

## **CHAPTER FOUR**

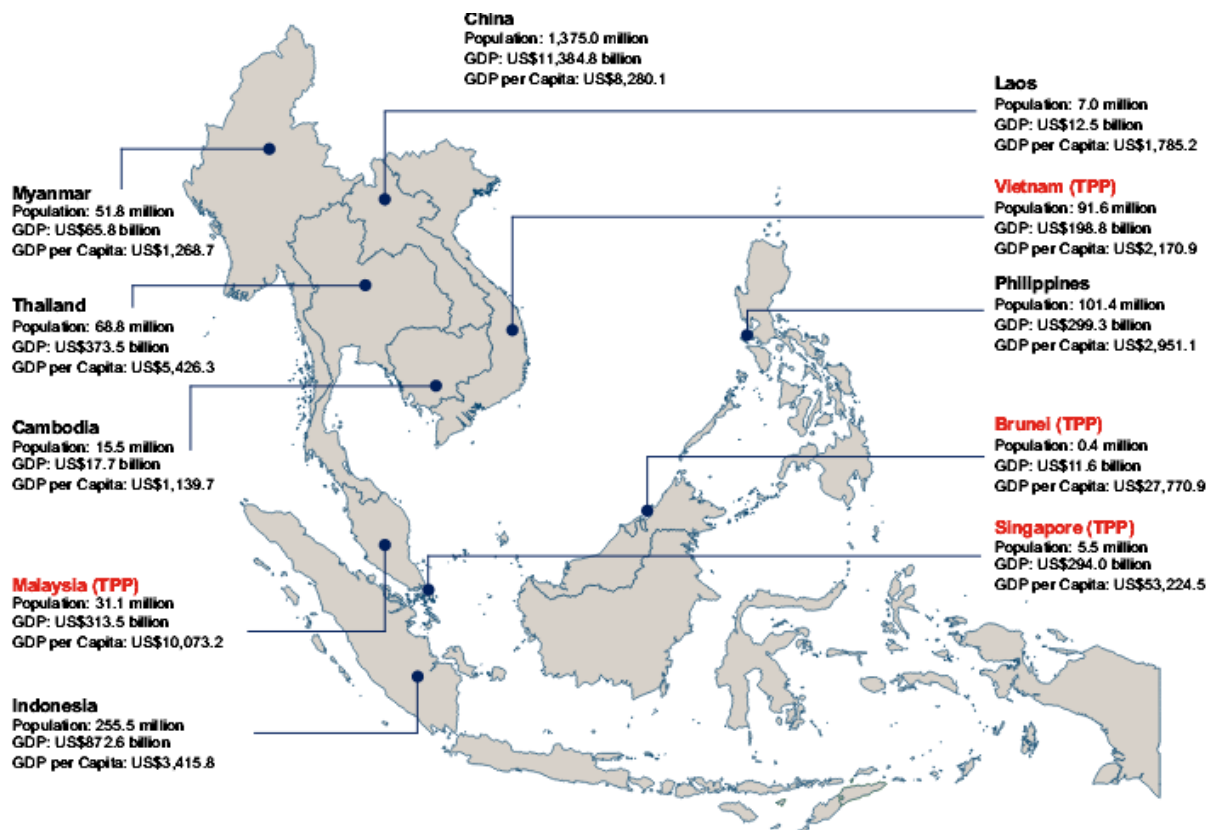
### **FINDING AND ANALYSIS**

#### **A. The Role of ACCP under ASEAN Economic Community**

Economic growth in the ASEAN region in the coming decades is likely to continue to be driven by demand for products and services by consumers within the region. The ready availability of consumer credit is likely to fuel that demand. Growth may therefore be driven by a growing middle class using credit to help finance their purchasing. The expected rapid growth of the middle class within the ASEAN region presents significant public policy, legal and regulatory challenges. This Consumer Protection Digest outlines the key problems that generally arise in the consumer credit marketplace, and outlines possible policy and regulatory responses.

Under the ASEAN meeting in January 2007 in Cebu, Philippines, the ASEAN leaders agreed to accelerate an ambitious initiative to integrate their economies and agreed the ASEAN Economic Community in 2015. Implementation of the ASEAN Economic Community already implemented since in the end of 2015. ASEAN Economic Community materialized from the desire of ASEAN countries to turn ASEAN into a united region whose economy is solid and taken into account in the International arena. Economic integration that applied in the ASEAN Economic Community is not an

economic integration as adopted by the EU (European Union) that imposed a single currency (euro).<sup>1</sup>



