Chapter 4

Investment Potential Between Cambodia and the EAEU

November 2019

This chapter should be cited as

Ministry of Commerce and Ministry of Economy and Finance Kingdom of Cambodia (2019), 'Investment Potential Between Cambodia and the EAEU', in *Energy Pricing in India: A Study on Taxes and Subsidies.* ERIA Research Project Report FY2018 no.16, Jakarta: ERIA, pp.60-69.

Chapter 4
Investment Potential Between Cambodia and the EAEU

1. Investment in Cambodia

Under the Law on Amendment to the Law on Investment in 2003, projects of Cambodian capital or foreign capital, so-called qualified investment project (QIP),[31] shall be applied through the Council for the Development of Cambodia (CDC).[32] The investment approval on QIP is the project approval itself to be granted with investment incentives, not an approval for any investor or investing enterprise.

Laws and regulations on investment are designed to encourage investments without restricted sectors, a friendly non-discriminatory policy, except for land ownership. Since there is no limitation on nationality, a QIP could be in the form of a joint venture between Cambodian entities, between Cambodian entities and foreign entities, or between foreign entities, except when the joint venture is intended for land ownership that requires a Cambodian's combined shareholding of at least 50% (CDC, 2017a). Current laws and regulations provide a generous incentive scheme for investors who received the final registration certificate under Articles 2 and 6 of the Amended Law on Investment. Those incentives include long periods of profit tax exemption as mandated by the Law on Taxation, duty-free import of production equipment, export tax exemption, etc.[33] As a least developed country, Cambodia benefits from the Generalized System of Preferences schemes provided by the EU, Japan, Canada, and the US through exemption from customs duty or tariff reduction. At the same time, to provide a mechanism for foreign investment protection through international arbitration, Cambodia ratified the Convention on the Settlement of Investment Disputes between the States and Nationals of Other States on 20 December 2004, which became effective on 19 January 2005 (UNCTAD, 1965). In 2017, Cambodia was ranked 135th out of 190 countries in the Doing Business Report of the World Bank (World Bank, 2018).

Over the 12 years from 1994 to 2006, the average annual investment amount was US$932 million. In the following 5 years from 2007 to 2011, this amount grew by about 6.2 times, amounting to US$5.8 billion. From the period 2012 to 2016, local investment approximately accounted for 54% of the total investment in Cambodia. Almost 90% of the total foreign investment came from Asia, with the Chinese investors being the most active amongst other foreign investors (CDC, 2017b). The investments in

[31] Domestically oriented, export-oriented, and supporting industry qualified investment projects (QIPs) are subject to the investment incentives as stated in Chapter 5 of Amended Law on Investment, including profit tax exemption, duty free import of production equipment or construction materials, and special depreciation.

[32] The Council for the Development of Cambodia (CDC), acting as the one-stop service organisation for the rehabilitation, development, and oversight of investment activities, is responsible for the assessment and decision of approving investment projects to be guaranteed and granted investment incentives. Nonetheless, the CDC is not the final decision-maker since it has to elevate projects to the Council of Ministers for approval and examination on whether the capital investment is US$50 million and above, are related to political sensitive issues, are involved with exploration and exploitation of mineral and national resources, have possible negative impact on the environment, have a long-term development strategy, etc.

[33] For detailed information on the Investment Incentives in Cambodia, see http://www.cambodiainvestment.gov.kh/investment-scheme/investment-incentives.html.

Cambodia were mainly in industries and infrastructure as they accounted for 72% of the total investments in 2012-2016 (see Tables 27 and 28).

Table 27. Investment Capital, by Country

Year	2012	2013	2014	2015	2016
Total	**$2.9 billion**	**$4.9 billion**	**$3.9 billion**	**$4.6 billion**	**$3.6 billion**
1	Cambodia, 42.08%	Cambodia, 66.80%	Cambodia, 64%	Cambodia, 69.28%	China, 29.92%
2	China, 20.69%	China, 15.68%	China, 24.44%	China, 18.62%	Cambodia, 27.55%
3	Korea, 9.89%	Viet Nam, 6.10%	Malaysia, 2.18%	United Kingdom, 3.0%	Japan, 22.78%
4	Japan, 9.15%	Thailand, 4.37%	Japan, 1.72%	Singapore, 2.18%	Thailand 4.61%
5	Malaysia, 6.04%	Korea, 1.76%	Korea, 1.66%	Viet Nam, 1.92%	Korea 4.59%

