sharing knowledge across the entire cross-border e-Commerce value chain, from the time an individual consumer or business places an order, to the time of order fulfilment with payment received and goods or services delivered.

**Figure 4: Example of a possible cross-border e-Commerce transaction**



*This diagram captures one possible cross-border e-Commerce transaction, from the time an individual consumer or business places an order, to the time of order fulfilment with payment received and goods or services delivered.*

ASEAN’s intent to develop an “ASEAN Agreement on e-Commerce”<sup>27</sup>, announced in the *ASEAN Economic Blueprint 2025*, is a laudable step forward and we hope this will take the form of such a framework. The Blueprint also calls for the “formulation of appropriate strategies on global megatrends and emerging trade-related issues” such as the expansion of interconnected global cross-border flows and accelerating advancements in digital technology, and highlights the importance of consultations with stakeholders at the forefront of these trends. US-ABC and its members look forward

<sup>26</sup> Assuming annual growth of 5% in retail sales in the region. “ASEAN eCommerce: Is ASEAN at an inflection point for eCommerce?” UBS. 2015.

<sup>27</sup> “ASEAN 2025: Forging Ahead Together,” Jakarta: ASEAN Secretariat, November 2015, p. 24.

to supporting ASEAN's formulation of a regional strategy for facilitating cross-border e-Commerce trade. In aid of these efforts, we offer the following twelve policy recommendations.

## Prioritize Cross-Sectoral E-Commerce Policy Coordination

### 1. Embrace Cross-Sectoral Policy Coordination

Cross-border e-Commerce presents numerous policy questions for governments governing the flow of physical goods, information, services, and funds. A holistic approach focusing on all major aspects of the cross-border e-Commerce value chain is necessary to facilitate its growth.

#### Recommendations

- Create cross-agency mechanisms to improve policy coordination across the entire cross-border e-Commerce value chain.
- Create mechanisms to facilitate transparency in regulation, allowing adequate commentary periods for new regulations in which feedback is gathered and regulations adjusted as needed.
- Perform cost-benefit analyses of new and existing regulations, in particular their impact on SMEs, and create formal review mechanisms that incorporate these analyses as well as user feedback.

## Facilitate the Movement of Goods across Borders

### 2. Simplify and Strengthen Border Clearance Procedures

Complicated border clearance procedures are a problem for all international traders, but they can be even greater obstacles for SMEs. The high costs of determining import requirements and completing excessive paperwork hamper cross-border e-Commerce. Retailers risk their reputations – and in the case of SMEs their very survival – with customs holds, late deliveries, or inefficient return procedures – all of which are common across ASEAN. Simplifying and harmonizing border clearance procedures across the region would lower trade costs and increase predictability.

#### Recommendations

##### Support Ecosystems for Processing Personal and Low Value E-Commerce Shipments

- Implement the World Customs Organization Immediate Release Guidelines, which categorize all inbound shipments, including cross-border e-Commerce shipments, into low value consignments for which no duties and taxes are collected, low value dutiable consignments and high value dutiable consignments.

- Simplify exporter/importer registration and waive Power of Attorney requirements, particularly for *de minimis* and low value dutiable shipments.
- Review current *de minimis* thresholds to ensure they are commercially relevant in order to create new benefits and opportunities for ASEAN SMEs and consumers.
- As appropriate, review VAT/GST collection process for low-value imports, and work with carriers and vendors to implement VAT/GST collection best practices, including fast-track processing and immediate release of consignments from compliant vendors and account-based revenue collection.
- Introduce a duty-drawback scheme to facilitate cross-border e-Commerce product returns.

#### Improve Risk Management

- Improve pre-arrival risk management to address revenue, safety and security concerns. For example, collaboration with express carriers in using intelligence-led and risk-based selectivity and targeting to improve the identification and targeting of high-risk shipments.
- Establish an ongoing work plan between customs and carriers to improve risk management practices in order to achieve an effective balance between customs control and legitimate trade facilitation.

#### Facilitate Service Enhancement

- Allow required border clearance paperwork to be filed electronically (EDI) and through a National Single Window to simplify and speed up border clearance.
- Adopt service level commitments that require Customs authorities to clear goods within a specified period of time.
- Minimize or eliminate open box inspections for cross-border e-Commerce products if deemed low risk goods.
- Refrain from erecting new requirements for cross-border e-Commerce shipments, such as higher inspection rates or additional consignee information.