Source: UOB Global Economics & Markets Research, Free Vector Maps

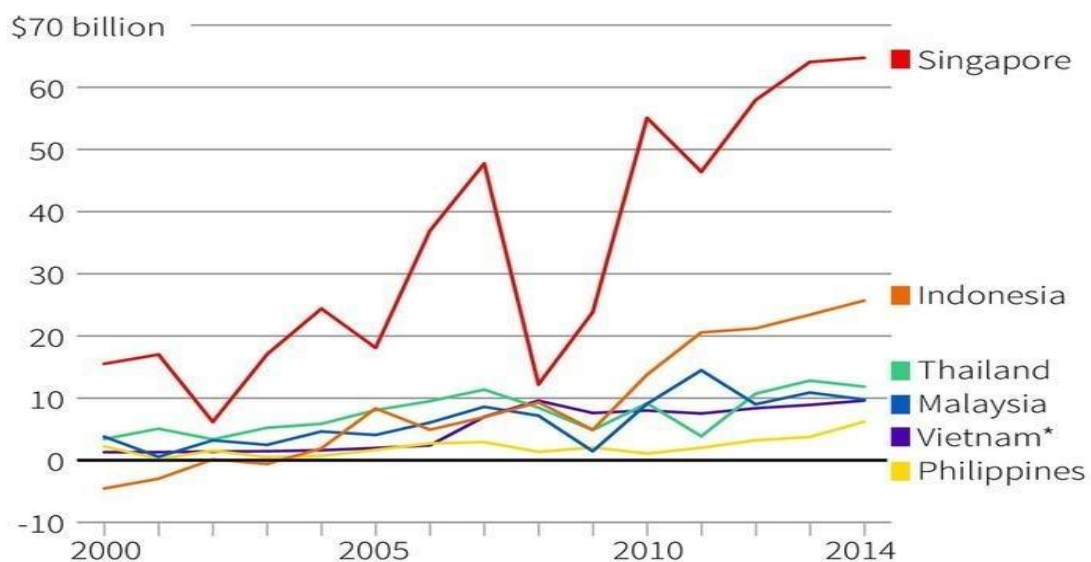
Figure 4.1 ASEAN Member State's GDP 2015

Between 2007 and 2014, ASEAN trade increased by a value of nearly \$1 trillion. Most of that (24%) was trade within the region, followed by trade with China (14%), Europe (10%), Japan (9%) and the United States (8%). During the same period, Foreign Direct Investment (FDI) rose from \$85 billion

<sup>1</sup> ASEAN, 2015, "A Blueprint for Growth: ASEAN Economic Community 2015: Progress and Key Achievements", November 2015, Jakarta, ASEAN Secretariat, p. 10

to \$136 billion, and in share to the world from 5% to 11%. With 622 million people ASEAN is the world's third largest market, which behind China and India has the third largest labour force.<sup>2</sup>

## Foreign direct investment inflows



\*Estimated 2014 figure based on growth reported by Planning and Investment Ministry

Source: UNCTAD; central banks

J. Pong, 16/03/2015

REUTERS

Chart 4.1 Foreign Direct Investment Inflows

Since, the ASEAN Economic Community is already applied in the end of 2015, there will be many cases of which, in order to maximize profits, businessmen will exploit consumers by supplying poor quality goods at higher prices. They may adopt unfair trade practices such as adulteration, boarding, and black-marketing. As a result consumers do not get value for their money.

<sup>2</sup> World Economic Forum, 2016, "World Economic Forum on ASEAN 2016" Available at <https://www.weforum.org/events/world-economic-forum-on-asean-2016> Accessed on 17 March 2017 at 9:45 a.m.

Big business houses use their power for private gain and to the detriment of consumers. Consumers are exposed to physical, environmental and other hazards. They need to be protected from spurious, duplicate and adulterated products, pollution of air, water and noise, and misleading advertising.<sup>3</sup>

In the matter of consumer protection, United Nations already made a guideline that stated,

“Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements. In so doing, each Government should set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures.”<sup>4</sup>

In the essence, consumer protection is provided by the state. However, there is a possibility that the regulation made by the state does not protect consumers of goods and services from overseas. To overcome this, the cross-border consumer protection is important.

ASEAN Economic Community is an integration among countries in Southeast Asia that aims to minimize the gap among ASEAN countries in terms of economic growth. Some affair become main focus of the ASEAN Economic Community. One of them is that the ASEAN Economic Community will be established as an economic region with a high level of competition. To guarantee a high level of competition and fair, ASEAN Economic Community

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<sup>3</sup> Soumya Singh, 2014, “*Why Do We Need for Consumer Protection?*”, Available at <http://www.preservearticles.com/2012022923918/why-do-we-need-for-consumer-protection.html> Accessed on October 5<sup>th</sup> 2016 at 4:15 p.m.

<sup>4</sup> Department of Economic and Social Affairs of United Nations, 2003, “*United Nations guidelines for consumer protection (as expanded in 1999)*”, United Nations, New York. Available at [www.un.org/esa/sustdev/publications/consumption\\_en.pdf](http://www.un.org/esa/sustdev/publications/consumption_en.pdf). Accessed on December 1<sup>st</sup> 2016 16.04 pm.

establish a form of consumer protection policy which will also ensure the flow of accurate information on the market for goods and services.<sup>5</sup>

To maintain the effectiveness of these policies, ASEAN Economic Community formed ACCP (ASEAN Committee on Consumer Protection) to provide a channel or facility for consumers in the ASEAN region to a complaint or a claim for losses incurred (in connection with the goods or services purchased or obtained) more easily, quickly, and with minimal cost. ACCP as an organization that has the authority to monitor will face several challenges including the area of coverage is the responsibility of the organization is very broad. Technical assistance and substantial financial indispensable in the process of development and introduction of policies within the scope of national legal and institutional arrangements accompanied on consumer protection.<sup>6</sup>

Consumers need to get a form of protection on a product. Some cases that have occurred show that their exploitation behavior to consumers in the form of providing quality goods at below the standard price is quite high, counterfeiting, black market, and other things that make the consumer does not benefit from the money that he uses even the Products- sub-standard products which can harm the users. This can make companies fail to compete as a result

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<sup>5</sup>Arya Baskoro (Associate Researcher) – CRMS Indonesia “*Risiko dan Tantangan dari Kebijakan Perlindungan Konsumen Masyarakat Ekonomi ASEAN Bagi Industri Indonesia*” available at <http://crmsindonesia.org/www2/knowledge/crms-articles/risiko-dan-tantangan-dari-kebijakan-perlindungan-konsumen-masyarakat-ekonomi> accessed on 12 March 2017 at 11:36 a.m.