Note: The data only reflected QIPs according to the Law on Investment, excluding investments that are ineligible for investment incentives in sectors such as banking, insurance, and construction.
Source: CDC website, http://www.cambodiainvestment.gov.kh/

Table 28. Areas of Investments

Areas	2012	2013	2014	2015	2016	2012–2016
Agriculture	556.60	1,128.80	264.70	482.60	478.30	2,911.00
Industries	1,489.70	1,106.70	2,835.60	919.30	1,186.30	7,537.60
Infrastructure	227.80	2,620.80	353.50	3,129.80	544.30	6,876.20
Tourism	691.50	106.00	479.60	111.90	1,400.80	2,789.80
Total	2,965.60	4,962.30	3,933.40	4,643.60	3,609.70	20,114.60

Note: The data only reflected QIPs according to the Law on Investment, excluding investments that are ineligible for investment incentives in sectors such banking, insurance, and construction.
Source: CDC website, http://www.cambodiainvestment.gov.kh/

2. Investment in Armenia

Armenia has been implementing an ‘open-door’ policy, thus becoming one of the most open investment regimes in the region according to the Law on Foreign Investments (MEDI, 1994) dated 31 July 1994, which is the key legal act regulating foreign investments in Armenia. It permits 100% foreign ownership with no restriction to any sector and with equal treatment and guarantee. The Constitution of the Republic of Armenia provides that ‘non-citizens do not have the right to own land’, yet the Land Code permits foreign entities to lease land for long-term contract (CAPEXIL, 2017). The Government of Armenia is carrying out comprehensive reforms of the business environment to ensure favourable investment and business conditions for foreign investors (MEDI, 1994). In 2017, Armenia was ranked 47th out of 190 countries in the ‘Doing Business Report of the World Bank’ (World Bank, 2018).

Armenia is landlocked, yet it is at the crossroads of Europe and Asia. It has signed bilateral investment treaties with at least 41 countries to grant foreign investors non-discriminatory treatment, protection from expropriation, free transfer of profit and full protection and security from nationalisation, and an alternative dispute resolution mechanism (MEDI, 1994). Armenia also enjoys GSP+ preferential trade system with the EU and GSP preferential trade regime with Canada, Switzerland, Japan, Norway, and the US.

All other disputes to which the state is not a party can be considered by the Armenian courts or any other bodies resolving economic disputes or, upon the agreement of the parties, in arbitration tribunals. Armenia is a signatory to the International Convention on Investment Disputes, which allows dispute resolution by the International Centre for the Settlement of Investment Disputes (Government of Armenia, 2018).

3. Investment in Belarus

In 2009, Belarus liberalised its economy by adopting 56 legislative acts to improve the business environment in the country. Amongst other major actions taken by the government – improvement of the tax system, licence reduction, price liberalisation, and business registration – is privatisation. The government undertook measures to improve the investment climate by introducing 3-year privatisation plan for certain companies. Thus, from 2008 to 2010, almost 500 large companies were privatised to attract strategic investors to Belarus, bringing in new high technologies, upgrading modern business solutions, and finding new markets (Government of Belarus, 2018). In 2017, Belarus was ranked 38th out of 190 countries in the 'Doing Business Report of the World Bank'.

Belarus allows foreign investments in all sectors of the economy, except in the production of weapons, narcotics, and toxic substances. Meanwhile, the legal conditions have provided equal guarantee, without discrimination, protection of rights and legitimate interests regardless of ownership and national status. The system of incentives, privileges, and preferences were established in investment activities with special legal regime for investors in free economic zones, small and medium-sized cities, rural areas, high-technology parks, Chinese–Belarusian industrial parks, etc..[34]

4. Investment in Kazakhstan

After independence in 1991, Kazakhstan introduced several reform measures to remove restrictions, and improve the framework conditions for FDI to enhance economic growth and create jobs. Over these years, the government's key priority is to attract FDI into the country (OECD, 2017.