#### Ensure Fair Competition

- Allow fair competition between public and private delivery service providers in order to create new benefits for ASEAN SMEs and consumers by reducing transportation costs and increasing service quality.

### 3. Improve Physical Infrastructure and Connectivity to Facilitate Last Mile Delivery

In addition to creating conditions for competitive services, improving physical infrastructure and connectivity will facilitate cross-border e-Commerce trade in ASEAN. In ASEAN, under-developed transport infrastructure and limited connectivity close off cost-efficient options that facilitate last mile delivery and lower the cost of shipping for cross-border e-Commerce deliveries, which in many instances are low-value. Enhanced physical infrastructure – especially efficient cross-border trucking, well-planned road networks in urban areas, carrier-neutral drop boxes, and alternate delivery locations – would improve access to markets, lower costs for consumers, make cross-border e-Commerce shopping more convenient, help ASEAN’s cross-border e-Commerce companies be more cost-competitive, and ultimately increase cross-border e-Commerce trade in the region.

#### Recommendations

- Implement the *ASEAN Agreement on Inter-State Transport* and *ASEAN Agreement on Customs Transit* to provide additional cost-efficient options for cross-border deliveries.
- Invest in physical transport infrastructure, especially efficient road networks in urban areas.
- Develop carrier-neutral drop boxes and support alternate delivery locations to facilitate last mile delivery.

## Enhance the Regulatory Environment for ASEAN Businesses and Consumers

### 4. Ease Business Regulations to Create a Level Playing Field for SMEs

For cross-border e-Commerce to continue to be an enabler for growth, particularly for SMEs, barriers to entry should be minimal. SMEs do not have the manpower and resources to handle onerous registration and reporting requirements. Instead, when SMEs are encouraged to leverage reputable cross-border e-Commerce platforms and adopt effective practices such as safe payment methods, they will be able to grow their cross-border e-Commerce businesses without the need for excessive government intervention, focusing instead on scaling their business successfully and surviving the initial stages of doing business.

#### Recommendations

- Allow SMEs with revenue below a certain threshold to be exempt from certain regulations, such as small business exemption provisions from GST and VAT regimes.
- Adopt policies that enhance ease of doing business.

## 5. Encourage an Open, Safe, Secure, and Interoperable Payments Ecosystem

Payments services enable merchants and consumers across the world to transact online. Merchants require efficient and effective payment services that are easy to implement, maintain, and use while consumers require trusted and safe payment mechanisms. An interoperable, open, secure, and competitive payments ecosystem will contribute to ASEAN's goals of greater economic integration, financial inclusion, and enabling e-Commerce.

While cash remains the dominant payment method in ASEAN, cash payments bear a number of costs. Many issuers in ASEAN block e-commerce transactions for debit cards, hindering cross-border e-Commerce growth. A minimum security standard for online transactions including account registration and appropriately tiered Know Your Customer (KYC) regulations can mitigate security and anti-money laundering concerns and enable issuers to put forward financial instruments that will facilitate cross-border e-Commerce trade.

Because online payments services are often linked to bank accounts, those outside the formal banking system often do not benefit from cross-border e-Commerce. While solutions such as branchless banking are being implemented across ASEAN to increase financial inclusion, policymakers should help ensure that these solutions are interoperable. At the same time, other forms of online payments services such as interoperable e-money or pre-paid financial products should be considered and encouraged for those who still remain outside the formal banking system.

### Recommendations

- Encourage financial inclusion initiatives such as branchless banking, and ensure they are interoperable and do not lock users into a single method for using financial services.
- Foster cashless payments by enabling electronic and online payment systems.
- Stimulate mobile Internet adoption to facilitate access to more complex financial services.
- Collaborate with the private sector to construct a next-generation regulatory model for financial services.
- Adopt a market-driven approach to encouraging multiple payment gateways, giving merchants and consumers more choices and avoiding concentration of risks.
- Promote greater adoption of interoperable electronic payment instruments, such as prepaid cards with appropriately tiered and proportionate KYC requirements.
- Set minimum security standards such as two-factor authentication or use of biometric features.



## 6. Encourage the Establishment of Online Platforms and Marketplaces

Online platforms and marketplaces facilitate cross-border e-Commerce by fostering a secure transactional environment, establishing mechanisms to address disputes, offering customer support to buyers and sellers, and formulating clear policies to which sellers adhere, thereby creating trust among consumers. As a result, these platforms are often important distribution channels for many ASEAN SMEs. To continue to flourish, it is imperative to ensure an appropriate legal framework for online intermediaries to offer the benefits of the Internet while also deterring illegal content.