<sup>6</sup> *Ibid*

of the decline in consumer loyalty for our product in addition to harming the consumer as well.<sup>7</sup>

In addition to improving the welfare of the community, this development policy could be an opportunity for businessman. With the implementation of consumer protection regulation, ASEAN's countries have the opportunity to expand the market share of industries in the country at ASEAN Economic Community era. However, ASEAN's countries have many challenges in the implementation of consumer protection policies are still many in the form of goods and services are sub-standard, entrepreneurs have yet to implement consumer protection rules, the difficulty in strengthening the law on consumer protection, as well as the lack of trained and experienced personnel who study consumer protection.<sup>8</sup>

On the industrial side, the implementation of consumer protection policies will be regulatory risk, industries in the ASEAN region must comply with the standards regulated by the ACCP. Industries are expected to be more attentive to the quality of their products so that consumers feel safe on goods and services that consumed, it can enhance customer loyalty to the goods or services offered so that ultimately the profitability of the industry may increase.<sup>9</sup>

On the other hand, there is a risk of product development with the enforcement of these regulations. Companies faced with the uncertainty with

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<sup>7</sup> *Ibid*

<sup>8</sup> Fitrian Reyta, 2016, "*Mea dan Perlindungan Konsumen*" Available at <http://strategidanbisnis.com/artikel/954/mea-dan-perlindungan> Accessed on 12 March 2017 at 11:56 a.m.

<sup>9</sup> *Ibid*

changing patterns of production are expected to increase the quality of products. The resulting new product can be a malfunction that did not sell in the market or even can cause an increase in production costs. As a result, this can be the company's increasingly heavy burden in the operation that may lead to bankruptcy. Moreover, it can also occur that as a result of the compliance risk of complaints the products were damaged or even suffer from malfunction. This can lead to additional costs because of its own for a company must compensate for the goods complained by consumers, indirectly, these activities can reduce customer loyalty because they are skeptical of the products of a company.<sup>10</sup>

Enforcement of the prohibition of an item can be an opportunity for the industry to move in the same plane. Consumer protection policy raises competition risk, such policies can make a product that is not standards-compliant goods in one country will be banned to be produced and circulated in the country. Products that meet the standards can get into the regulated market, in other words that the industry pay attention to the quality level of the products can dominate a larger market share in the end the company's profitability can be increased.<sup>11</sup>

The practitioners of the risk management field inevitably have to comply with this consumer protection policy. The presence of these policies provide opportunities for domestic industries to expand its market. Quality of product's standards can be an incentive for industry to increase its production

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<sup>10</sup> *Op. Cit.*

<sup>11</sup> *Ibid.*

capacity, because people have a guarantee of the product that will be consumed with so consumers would be more loyal to the products offered. Besides agents working under agency ACCP is also expected to work optimally in setting appropriate standards to be circulated in a country and to coordinate with the industries in the countries concerned and impartially, to conduct a fraud. The practitioners of the profession are expected to decide the form of the handling and treatment of risks that would arise if we do not start now then all things will be difficult to manage the risks.<sup>12</sup>

Currently, ASEAN has created and managed Websites to give information related with the mechanism of cross-border consumer redress [www.aseanconsumer.org](http://www.aseanconsumer.org) and ASEAN Consumer Complaints Leaflet [www.asean.org](http://www.asean.org), including also be used for tourists visiting ASEAN. This facilitation is expected to ASEAN consumers can be smart consumers, thorough and meticulous in choosing the items that will be consumed and to know their rights and responsibilities as a consumer good.

## **1. Products that Protecting by ACCP**

Surprisingly the articles that published by the ASEAN Committee on Consumer Protection, mentioned products should be reported, not include food, pharmaceuticals, health supplements, traditional medicines, cosmetics and

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<sup>12</sup> ASEAN, 2015, “*Overview Consumer Protection*”, Available at <http://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/consumer-protection/> accessed on March 28, 2017 at 10:16 p.m.



medical equipment. There are 6 issues as main focus of ASEAN Committee on Consumer Protection, they are:<sup>13</sup>

**a. Consumer Credit and Banking**

Consumer credit and banking covers a wide range of consumer products including housing loans, credit cards, personal loans, hire purchase agreements, retail store credit arrangements and payday loans. With the predicted massive growth of the middle class in the ASEAN region, the demand for these financial products is likely to dramatically increase. This will place increased pressure on ASEAN governments to ensure adequate and appropriate laws and regulatory systems are in place to enable orderly growth of the market. If bad lending practices are allowed to flourish, it could undermine consumer confidence and retard the growth of the consumer credit market.<sup>14</sup>

Generally, the more consumers feel confident that they can get meaningful protection if things go wrong, the more confident they will be in participating in the marketplace. Put simply, the more they feel the consumer credit marketplace is a safe place, the more they are likely to purchase quality consumer credit products. This in turn leads to growth of the market, leading to increased economic activity, which benefits consumers, businesses and the country's economy overall. A poorly regulated consumer credit market can allow a wide range of exploitative,

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<sup>13</sup> See [www.ASEANConsumer.com](http://www.ASEANConsumer.com) last viewed on April 13<sup>th</sup>, 2017 at 10:16 p.m.