The Law on Investment Preferences provides incentives to legal entities that implement investment projects and for leasing companies engaged by the legal entities to undertake investment projects for importing technological equipment under the financial leasing agreement within the validity period of the investment project. Those investment preferences could be the exemption of the customs duties, tax incentives, state in-kind grants or investment subsidies, etc.[35] The government allows foreign investors to participate in most sectors of the economy without discrimination. In 2017, Kazakhstan was ranked 36th out of 190 countries in the 'Doing Business Report of the World Bank' (World Bank, 2018).

[34] Detailed information on investment incentives in Belarus can be found at http://investinbelarus.by/en/why-belarus/).
[35] Further details on the investment preferences in Kazakhstan are at http://invest.gov.kz/en/guide/child/investment_preferences.

The investment disputes in Kazakhstan are encouraged to be resolved amicably or, pursuant to the dispute resolution procedure by the courts of the Republic of Kazakhstan per its international treaties and legislative acts, or by arbitration as appointed per agreement of the parties (Government of Kazakhstan, 2018). The government signed several international investment agreements to protect foreign investment against expropriation without compensation and against discrimination, and to guarantee fair and equal treatment. The government had signed 47 bilateral investment treaties (BITs), of which 44 are in effect (OECD, 2017).

5. Investment in Kyrgyzstan

After its independence in 1991, Kyrgyzstan, too, has been moving towards a market economy. While landlocked and mountainous, the country is strategically located at the crossroads of the East and West, featuring abundant mineral resources. The FDI boom in Kyrgyzstan in the mid-2000s was in exploration and exploitation of gold. Since then, the FDI has been driven towards mining-related activities. The FDI inflows significantly grew in 2013, with investments in sectors such as finance and manufacture of petroleum products. However, the FDI for non-mining remains low (UNCTAD, 2016).

The government has enacted legislation to protect foreign investments by providing them with the national treatment,[36] the rights and guarantees for foreign investors, protection against investment expropriation and coverage of losses, and freedom of monetary transactions, etc. (Investment Promotion and Protection Agency of the Kyrgyz Republic, 2018).[37] In 2017, Kyrgyzstan was ranked 77th out of 190 countries in the 'Doing Business Report of the World Bank' (World Bank, 2018).

Regarding the investment disputes, Kyrgyzstan's legislation permits parties to resolve the dispute through consultation 'within 3 months from the day of the first written request', settle the dispute in a Kyrgyz court, or resort to international arbitration such as the International Center for Settlement of Investment Disputes under the Convention on the Settlement of Investment Disputes between States and Citizens of Other States (Investment Promotion and Protection Agency of the Kyrgyz Republic, 2018). Kyrgyzstan had signed BITs with 31 countries.

6. Investment in Russia

Based on GDP purchasing power parity, Russia is the sixth-largest economy in the world, and its economy is expected to grow to almost US$4 trillion in 2018 (Invest in Russia, 2018a). Russia has one of the richest mineral resources, such as the gas reserves that are estimated to reach 14.1 billion barrels (6.1% of the global reserves), including the largest proven gas reserves in the world (31.2 tcm, which is 48% of global gas reserves) (Invest in Russia, 2018b). Russia is the world's largest country in terms of territory with a unique geographic position, consisting of a consumer market of over 140 million people, vast natural resources, a highly educated workforce, and technologically- advanced research and production capabilities.

A key state priority for Russia is to facilitate FDI inflows by providing opportunities, such as developing various state and regional programmes to protect the interest of foreign investors. Typically, foreign

[36] Treatment of foreign firms equal terms to local firms in terms of operation at the domestic economy.

[37] See http://test.invest.gov.kg/en/information-for-investors/investment-climate/ for further information on investment incentives.

investors are subject to the same treatment as domestic investors. In addition, the government had introduced laws such as the 'Federal Law on Investment Activity in the Russian Federation Implemented in the Form of Capital Investment' and the 'Federal Law on Foreign Investment in the Russia Federation' to guarantee foreign investment, provide legal protection and rights, and establish public institutions to promote and attract more FDI into Russia. In this light, foreign investors in Russia could be advantaged in accordance with the laws, such as the favourable conditions for the investment, the removal of obstacles to investment, improvement of tax system, supporting the implementation of investment projects and assistance in overcoming administrative barriers (Russian Investment Agency, 2018). The legislation for foreign investors' protection become more favourable in the legislation process should the entities hold more than 25% of a Russian company's share capital and for priority investment project protection regardless of the foreign investor's stake in the project's share capital. 'Foreign investors are protected against newly adopted laws altering customs duties; federal tax rates and contributions to state non-budgetary funds (subject to certain restrictions); amendments to current laws resulting in an increase of the investor's tax burden; and introduction of bans and limitations on foreign investments in Russia' (Invest in Russia, 2018c). In 2017, Russia was ranked 35th out of 190 countries in the 'Doing Business Report of the World Bank' (World Bank, 2018).