Laws that appropriately limit the liabilities of online intermediaries while providing legal incentives for such intermediaries to cooperate with rights holders to combat illegal activity are the foundation of the information economy. In the context of cross-border e-Commerce, legal regimes must reflect the importance of online platforms and the reality that the volume of goods and services traded on platforms require appropriate safe harbors from liability when third parties traffic counterfeit, fake, smuggled or other illegal goods through the platforms. Measures that limit the liabilities of online intermediaries, while ensuring that illegal activity is legitimately addressed, will help cross-border e-Commerce to continue to flourish.

### Recommendations

- In the formulation of laws, a clear distinction should be made between the legal liabilities and responsibilities applied to online intermediaries that only facilitate transactions and parties that own the transactions/goods themselves.
- Implement clear “safe harbours,” or laws guaranteeing that, as long as online intermediaries meet certain conditions, they are not liable for the acts of their users. Safe harbours should also protect online intermediaries from liability for taking actions in good faith to prevent use of their services or platforms for illegal activities.
- Leverage existing “notice and takedown” mechanisms to help online intermediaries identify and take down infringing items as soon as they are notified by an intellectual property (IP) owner.

## 7. Liberalize Services Critical to Supporting Cross-Border e-Commerce

Competitive firms need access to world-class service providers, but liberalization of services investment has lagged behind liberalization of foreign investment in manufacturing. Investment liberalization stimulates the provision of efficient and competitively priced services, which would help lower costs for consumers and make ASEAN products more competitive in the global marketplace. Opening ASEAN’s services sector to more foreign participation also creates spill over effects to local people and companies.

Logistics and express delivery, e-payments, and other computer-related services such as shopping carts and cloud computing are a critical part of the cross-border e-Commerce ecosystem. New services are also continuously being developed to address the unique needs of the new and dynamic digital world.

### Recommendations

- Conduct a scoping exercise to identify all services relevant to the functioning of cross-border e-Commerce trade.
- Commit to clear targets and an ambitious timeline towards allowing full foreign ownership in every service sector and subsector.
- Adopt a negative list approach to investment restrictions, identifying areas where investment is restricted, to enable innovative new services to develop freely.
- Ensure a fair and competitive environment for all service providers, including those serving customs clearance, security and data reporting, cyber security, and taxation needs.

## Build a Secure, Trusted, and Facilitating Online Environment

### 8. Facilitate Cross-Border Data Flows

Cross-border e-Commerce companies depend on cross border data flows to sell their products, process payments, send human resources data to and from headquarters, and use efficiency-improving cloud-based technologies. Cross-border data flows are particularly important for SMEs and start-ups. Overcoming redundancies, achieving greater scale and speed, and lowering costs through the use of cloud infrastructure allow smaller companies to compete internationally. Cross-border data flows are also a critical enabler of the new field of big data analytics, techniques that promise to reduce costs, improve decision making, and reduce risks for all businesses, governments, and consumers.

While security and privacy concerns have motivated some ASEAN Member States to mandate local data storage, distributed online data storage is safer. With distributed infrastructure, when one data centre goes down, another can take over, ensuring that service is not interrupted. In addition, local storage can create an attractive target for cybercriminals and surveillance. Forced localization is also bad for customers, resulting in less choice of services and increased prices, and makes local companies less competitive because local storage increases costs and complexity of doing business. Government concerns about data access and foreign government surveillance would be better addressed by enhanced international police cooperation and encryption solutions based on international standards.<sup>28</sup> Finally, instead of mandating data localization as a means of developing the local industry of Internet infrastructure providers, a more considered approach would be to study how local companies can leverage cost advantages and market knowledge to provide competitive services, as supported in the *ASEAN ICT Masterplan 2020*.<sup>29</sup>

<sup>28</sup> The *ASEAN ICT Masterplan 2020* provides an excellent platform to address these goals. As put forward under Initiative 8.2 “Strengthen Information Security Preparedness in ASEAN,” we would encourage the ASEAN Member States to prioritize the feasibility study on establishing an ASEAN CERT, development of an Incident Reporting Framework, and regular cyber security collaboration between governments, the business community and citizens.

<sup>29</sup> Initiative 4.3 “Support Cloud Computing Development”

### Recommendations

- Instead of mandating data localization, advocate for enhanced international cooperation between law enforcement bodies, and implement encryption solutions based on international standards.
- Prioritize the “Information Security and Assurance” Initiatives in the *ASEAN ICT Masterplan 2020*.
- Adopt APEC’s Cross Border Privacy Rules System to ensure that companies meet domestic rules while facilitating trade through the flow of data across borders.