<sup>14</sup> Homi Kharas and Geoffrey Gertz, (2010) 'The New Global Middle Class: A Cross-Over from West to East' Chapter 2 in *China's Emerging Middle Class: Beyond Economic Transformation* (Cheng Li, editor), Washington, DC: Brookings Institution Press, p.5.

inefficient, corrupt and in some cases dangerous, practices. The bad practices can include:<sup>15</sup>

- 1) Lenders charging low income consumers extremely high interest rates, along with excessive penalty rates for late payment of loans. If this practice is widespread it can trap large numbers of low income members of society in permanent states of poverty.
- 2) Lenders misleading consumers about the terms of the loan or guarantee arrangements.
- 3) Debt collectors using threats and the use of violence to compel loan repayments. In some cases, the debt collectors may unlawfully take a person's property claiming it is for repayment of a debt.
- 4) Lenders having inappropriate access to the credit histories and information of borrowers.
- 5) Agents acting for lenders by completing loan application forms for borrowers which misrepresent the borrower's income and assets. This might lead to lenders providing credit to a borrower who has no realistic capacity to repay the loan. This in turn can lead to the borrower's bankruptcy or the taking of the borrower's property in satisfaction of the loan. Systemic and widespread bad practices of this kind can have serious economic consequences. For instance, these kinds of practices in the United States sub-prime house

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<sup>15</sup> The ASEAN Committee on Consumer Protection Team, 2015, "*Project on Strengthening Technical Competency for Consumer Protection in ASEAN: Consumer Credit and Banking*", Jakarta, ACCP Secretariat, p. 15

lending market during the 1990s and early 2000s triggered the Global Financial Crisis.

- 6) Lenders requiring the borrower to enter into unnecessary or expensive insurance contracts as a condition of having the loan.

Laws and practices regarding consumer credit generally aim to protect the interests of consumers against harsh and unfair practices, which in turn can promote consumer confidence and engagement in the consumer credit marketplace. The core policy objectives include providing for greater transparency regarding the nature of the consumer credit products and services a consumer may wish to purchase and their rights if they have not been treated properly or fairly. The policy objectives of ACCP also seek to ensure that consumers are treated fairly.

This includes ensuring that consumers are not provided credit in circumstances where they are very unlikely to be able to meet their credit repayment obligations. Marketing practices should not deceive or mislead consumers about credit products and their personal data and financial records should be treated confidentially. Consumers should also have a capacity to seek redress that is low-cost and quick.<sup>16</sup>

#### **b. Phones, Internet Services and E-commerce**

Mobile phone and internet access services are telecommunications technologies that allow citizens to communicate with others at a distance,

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<sup>16</sup> *Ibid* p.18

both in their capability as private individuals and as consumers. They are not the first technologies to allow long distance communications, but their particular attributes, costs and capabilities have combined to transform the lives of consumers. In particular, these technologies have facilitated the development of e-commerce, the virtual market place where consumers and traders buy and sell using the technologies. Throughout this thesis two terms are used extensively:<sup>17</sup>

‘Online’: this term is used as a short cut to refer to transaction involving mobile phones (including smart phones), the Internet and e-commerce. ‘Bricks and mortar’: this term is used as a contrast to ‘online’ and refers to traditional market places (shops) and older technologies.

The effective use of these technologies is central to economic growth and increased consumer welfare. Effective use of these online technologies delivers benefits to both consumers and businesses:<sup>18</sup>

- 1) Consumers enjoy increased choice (in quality, price and other attributes) because they can now select from a larger range of products/services a trader to better match their needs.
- 2) Consumers can benefit from increased competition as more traders compete for their custom (innovation, lower prices)
- 3) Consumers can lower their search and transaction costs

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<sup>17</sup> The ASEAN Committee on Consumer Protection Team, 2016, “*Project on Strengthening Technical Competency for Consumer Protection in ASEAN: Phones Internet Services & E-commerce*”, Jakarta, ACCP Secretariat, p. 10

<sup>18</sup> *Ibid*

- 4) Traders can potential make offers to a great number of potential customers.  
If those increased offers become increased sales, there may be economics of scale and scope to be realized, further boosting profits

- 5) Traders can make significant saving in marketing and transaction costs

The bottom line is that enhanced protection for consumers when they use their phones and computers to access the Internet makes good sense, economically, socially, for individual consumers and traders, for national economies and for the ASEAN region. Key principles in this issue are:<sup>19</sup>

- 1) Protection: Consumers should be protected from unfair practices.
- 2) Responsibility: Transparent legislation in addition to effective consumer and business education programmes to enable consumers and traders to have sufficient information in order for them to exercise their respective responsibilities and protect their own interests.
- 3) Enforcement: There should be prompt and efficient enforcement of legislation to deter breaches of the consumer protection laws by businesses.
- 4) Change: new and emerging consumer issues are identified so that legislation is updated and consumers have access to relevant information on these issues in order to make informed choices
- 5) Competition: Free and open competition is generally beneficial for consumers and Government regulations and legislation help to ensure a fair environment in the marketplace for consumers and businesses.

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<sup>19</sup> *Ibid* p.11

- 6) Representation: Legitimacy for representation by non-governmental consumer organisations must be recognised including the right to association.

### **c. Environment**

Consumers are becoming more aware of the environmental impacts of consumption and production, and the role consumers have to play to contribute to environmental conservation and protection. And, this is reflected in the recent assessment of areas for consumer protection in the ASEAN, as well as:<sup>20</sup>

- 1) Laws on water and air pollution among other environmental issues in the region need to be comprehensive and fully enforced.
- 2) Links need to be established in consumption patterns and solid (household) waste generation, highlighting the role of consumers, industry and the government in waste management.
- 3) Understanding of climate change and its impacts in light of social and economic wellbeing, and adequate response for consumer protection are needed.