7. Relevance of Current and Potential FTA for Investment

7.1. Reviewing of EAEU–India investment chapter

India signed a BIT with Armenia in 2003 (entered into force in 2006), with Belarus in 2002 (entered into force in 2003), with Kazakhstan in 1996 (entered into force in 1998), and with Russia in 1994 (entered into force in 1996). From 2000 to 2015, FDI inflows from the EAEU to India were very low, amongst those mainly from Russia and to a small extent from Kazakhstan.

Various sectors are amenable to bilateral investment flows. Potential areas for investment from India to the EAEU include oil and gas, textile and clothing, leather products, iron and steel, pharmaceuticals, automobiles including parts and components, engineering goods, information technology services, health services, telecommunications, etc.

Potential areas for investment from the EAEU to India include processed food, heavy engineering goods, transportation goods, minerals and metallurgy, tourism services, R&D centres, space technology and energy-efficient technology, etc.

7.2. Existing BITs between Cambodia and EAEU

As investment provisions vary from one regional trade agreement (RTA) to another, some countries tend to maintain BITs with the RTAs. The investment chapters in the FTAs essentially take their origins in BITs to provide standards of protection for foreign investors and their investments regarding transfers, expropriation and compensation, fair and equitable treatment, and investor-to-state-arbitration of investment disputes (OECD, 2008). Cambodia completed BITs with 24 countries, including Belarus in April 2014 and with Russia in March 2015,[38] yet it does not have a BIT with Armenia, Kazakhstan, and Kyrgyzstan. Nevertheless, the existing Cambodia–Belarus and Cambodia–

[38] Refer to Annex: Cambodia's BITs.

Russia BIT could be a foundation for negotiations on the investment chapter between Cambodia and the EAEU members.

