Investment Policy
Liberalization and Cooperation in ASEAN:
Thailand’s View

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Roadmap

- Investment Policy Liberalization and Cooperation in ASEAN: An Overview
- Thailand’s Investment Policy Liberalization and Cooperation in ASEAN
- Concluding Remarks
Investment Policy Liberalization and Cooperation in ASEAN: An Overview

- WTO: GATS/TRIMs
- BITs
- ACIA
Multilateral Cooperation
WTO

The Agreement on Trade in Services (GATS)

supply of services by a foreign company setting up operations in a host country i.e. foreign investment
Multilateral Cooperation

WTO

Agreement on Trade-Related Investment Measures (TRIMs)

prohibiting trade-related investment measures which is inconsistent with the provisions of GATT Article III (national treatment) or Article XI (quantitative restrictions) such as local content requirements
Limitations?

- Dispute settlement is limited to state-state dispute under the WTO;
- Limited scope of commitments;
- Lack of basic definition of investment;
- Not introduce disciplinary policies but refers to GATT articles;
- Implementation difficulties due to ambiguity.
Bilateral Cooperation

BITs

BITs between developing countries by region and decade, 1960-1999

Source: UNCTAD database on BITs.
Examples of BITs between ASEAN countries

Cambodia

Malaysia *date of signature*
17 August 1994

Thailand *date of signature*
29 March 1995

Singapore *date of signature*
04 November 1996

Indonesia *date of signature*
16 March 1999
Examples of BITs between ASEAN countries

**Indonesia**
- Singapore 28 August 1990
- Viet Nam 25 October 1991
- Malaysia 22 January 1994
- Lao People's Democratic Republic 18 October 1994
- Thailand 17 February 1998
- Cambodia 16 March 1999

**Malaysia**
- Viet Nam 21 January 1992
- Indonesia 22 January 1994
- Cambodia 17 August 1994

**Myanmar**
- Philippines 17 February 1998

**Philippines**
- Viet Nam 27 February 1992
- Thailand 30 September 1995
- Myanmar 17 February 1998
BITs between ASEAN countries

- to protect, promote, and facilitate foreign investment
- to create a favorable climate for investment and contribute to the creation of an investment-friendly regulatory environment
- to further strengthen the economic development in the host country
BITs between ASEAN countries

Limitations?

- limited to cooperation between the two ASEAN members who are parties to the treaty;
- not all ASEAN member States have BITs with all other ASEAN member States;
- they are primarily if not entirely focused on investment protection issues
Regional Cooperation
ACIA

ASEAN Charter

AEC

AEC Blueprint

ACIA

Strategic schedule
Regional Cooperation
ACIA

ACIA

IGA
AIA
Regional Cooperation
ACIA

Key features
- Comprehensive investment liberalization and protection provisions;
- Clear timelines for investment liberalization in line with the AEC Blueprint;
- Benefits extended to foreign-owned ASEAN-based investors; and
- A more liberal, facilitative, transparent and competitive investment regime

Source: ASEAN Investment Guidebook 2009
Thailand’s Investment Policy Liberalization and Cooperation in ASEAN
FTAs
- Ministry of Commerce
- National Committee on Economic Policy

ACIA
- Ministry of Foreign Affairs (MFA): head of the negotiation
- Board of Investment (BOI): reservation list

BITs
- Ministry of Foreign Affairs (MFA)
Current Position of Thailand

covers 5 non-service sectors: manufacturing, fishery, agriculture, forestry and mining and quarrying.

other three modes of services (other than mode 3) will be covered in services chapters/agreements.

positive list approach to liberalization.
Current Position of Thailand

- the scope of ‘investment’ covers only FDI
- prohibit only TRIMS-based performance requirements
- measures to safeguard the balance of payments / measures for macro economic stability
Foreign Direct Investment net inflow to ASEAN and ASEAN Member States as a percentage of GDP
Thailand’s Cooperation

- ASEAN Framework Agreement Services (AFAS)
- ASEAN Industrial Cooperation Scheme (AICO)
- ASEAN Investment Area (AIA)
- ASEAN Investment Guarantee Agreement (IGA)
- ASEAN Comprehensive Investment Agreement (ACIA)
Thailand’s Investment Cooperation

ASEAN FTA with dialogue partners:
- ASEAN-Australian-New Zealand
- ASEAN-China
- ASEAN-Republic of Korea
- ASEAN-India (currently under negotiations)
- ASEAN-Japan (currently under negotiations)
Thailand’s Investment Cooperation

Separate investment agreements:
- Thai- India
- Thai-EU (forthcoming)

Investment Chapters:
- Thailand-Australia FTA (TAFTA)
- Thailand-New Zealand Closer Economic Partnership (CEP) Agreement
- Japan-Thailand Economic Partnership Agreement (JTEPA)
Thailand’s Investment Cooperation

BITs: as of 27 October 2010

- 36 BITs have entered into force
  - e.g. Argentina, Turkey, Luxemburg, Cambodia, Canada, China, Croatia, Korea, Egypt, Finland, Germany, Hong Kong, Hungary, India, and Indonesia

- 5 have concluded and yet to be entered into force
  - e.g. Myanmar, Kuwait

- 6 in the process of negotiations
  - e.g. France, Iran, Italy, Morocco, Russia, Tunisia

- 38 in the process of changing drafts
  - e.g. Armenia, Pakistan, Kenya, Cuba, Ukraine, Bosnia, Latvia, Mongolia, Austria, Sudan, Qatar, Oman
Thailand’s Investment Cooperation

Thailand has BITs with 6 ASEAN Countries

- Cambodia signed in 1995
- Indonesia signed in 1998
- Laos signed in 1990
- Myanmar signed in 2008
- Philippines signed in 1995
- Vietnam signed in 1991
Thailand’s Investment Cooperation

- WTO/TRIMS/GATS
- World Bank Multilateral Investment Guarantee Agency (MIGA)
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention)
- ICSID Convention and is in the process of ratifying the Convention
Recent Development

The Constitution of Thailand 2007 and Investment Cooperation in ASEAN

- Section 190 paragraph 2
- Section 305 paragraph (5)
Recent Development

The negotiation framework for BITs:
- May 2010 cabinet approval
- September 2010 parliamentary approval
- Main elements of Thailand’s negotiation framework: e.g.

The scope of BIT will be limited to foreign direct investment: FDI by protecting investors in accordance with rules and regulations stipulated by the Thai Government; MFN and NT; Fair and equitable treatment; Compensation for expropriation; Subrogation; Free transfer; ISDS and State-to-State dispute settlement
Recent Development

ACIA

- negotiation framework: the AEC blueprint which has already been approved by the National Legislative Assembly on 14 November 2007
- signed on 26 February 2009 in Cha-am, Thailand
- Current status
Benefits

- Multi-layer cooperation
- Deeper integration
Keys to success

- Flexibility
- Partnership
Challenges

- Meeting the deadline
- The implementation of the ACIA
Thank you

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