Additionally, emphasis has been made on the need for green/renewable energy and ecolabeling in the region, and it was noted that priorities among the focus areas are varied in the different countries as gathered from the responses (i.e. water and air quality are top priority for

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<sup>20</sup> The ASEAN Committee on Consumer Protection Team, *“Project on Strengthening Technical Competency for Consumer Protection in ASEAN: Phones Internet Services & E-commerce”* 21 January 2016, Philippines, ACCP Secretariat, p. 5

Indonesia, waste management for Philippines and green energy for Myanmar).<sup>21</sup>

With the exception of organic produce, environmental concerns and issues in the AMS are addressed by existing environmental laws from the basic environmental protection law and pollution regulations to the proactive policies promoting eco-labelling, with countries having varying policy responses and mechanisms. These existing laws also have clearly defined prohibited acts with corresponding fines and penalties. While some laws are in its infancy, countries are able to evolve and consider changing development needs in updating these laws. In Lao PDR, the Environmental Protection Law has recently been revised in 2013 to include dispute settlement means. Food Laws in Indonesia and Singapore have been updated to reflect the need to regulate hazards of food packaging.

Environmental laws in the region cover basic environmental concerns of consumers through specialized laws covering from provision of basic utilities and water and air pollution to solid waste management laws promoting the 3R principle and green industry in some countries.<sup>22</sup>

Many of the laws in the region provide mechanisms for complaints, investigation of pollution cases, fines and penalties for violations. Market mechanisms like tax on water utilities, reward for good environmental performance of organizations, and payment for waste collection service and use of plastic bags are also increasingly used. However, subsidies for

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<sup>21</sup> *Ibid*

<sup>22</sup> *Ibid*

polluting sectors like energy are still enjoying subsidies which may be counterintuitive to safeguarding environmental quality.

For post market intervention, the case of the Pollution Adjudication Board in the Philippines was presented that illustrated how environmental/pollution cases are resolved outside of courts. This demonstrated that violations can be proven, and fines and penalties be imposed to polluters. This can be a benchmark case for AMS in establishing procedures for handling environmental cases and investigation protocols.<sup>23</sup>

#### **d. Product Safety and Labelling**

An earlier road-mapping study for ASEAN had revealed the absence of a comprehensive product safety regulatory regime in the ASEAN Member States (AMS). In most countries, there is no designated agency exercising responsibility over all consumer products. Common features among the AMS include a focus on specific products or sectors considered high-risk, such as food, pharmaceuticals, cosmetics and pesticides, with ministries other than the Consumer Protection Agency (CPA) having power and responsibilities over these products. In some countries, minimum safety standards exist only for some product groups.<sup>24</sup>

There are piecemeal product safety, strict product liability or labeling laws in most AMS, but rarely all three. Yet, as a result of a vibrant cross-

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<sup>23</sup> *Ibid* p.7

<sup>24</sup> The ASEAN Committee on Consumer Protection Team, 2015 “*Project on Strengthening Technical Competency for Consumer Protection in ASEAN: Product Safety and Labelling*”, Jakarta, ACCP Secretariat, p. 4



border trade between AMS, countries with weaker product safety regimes risk becoming thriving markets for unregulated and sometimes underground trade in unsafe products. Such products do not conform to standards, contain hazardous content or are inadequately labeled in the languages of the countries of origin and not of the country of sale.<sup>25</sup>

The main gaps or challenges in the overall regulatory regimes for product safety and labelling in the AMS are as follows:<sup>26</sup>

- 1) Except in Singapore since 2011, specific minimum safety standards set by the CPA for a wide range of household consumer products and services do not exist, other than high-risk products (such as foods) which are typically subject to specific laws and other regulators
- 2) Except for Malaysia, general consumer laws enforced by the CPA do not provide for a general (back-up) product safety requirement requiring all consumer goods to be reasonably safe;
- 3) Laws on labelling are not focused on product safety issues, but (as in Thailand) they can overlap with laws allowing the CPA to set minimum “information standards”;
- 4) There are few effective strict product liability laws providing redress to consumers who have suffered harm from goods with a safety “defect”, despite enactments in five AMS, even in the few AMS where collective redress mechanisms have been introduced (including US-style class action regimes in Indonesia and recently Thailand);

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<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

5) There is limited data collection and sharing regarding recalls of general consumer goods (except recently in Vietnam), let alone accidents more generally and other risks relating to consumer products.

Nevertheless, consumers are usually not aware of such distinctions and refer complaints on all types of consumer products to the CPA. This makes the CPA the *de facto* agency that consumers turn to for advice and representation. Therefore, even though the CPA does not have direct responsibility for all consumer products, it does become a referral agency for all consumer products. This is an important role as it gives the CPA an opportunity to collect data on unsafe products and to advise consumers on the course of action they need to take with respect to redress, as well as to refer them to the correct or more appropriate agency that can assist them with their problems.