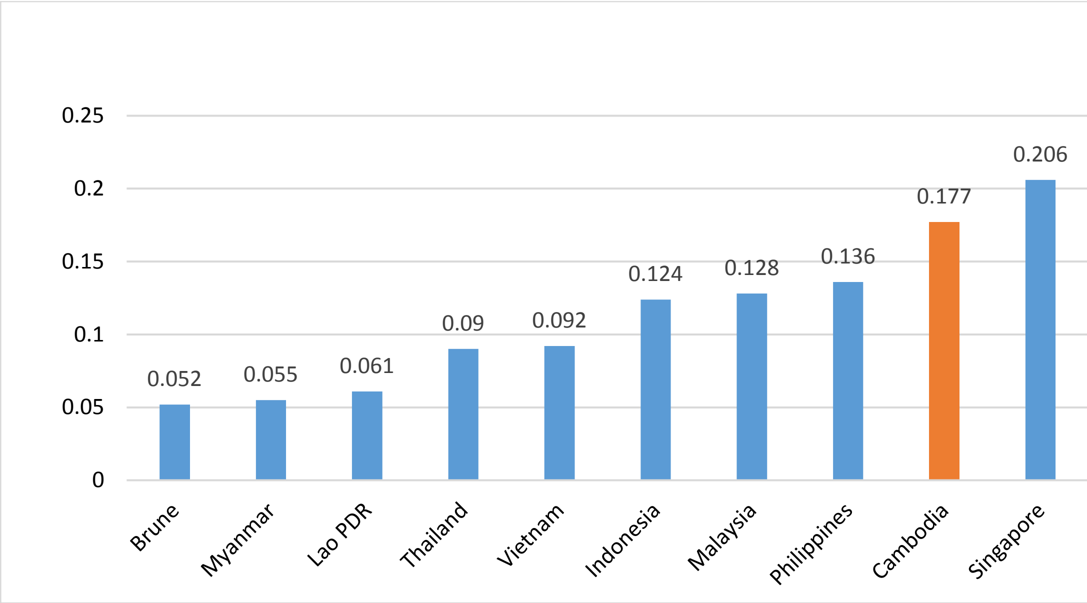
The investment chapter has at least three major components: standard of treatment, compensation for losses and expropriation, and dispute settlement mechanism. For the standard of treatment, the investment chapter in most regional trade agreements – including the Cambodia–Russia BIT (Article 3) and the EAEU–VN FTA (Articles 8.32 and 8.33) – frequently provides two kinds of treatment: national treatment and most-favoured-nation (MFN) treatment. National treatment is non-discrimination between own investors and investors of the other party, while MFN treatment is non-discrimination between investors of the other party to this investment chapter and investors of any third country. Thus, investors from foreign countries can enjoy the same treatment, preferences, and privileges. Additionally, the second component of the investment chapter is the compensation for losses and expropriation. Under the Cambodia–Russia BIT (Article 5) and the EAEU–VN FTA (Article 8.34), the host country is bound by the same obligations to losses which were caused by war, armed conflict, revolt, insurrection, revolution, riot, civil strife or civil disturbance, and similar circumstances, and shall be compensated and settled with no less favourable treatment than its own investors. Similarly, regarding expropriation, the act to nationalise, expropriate or subject to measures equivalent to, could be done for public purposes, in complying with regulations, in non-discrimination, but with prompt, adequate, and effective payment for compensation (WTO, 2015). These commitments could be found in both the Cambodia–Russia BIT (Article 4) and the EAEU–VN FTA (Article 8.35). Lastly, the dispute settlement mechanism is a key element in the investment chapter of the FTA, paving the way for the investor–state dispute settlement mechanism. Both the Cambodia–Russia BIT (Article 8) and the EAEU–VN FTA (Article 8.38) have at least introduced various dispute settlement platforms for investment disputes (i) through consultation or negotiation (as non-binding, third party procedures such as good office, conciliation, and mediation); and (ii) through either domestic court (a competent court of the party where investment was made) or international court (could be the International Center for Settlement of Investment Dispute or under any other arbitration rules). In this connection, these components, which are present in the Cambodia–Russia BIT, could be a stepping stone for the Cambodia–EAEU FTA negotiation to intensify economic cooperation for the parties' mutual benefit.

7.3. Potential investment areas from EAEU countries to Cambodia

Energy Sector

Energy, including oil and gas, the electric power sector, civilian nuclear energy, and promotion of renewable energy, are seen as the key sources of support for Cambodia's industrialisation. The country's economic growth is estimated to remain strong at 7% in 2017.This robust growth rate has significantly increased demand for electricity and other sources of energy supplies. Over these years, considerable progress in expanding the capacity and coverage of electricity supply have been achieved. Yet, compared with its neighbouring countries, Cambodia's electricity cost remains one of the highest, and its electrification rate is one of the lowest in Asia. With the growing population and economic boom, Cambodia is confronted with the supply-side constraints to satisfy the non-stoppable growing demand.

Figure 53. ASEAN Electricity Tariff in May 2014



Source: CDRI (2016).

Cambodia typically generates 200 MW of energy through oil-powered electricity plants, 500 MW through coal-fired plants, and 928 MW through hydropower plants. Additionally, the hydroelectric Lower Sesan II dam opened in December 2018, with a capacity of about 400 MW while a 135 MW coal-fired power plant will open early in 2019 (Sum 2017). Notwithstanding, the government has continuously attempted to cut down the price from $0.177 per kWh in 2014 to $0.14 per kWh as of October 2017, and widened the coverage nationwide. But based on available data in May 2014, the current cost of electricity in Cambodia remains high compared to its neighbours. The high cost of energy would continue to affect all productive sectors and hinder industrial investments and competitiveness.

On 23 November 2017, the Minister of Mines and Energy confirmed that Cambodia can potentially exploit crude oil and gas from both maritime and land areas possibly produce up to 5 million tons annually. For the maritime block, by 2019, crude oil is expected to be produced for the first time by KrisEnergy, a Singapore company, at 31 million barrels. A Malaysian company is conducting a feasibility study, while other foreign companies are exploring other blocks further. At the same time, a Vietnamese company has filed a request to conduct a feasibility study at Kampong Thom Province. This oil production would become an additional source of government revenue to sustain economic development in the long run.[39] This new emerging industry presents a huge opportunity for Cambodia to industrialise and move to another stage of economic development.