## 9. Support Growth-Focused Data Protection

Cross-border e-Commerce and data-driven innovation pose challenges to data protection. However, policy makers can adopt a pro-innovation approach that balances privacy and the benefits of data-driven innovation. Privacy is not only compatible with innovation, it is critical to its success. Blanket restrictions on data collection and transfer limits stifle innovation. Instead, policy makers can work with the private sector to promote strong data security standards, encourage user awareness and empowerment, and data portability. Impact assessments that fully weigh economic implications should be completed when considering new regulations.

### Recommendations

- Adopt a pro-innovation approach that balances privacy and the benefits of data-driven innovation by working with the private sector to promote strong data security standards, reasonable user awareness and empowerment, and data portability.
- Take a “harms-based” policy approach to concerns with data-driven services by considering a range of possible solutions that address specific real-world harms.
- Harmonize privacy/data protection policies and definitions of personal data between ASEAN Member States.

## 10. Enable Strong Cyber Security Defenses

Complementing the facilitation of seamless cross border data flows and support for growth-focused data protection is a need for adequate cyber security defenses. For e-Commerce to flourish, users need to trust the network environment and governments need to adopt sound network security practices and be adequately prepared to respond to threats. Traditional approaches taken to defend networks by monitoring just the perimeter and entry points are not enough to fight modern threats, especially given the pervasive use of mobile devices, cloud services and social networks today. The evolving ways in which technology is used in our everyday lives requires an overhaul of the way we protect ourselves.

### Recommendations

- Develop a comprehensive cyber security strategy for ASEAN that will address not only security threats, but also develop the human capacity needed for ensuring cyber security in the region.
- Collaborate with industry to improve cyber-attack related incident detection and analysis, exchange and distribute threat information, and enhance the ability to respond to incidents.
- Develop local centers of excellence in cyber security to provide support to meet business and government needs to defend against online threats.

## Empower ASEAN Businesses and Consumers

### 11. Improve Internet Access

Improving Internet access is critical for cross-border e-Commerce trade to flourish. Expanding broadband and mobile Internet penetration will allow more merchants and consumers to access the global online marketplace, giving consumers more choices and SMEs a global platform to sell their goods and services.

### Recommendations

- Reduce the cost of Internet access and improve connection speeds by granting equal access to telecommunications infrastructure and radio spectrum; implementing Mutual Recognition Agreements (MRAs) to simplify and speed up import certification to lower the cost of network devices; and promoting carrier-neutral IXPs to increase bandwidth and reduce IP transit traffic costs.
- Improve Internet access in rural communities with new technologies such as TV White Space and other innovations.
- Establish Public-Private Partnerships in ICT to increase Internet penetration, from network infrastructure to applications development.
- Stimulate demand by encouraging the development of Internet-enabled applications in new areas of the economy to extend the Internet's benefits.

### 12. Facilitate Trade in Digital Products

The characteristics of digital products are different from physical products, and there is a need to update policy and regulations to cater for these differences, rather than force-fit such digital products under existing regulatory regimes. A digital product refers to a computer program, text, video, image,

sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and can be transmitted electronically. A forward-looking approach will help promote e-Commerce and the growing trade in digital products, as well as encourage domestic creation of such products in ASEAN.

#### Recommendations

- Minimize regulation of digital product providers, noting that it may not be appropriate to subject them to the same regulations as traditional telecommunications service providers.
- Refrain from imposing additional, unfair taxes that target digital products, and remove tariffs on digital products across the region.
- Harmonize policies related to content and balanced intellectual property protections, including strong enforcement against pirated goods and appropriate limitations and exceptions.

## Conclusion

---

We have outlined above our recommendations to prioritize cross-sectoral e-Commerce policy coordination, facilitate the movement of goods across borders, enhance the regulatory environment for ASEAN businesses and consumers, build a secure and trusted online environment, and empower ASEAN businesses and consumers.

US-ABC hopes that these recommendations will assist ASEAN policy makers in charting the path forward for cross-border e-Commerce. US-ABC looks forward to assisting ASEAN in developing a strategy that incorporates the above elements for the benefit of all stakeholders. We look forward to opportunities to discuss these ideas and recommendations with ASEAN Member States for the betterment of all ASEAN peoples.