The scope of products that come within the jurisdiction of the CPA is usually found in a general Consumer Protection Act. It is important that at a minimum all products used by consumers for household and domestic purposes are included within this definition. (The definition of products also includes services, and often does in AMS.) The definition employed for products will then have implications for the responsibility of the CPA for safety issues relating to these products.<sup>27</sup>

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<sup>27</sup> *Ibid* p. 6

#### **e. Health Care Services**

According to a UN General Assembly resolution; “health is a precondition for, an outcome and indicator of all three dimensions of sustainable development; economic, social and environmental”. The resolution goes on to state that the goals of sustainable development can only be achieved in the absence of a high prevalence of debilitating communicable and non-communicable diseases, and where populations can reach a state of physical, mental and social well-being.<sup>28</sup>

Consumers of Health Services in ASEAN Member States experience differing levels of protection depending not only on which country they live in, but where in the country they live. This project seeks to provide training for Officials responsible for the establishment of policy and the regulation of providers of health care services, with a view to improve standards of practice and enhance the welfare of consumers generally.<sup>29</sup>

ASEAN policymakers have been convinced that action on the social and environmental determinants of health, both for the poor and vulnerable and for the entire population, is important to create inclusive, equitable, economically productive and healthy societies. ASEAN Health Ministers have developed a new health agenda which involves identification of health priorities and goals for the coming five years. This training module on

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<sup>28</sup> The ASEAN Committee on Consumer Protection Team, 2016, “*Project on Strengthening Technical Competency for Consumer Protection in ASEAN: Health Care Services*”, ACCP Secretariat, p. 5

<sup>29</sup> *Ibid*

healthcare services has been developed to assist in the realization of the vision of ASEAN as “A healthy, caring and sustainable community”<sup>30</sup>

Relationships between healthcare service providers and patients (business-related activities related to the rendering of health care services); The area of health-care products, pharmaceuticals and medicaments (generic or branded) medical devices, traditional medicines; Management of hospitals, clinics and other facilities that related to the platform (facilities – premises) where the services are taking place ‘Government agencies involved in consumer protection require specific expertise and knowledge in the workings of consumer protection mechanisms’.<sup>31</sup>

#### **f. Professional Service**

The use of licensing and regulation to control the practice of law and medicine is extensive throughout ASEAN member states. Unlike other areas of consumer policy covering goods and services, it is not surprising that professional regulation and licensing is seen as the primary tool to address policy issue in the professions. From a policy perspective, the decision to use professional licensing considers whether or not there is a role for government to resolve an issue and if so what type of regulation all licensing requirement will best achieve the desired policy objectives. In addition, the ASEAN Committee on Consumer Protection also has coordination and cooperation with ASEAN Expert Group on Competition (AEGC) and the ASEAN

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<sup>30</sup> *Ibid*

<sup>31</sup> *Ibid.*, p. 6

Consultative Committee for Standards and Quality (ACCSQ) to generate better for consumers ASEAN later.<sup>32</sup>

To ensure the best results, professional licensing requires careful consideration, particularly since there are numerous studies that have examined the potential for professional licensing to cost more in terms of higher prices, reduced competition, and poorer consumer choice and options than some schemes actually achieve in terms of protecting consumers and addressing market failures.<sup>33</sup>

In considering the potential usefulness of professional regulation, it is important to assess whether or not there is a role for government intervention. While this might seem self-evident to many, the question is critical to ensuring that government only regulates when it must and ensuring that the specific problems that require regulation are identified.<sup>34</sup>

## **2. Rationale Complaint Handling and Redress Assessment Offer by ACCP**

Based on ASEAN Complaint and Redress Mechanism Models<sup>35</sup>, The ACCP offer two kinds of rationale complaint handling and redress assessment if consumer want to give complaint. This mechanism divided into two chategorise such as:

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<sup>32</sup> The ASEAN Committee on Consumer Protection Team, 21 December 2015, “*Project on Strengthening Technical Competency for Consumer Protection in ASEAN: Profesional Services*”, Jakarta, ACCP Secretariat, p. 20

<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid.*, p.21

<sup>35</sup> The final report was prepared by World Wide Project Management Services (WWPMS) in association with the Foundation for Effective Markets and Governance (FEMAG), as the approved Contractor on the Development of Complaint and Redress Mechanism Models in ASEAN under the Special Service Agreement signed by and between the ASEAN Secretariat and WWPMS.

a. Internal Complaint Handling

Organisation can use the internal complaint handling process in conjunction with customer satisfaction codes of product, citizen charters and external dispute resolution processes. The connection between organisational complaint handling systems and redress schemes.