The government's policies are to (i) seek for domestic and foreign investment on clean and renewable energy supplies, (ii) reduce costs, and (iii) improve the coverage and reliability of electricity and other sources of energy. The government's strategy is to diversify energy sources, and move towards renewable and alternative energy sources.

[39] Unofficial translation, 'Cambodia upholds crude oil storing in both maritime and land areas and possibly produces million barrels per year,' Kley Kley, published on 23 November 2017, accessed in January 2017, available at (http://kleykley.sabay.com.kh/article/991482#utm_campaign=fb)

Tourism Sector

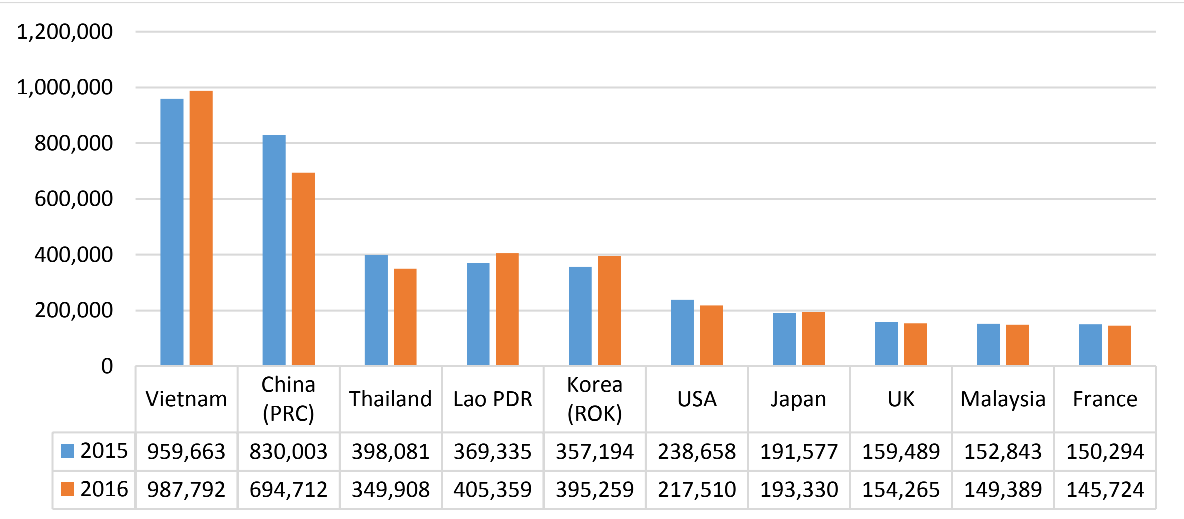
The tourism sector, which is solidly linked to other sub-service sectors such as hotels and restaurants, is a key growth driver for the Cambodian economy. Based on the 'Tourism Development Strategic Plan in 2012–2020', Cambodia aims to receive 7 million international tourists, together with 8 million to 10 million domestic tourists. Nonetheless, due to the tough competition from Myanmar's opening, tourist arrivals experienced slow growth. The growth in the services sector fell from 8.7% in 2014 to 7.1% in 2015, and this trend is estimated to have continued in 2016. Moreover, the rising share of short-staying, low-spending tourists and the slow growth of tourist arrivals in 2016 posed challenges for the development of the tourism sector development.

Table 29. International Tourist Arrivals, Average Length of Stay, Hotel Occupancy, and International Tourist Receipts of Cambodia, 1993–2016

Year	International Tourist Arrivals		Average Length of Stays (Days)	Hotel Occupancy (%)	Tourism Receipts (Million US$)
	Number	Change (%)			
2010	2,508,289	16.0	6.45	65.7	1,786
2011	2,881,862	14.9	6.30	66.2	1,912
2012	3,584,307	24.4	6.75	68.5	2,210
2013	4,210,165	17.5	6.50	69.5	2,547
2014	4,503,775	7.0	6.80	67.6	2,736
2015	4,775,231	6.1	6.80	70.2	3,012
2016	5,011,712	5.0	6.30	68.9	3,212

Source: Ministry of Tourism of Cambodia (2016).

