



State of Investment Regime in ASEAN

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EU-ASEAN FTA Campaign Network

Background: Strides Towards Regional Integration

- **ASEAN Charter** (signed 2007; adopted 2008)
 - embodies the values and principles of ASEAN and defines the structures and mechanisms necessary to realize its vision of one regional community, build upon the three pillars of political and security cooperation, economic cooperation, and socio-cultural cooperation

Strides Towards Integration

- **ASEAN Economic Community Blueprint (AEC)** (November 2007)
 - defines the block's strategies and plans for enhanced regional economic integration
 - ASEAN Economic Community by 2015 (ahead of the vision 2020)
 - Higher levels of dynamism, sustained prosperity, inclusive growth and integrated development
 - Principles of an open, outward-looking, inclusive, and market-driven economy
 - Single market and production base- free flow of goods, services, investment, capital and skilled labor

Stride towards Integration

- **Free flow of investments in AEC**
 - A free and open investment regime is key to enhancing ASEAN's competitiveness in attracting foreign direct investment (FDI) as well as intra-ASEAN investment

De Facto Integration

- While ASEAN prefers the more formal and institutional approach to integration, de facto integration or market-driven integration has already been evident thru the establishment of TNC of their vertically integrated production chains across the region

Investment Policy Regime

- **Framework Agreement on Investment Area (AIA)** tackles investment cooperation
 - all industries (in the manufacturing, agriculture, fishery, forestry and mining and quarrying sectors and services incidental to these five sectors) shall be open
 - national treatment granted to investors both at the pre-establishment and the post-establishment stages,
 - some exceptions as listed in member countries' Temporary Exclusion Lists (TEL) and Sensitive Lists (SL). The TEL is to be phased-out based on agreed timelines. Although the SL does not have a timeline for phasing-out, they will be reviewed periodically

Investment Policy Regime

- ASEAN Investment Guarantee Agreement (IGA) tackles investment protection
- AIA and IGA were integrated into the ASEAN Comprehensive Investment Agreement (ACIA) in 2009

ACIA

- Guiding Principles
 - Investment liberalization, protection, investment promotion and facilitation
 - Progressive liberalization
 - Benefit investors and their investments based in ASEAN
 - Maintain and accord preferential treatment to member states
 - No back-tracking of commitments under AIA and IGA
 - Special and differential treatment to Member states
 - Accommodate expansion of scope

ACIA: Additional Features

- A single investment agreement that provides clearer interaction of relevant provisions: e.g. liberalisation and protection
- Grants immediate benefits to both ASEAN investors and ASEAN-based foreign investors. Shorter deadline to achieve free and open investment environment (2015)
- Comprehensive and clearer definitions in line with international investment agreements- "International Best Practices"
- Covers portfolio investment. However, reservations can be taken
- New Article on Prohibition of Performance Requirements (TRIMs), with provision for joint assessment to consider additional commitments (TRIMs-Plus)
- New Article on SMBD to encourage inflow of key foreign managerial and senior management personnel
- Investor-State Dispute Settlement provisions are more comprehensive, including detailed procedures
- Expropriation article has an annex to clarify "measures equivalent to expropriation".

ACIA 'Limitations'

- No TRIMs-plus commitments e.g.:
 - prohibition of export requirement
 - value-added requirement
 - local hiring requirement
 - technology transfer requirements, etc.
- Investor-State Dispute Settlement (ISDS) provisions covers only post establishment
- Does not provide for automatic binding (ratchet) of autonomous liberalisation
 - Note: Assertion of of Policy Space**

Investment in ASEAN FTAs

- Investment rules and disciplines have found their way prominently in ASEAN free trade agreements including so called NAFTA provisions on investor rights
- Enhanced investment chapters in EU FTAs have already been drafted for EU-Singapore FTA which is currently being negotiated

Resistance to Investments

- Land and Natural Resources
 - Economic Land Concessions in Cambodia (99 year lease on lands) and land grabbing cases in Philippines and Indonesia
 - Mining (Indonesia and Philippines)
- Food and Agriculture

EU-ASEAN FTA Campaign

- Regional Campaign since 2007 when mandates for EU-ASEAN FTA were drafted
- Bi-regional platform with members in Europe and 5 countries in Southeast Asia (Indonesia, Malaysia, Philippines, Thailand and Viet Nam) has been established
- National Campaigns on-going in these 5 SEA countries against EU bilateral FTAs/Agreements

Common Strategies

- Countering the EU corporate agenda and exposing the contradictions in EU policies
- Challenging ASEAN agenda
- Highlighting critical issues as right to health and access to medicines and access and control over land, food and natural resources
- Utilizing HR assessment as a campaign tool
- Capacity Building
- Mobilization of key sectors
- Building alliances