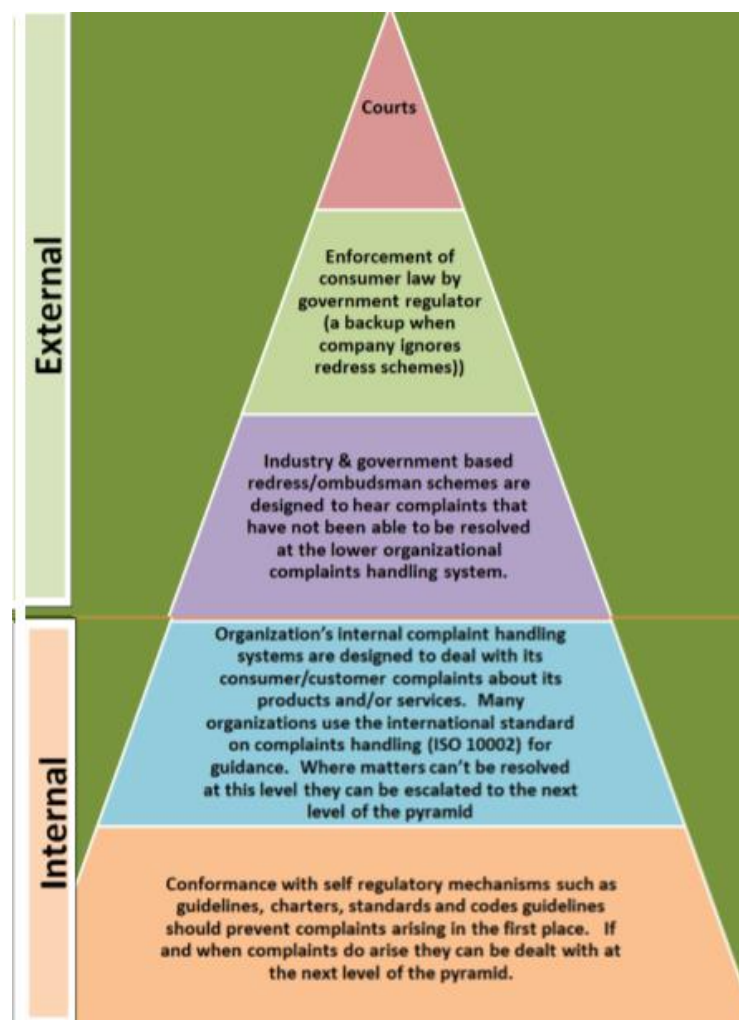
In addition, information obtained through the internal complaint handling process can lead to improvements in products and processes and where the complaint are properly handled, can improve the reputation of the organisation , regardless of size, location and sector.

b. External Complaint Handling

External consumer redress entails the process for enabling a wronged or injured consumer to obtain a remedy or put forward their case for compensation. A remedy may involve replacement or repair of goods and services, or repayment of the sum paid by the consumer. It may involve the payment of compensation or damages to a consumer or group of consumers adversely affected by the failure of the good and services, or their inability to undertake their purpose. A remedy may range from a simple apology to a consumer, through to payment of substantial damages for injury and/or economic loss.

A remedy may be obtained in the first instance, by direct complaint to the supplier of the good or service by accessing its complaints handling system, and this is ofcourse the best outcome. However, if an approach to

the supplier is disputed and fails then there is a need for a mechanism, external to the supplier to resolve the dispute. This may be a regulator that investigate the matter and makes an order or direction under their legislation-such as consumer protection law. Or it may be through a disputr tribunal, court, or industry based disputes resolution schemes.



Source: ASEAN Complaint and Redress Mechanism Models

Chart 4.2 Complaint and redress pyramid: Internal complaint handling system and external consumer redress schemes

With the progressive implementation of the Economic Blueprint in which market oriented measures will be adopted across ASEAN, governments might be considering more flexible and market sensitive means of regulation to deal with consumer protection. Choice of the best instrument for securing the greatest welfare for consumer is by no means straightforward. There is a wide spectrum from prescriptive regulation of market conduct enforced through institutional arrangements. One of the problems with the government legislation is that it is often seen as being not flexible enough to meet rapidly changing market situations.



## **B. The Protection to Consumer Complaint Given by ACCP**

As David Vogel documented in the mid-1990s in the context of closer regional integration through the EU, the North American FTA and the establishment of the multilateral World Trade Organisation, closer economic integration can often lead to “trading up” to higher safety standards.<sup>36</sup> Partly this is because exporters may need to improve safety features to comply with requirements set by public or private law in the destination country. It is then often inefficient to remove such features for products also sold into local markets, where requirements may initially be lower, or if features are removed consumers and regulators in local markets will more readily press for local safety standards to be raised.<sup>37</sup>

Since 2008, pursuant to the AEC Blueprint, a new ASEAN Committee on Consumer Protection has worked to ratchet up consumer protection laws.<sup>38</sup> The Committee has encouraged capacity building, regulatory cooperation and significant improvements in member states, supported by the ASEAN Secretariat based in Jakarta and the latter’s partners such as

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<sup>36</sup> Vogel D, 1997, *Trading Up: Consumer and Environmental Regulation in a Global Economy* (Harvard University Press, Cambridge, Mass., 1997), available at <http://hup.harvard.edu/catalog.php?isbn=9780674900844> Accessed on March 28th, 2016 3.04 p.m.

<sup>37</sup> Luke Nottage and Sakda Thanitcul, 2015, “Economic Integration and Consumer Protection in Southeast Asia: ASEAN Product Liability Law and Safety Regulation” Sydney Law School: Legal Studies Research Paper No. 15/100. p.20

<sup>38</sup> See [WWW.Aseanconsumer.org](http://WWW.Aseanconsumer.org) last viewed on March 28th, 2016 3.14 p.m.

AusAID<sup>39</sup> and the United Nations Conference on Trade and Development.

In essence, consumer protection is provided by the state. However, there is a possibility that the regulations that made by the state does not give protection to the quality of goods and services of cross-border's market. To overcome this issue, the cross-border consumer protection is important.

Consumers need to get a form of protection over a product. Some cases that have occurred shows that there is exploitation behavior to consumers in the form of providing quality of a good not completing the standard and price is quite high, counterfeiting, black market, and other things that make the consumer does not get the benefits of the money that they spent and the products can harm the users. This can make companies fail to compete as a result of the decline in consumer loyalty for product yielded in addition to harming the consumer as well.<sup>40</sup>

Related with goods and services that circulate in the market of ASEAN, will be fair if ASEAN have a cross-border dispute resolution mechanism. Unfortunately, ACCP is facilitator for any consumer complaints only.