Figure 54. Tourist Arrivals in Cambodia – Top 10 Countries (January–December 2016)



PRC = People's Republic of China, ROK = Republic of Korea, UK = United Kingdom, USA = United States of America.
Source: Ministry of Tourism of Cambodia (2016).

To attract more EAEU tourists, Cambodia must improve the Russian language capability of its tour operators and guides, ensure a better understanding of EAEU consumer behaviour, and develop information and communications technology platforms to link international travel agents. EAEU enterprises have a great opportunity to invest in Cambodia's tourism sector since the government aims to link tourist activities as part of the global value-chain activities in services to increase the multiplier effects of tourism expenditures. The potential areas of investment in the tourism sector are artificial tourism, ecotourism, duty-free shopping/outlets centres, and other leisure/entertainment industry in locations beyond Siem Reap, Phnom Penh, and Sihanoukville.

Agriculture

The agriculture sector has been a key potential sector contributing to Cambodia's economic growth; yet it remains less competitive and has not reached its full potential. This sector absorbs the majority of Cambodia's labour force, most of whom are unskilled and informal. The government has agreed to a new framework for the agricultural industry, which is expected to support the potential in manufacturing for creating jobs, promoting economic growth, and diversifying economic structure. Over the years, Cambodia's agro-processing sector has predominantly focused on the rice sector, but not on others. All types of subsidiary and industrial crops still have very limited commercial value-added manufacturing or processing in Cambodia (see Table 30).

Table 30. Agricultural Growth and Sub-sectors (%)

Sector	2011	2012	2013	2014	2015	2016e	2017p
Agriculture	3.1	4.3	1.6	0.3	0.2	0.5	0.8
Crops	4.3	4.9	0.6	0.5	0.3	1.0	1.7
Livestock and Poultry	0.2	0.8	0.1	0.2	0.0	0.8	0.3
Fisheries	3.1	6.7	5.4	0.1	0.3	-0.1	-0.5
Forestry and Logging	-0.1	-2.5	-2.9	-1.2	-0.8	-1.6	-1.6

Note: 2017 is projected.
Source: Ministry of Economy and Finance (2016).

However, this sector presents a window of opportunities for Cambodia to diversify its economy through the implementation of the government policy on agro-processing industry[40] and for EAEU enterprises to invest in. Based on the Industrial Development Policy of the Royal Government of Cambodia, the agro-processing sector is a key priority for the government to diversify the industry and to increasingly export agricultural products of up to 10% (of export products) by 2020 and 12% in 2025. Agro-processing industries will become an important major source for labour-intensive growth and provide opportunities for the government to parallel with the policies for rural development and SME promotion.

Cambodia exports a large number of unprocessed crops such as paddy rice, cassava, and cashew nuts to Thailand and Viet Nam for processing into value-added products which can be re-exported back into Cambodia (EuroCham, 2016). Cambodia's agro-processing industry sector is still underdeveloped and is dominated by micro, small, and medium-sized enterprises (MSMEs), which hold an 80% market share (EuroCham, 2016). Since these MSMEs are mostly unregistered with any government ministry, the lack of accurate data makes assessment difficult. The government, therefore, encourages FDI and

[40] The agro-processing industry transforms raw materials of agricultural products (such as crops, livestock, fish, and forestry products) into a different physical or chemical state, including packaging and other sophisticated processes. The agro-processing policy could provide linkages between the upstream and downstream industries of the agro-processing sector. In other words, it links primary agricultural products to intermediate and further to final goods in the markets through wholesale and retail chains.

domestic investment on this sector, and strengthens the capacity of both domestic and foreign small- and medium-sized enterprises (SMEs) by providing incentives, regulatory reforms, and skills development. Key challenges include building of food-processing capacity, smoothing out export logistics, lack of storage, and distribution and marketing capability to increase the value-added. At the same time, it also provides opportunities for both Cambodia and EAEU businesses to export those agro-processing products to the EAEU market. Nonetheless, both parties should consider the mutual recognition, particularly on SPS cooperation, to enhance trade in agricultural products and foods.