Currently, ASEAN already managed a Website. This website has a purpose to put in order the mechanism of cross-border consumer redress, that can be accessed on [www.aseanconsumer.org](http://www.aseanconsumer.org) and ASEAN Consumer

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<sup>39</sup> Recently incorporated into Australia's Department of Foreign Affairs and Trade: cf <http://aadcp2.org/supporting-research-dialogue-on-consumer-protection/>. ASEAN is al ready a more trading partner for Australia than the US, the EU or Japan (next only now to China), Australian Financial Review on October 30<sup>th</sup>, 2015.

<sup>40</sup> *Op. Cit.*

Complaints Leaflet [www.asean.org](http://www.asean.org) also useful for tourists whom visiting ASEAN.

Malaysia, as the Chair of the Working Group on Cross Border Consumer Redress, is in the final stage of developing a comprehensive website on cross border consumer redress for the ASEAN region. This website serve as the main reference point for matters pertaining to consumer redress, including: (i) information on basic cross border redress mechanism (handling complaints); (ii) information on focal point for consumer redress in each AMS; (iii) information on online/hotline access to cross border redress mechanism (handling complaints); and (iv) information related to ACCP.<sup>41</sup> But until now, there is no clear explanation about claim and complaint for ASEAN Consumer.

Simply, the claims and complaints for ASEAN Consumer will be proceed by every legal regulation in every AMS. The dispute also proceeds by them, the role of ACCP in this case is to maintain how the consumer protection run well. It will easy for ACCP to maintain consumer protection in every AMS since ACCP have their representative in every AMS. Those regulations are:

- a. Law of Republic Indonesia Number 8 of 1999 on Consumer Protection;
- b. Law of Republic Indonesia Number 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition;
- c. Brunei Darussalam Consumer Protection Law of 2011;
- d. Lao People's Democratic Republic Consumer Protection Law of 2010;

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<sup>41</sup> ASEAN Secretary, 2015, "ASEAN Committee on Consumer Protection" Available at <http://www.aseanconsumer.org/accp/index.php?r=portal/article&id=1>, Accessed on March 10th, 2017 at 10.31 a.m.

- e. Malaysia Consumer Protection Act year 1999;
- f. Malaysia Electronic Act Commerce year 2006;
- g. Malaysia Consumer Protection (Electronic Trade Transactions) Regulations year 2012;
- h. Myanmar The Consumer Protection Law year 2014.
- i. Singapore Consumer Protection (Fair Trading) Act year 2009.
- j. Singapore Statutes Online - 1 - Consumer Protection (Safety Requirements) Regulations.
- k. Singapore Statutes Online - 52A - Consumer Protection (Fair Trading) Act.
- l. Singapore Statutes Online - 53 - Consumer Protection (Trade Descriptions and Safety Requirements) Act.
- m. Singapore Statutes Online - 64 - Consumer Protection (Fair Trading) (Regulated Financial Products and Services) Regulations 2009.
- n. Singapore Statutes Online - 65 - Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations 2009.
- o. Singapore Statutes Online - 66 - Consumer Protection (Fair Trading) (Motor Vehicle Dealer Deposits) Regulations 2009.
- p. Singapore Statutes Online - 67 - Consumer Protection (Fair Trading) (Opt-Out Practices) Regulations 2009.
- q. Singapore Statutes Online - 113 - Consumer Protection (Consumer Goods Safety Requirements) Regulations 2011.
- r. Singapore Statutes Online - 125 - Hire-Purchase Act.

- s. Singapore Statutes Online - 190 - Multi-Level Marketing and Pyramid Selling (Prohibition) Act.
- t. Singapore Statutes Online - 205 - Hire-Purchase (Motor Vehicles) Regulations 2013.
- u. Thailand Direct Sales and Direct Marketing Act 2002.
- v. Thailand Product Liability Act 2008.
- w. Thailand The Consumer Protection Act 1979.
- x. The Philippines's Republic Act No. 7394 - The Consumer Act of 1992.
- y. Vietnam Law on Protection of Consumers' Interests year 2010

Those legal regulations, will give legal protection to consumer's of ASEAN Economic Community. Now days, ACCP still struggling to make consumer protection exist in Cambodia. But, ACCP still maintained the consumer protection in Cambodia or consumer might give a report through [www.aseanconsumer.com](http://www.aseanconsumer.com).

As for the way ACCP protects the consumer complains, the process will be as follows. If consumers have a claim or complaint yet don't know how to do one, they may give a report through ACCP. ACCP had been given the complaint then communicate it to the related country. As a result if the related country rejects or refuses to solve the issue, ACCP would act based on ASEAN Economic Community Blueprint which is explained below.

“If any set of problem will allow for both a consensus and flexibility approach in the decision making process.”<sup>42</sup>

The main role of ACCP is to build a good relation among related parties (Government, Consumer, Producer) in term of consumer protection activities. To realizing the aim, ACCP also conducts consultative meeting in the field of consumer protection dispute resolution. The model of dispute resolution made by ACCP both internally and externally can be implemented by member states to settle the dispute among them.

In the essence, consumer protection should be provided by the state. However, there is a weakness that the regulation made by the state does not fully protect consumers of goods and services, especially with regards to that matter from overseas. The cross-border consumer protection is important to be established. Unfortunately ACC is only a facilitator for any consume complaints.

In the issue of ensuring consumer complaints rights, if the related country rejects or refuses to solve the issue. ACCP would act based on ASEAN Economic Blueprint article 82 section VII.

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<sup>42</sup> See ASEAN Economic Community Blueprint Article 82 section VII last viewed on April 14th, 2017 on 8.08 a.m.