



## Summary Record

### **ASEAN-OECD INVESTMENT POLICY CONFERENCE 18-19 November 2010 ASEAN Hall, ASEAN Secretariat, Jakarta**

ASEAN has traditionally been a leading destination for international investment as a result of its dynamic regional market and relatively open policies towards foreign investors. Foreign investors have contributed to the participation of ASEAN economies in international production networks. In addition to individual countries' unilateral efforts to improve the investment climate, ASEAN has been moving forward on its regional integration agenda to create a free and open investment regime in ASEAN. Reform efforts in many countries after the Asian financial crisis of 1997/98 have enabled ASEAN countries to recover from the current global economic crisis relatively quickly.

Against this backdrop, multinational enterprises from OECD countries have invested over USD 300 billion in ASEAN countries, which is far more than the same firms have invested in China and India combined. In spite of this good performance, ASEAN countries have been facing increasing competition from other emerging markets such as China in attracting globally-integrated FDI.

Cooperation between ASEAN and the OECD grew out of the OECD Ministerial Council's adoption of a Resolution in May 2007 to expand the OECD's relations with Southeast Asia. Since then, cooperation has been moving forward through regional initiatives as well as country specific work. At the regional level, collaboration between ASEAN and the OECD covers investment policy, regulatory reform and financial integration. As part of the continuing and deepening dialogue between two organisations on investment policies, ASEAN and the OECD jointly held a two-day ASEAN-OECD Investment Policy Conference at the ASEAN Secretariat on 18 and 19 November 2010. The Conference was jointly opened by the ASEAN Deputy Secretary-General of ASEAN for ASEAN Economic Community, H.E. Sundram Pushpanathan, and the Deputy Secretary-General of the Organisation for Economic Co-operation and Development (OECD), H.E. Mario Amano.

The Conference provided an excellent platform to share experience and good practice in investment policies. Session I addressed policy reforms and investment attractiveness in ASEAN and the OECD by answering questions such as: how much has been achieved by ASEAN in improving the region's investment climate?; what impact has the current global crisis had on ASEAN's relative appeal to investors? Session II discussed ways to achieve a better investment environment in ASEAN including the use of Policy Framework of Investment developed at the OECD and already used in several Asian countries. Session III dealt with the role of international investment agreements in ASEAN including major FTAs signed by ASEAN and the ASEAN Comprehensive Investment Agreement. In Session IV, six panellists exchanged views on how to

attract more investment in ASEAN and leverage its positive impact on development. The final session concluded the Conference and looked at next steps of co-operation.

Over 160 participants attended the Conference representing all 10 ASEAN countries and 16 OECD member countries, as well as the EC, the business and trade union associations, academia and international and regional organisations.

### **Session I: Policy Reforms and Investment Attractiveness in ASEAN and OECD**

- The first presentation by Andrea Goldstein, OECD Secretariat, showed the importance of OECD investors in ASEAN. According to FDI statistics reported by OECD countries, OECD investors have consistently accounted for a significant share of FDI flows into the ASEAN region at around 45% of total flows from 1993 to 2008.
- While OECD investors mostly invest in other countries, investment positions held by OECD investors in non-OECD countries have increased from about 15% in 2003 to over 20% in 2008. The ASEAN region hosts 3% of total global investment positions by OECD investors, but China as well as other emerging economies have increased their attractiveness as FDI destinations for OECD investors in the past five years.
- Looking at the FDI statistics from the two largest OECD investors in ASEAN, namely the US and Japan, investors from both countries have been increasingly attracted to China and India since 2003/2004. The preference of Japanese investors' for the ASEAN region decreased after the Asian economic crisis and has still not recovered. Employment figures indicate that investment by American and Japanese investors in China has focused more on labour-intensive industries than that in ASEAN. While global investment flows are not a zero sum game where the recipient country gains at the expense of all other potential host countries, it is nevertheless the case that OECD investors have begun increasingly to feel the allure of the Chinese and Indian markets.
- Investment activities in the automobile sector by Japanese and American auto manufacturers also demonstrate that car production in China has been increasing at a faster pace than that in ASEAN.
- Firms from ASEAN countries, particularly Singapore and Malaysia, are emerging investors in OECD countries, to a much greater extent than Chinese firms. ASEAN investors account for more than 20% of investment positions held by non-OECD investors in OECD countries.
- The second presentation by Melanie S. Milo, ASEAN Secretariat, showed that output from ASEAN countries has been recovering relatively quickly from the negative effect of the current global crisis. While FDI flows into ASEAN region were adversely affected by the global crisis, the decline has been concentrated in a few countries, particularly Singapore.
- The global crisis reduced the importance of FDI in ASEAN economies. However, a survey on MNEs indicates that investors are bullish about their own investment activities in developing Asia including Southeast Asia in next two years and Asian MNEs are more optimistic about the global investment environment than MNEs from developed countries.

- Several ASEAN governments have significantly improved the doing business indicators, but China and India have been improving the same indicators at the same time.
- It is important for ASEAN countries: (1) to enhance further their investment environment by maintaining macroeconomic stability, updating labour and infrastructure quality and enhancing institutional predictability; and (2) to deepen regional market integration.
- The third presentation by Stephen Thomsen, OECD Secretariat, introduced the OECD FDI restrictiveness index which can be used to measure a country's investment policy reform progress. For OECD countries, the index mostly captures the commitments made under the OECD Code of Liberalisation of Capital Movements and the exceptions under the OECD National Treatment Instrument. The Index has been used to measure each country's restrictiveness towards FDI, changes in restrictiveness over time and relationship between the Index and a country's FDI performance.
- In addition to measuring the restrictiveness of FDI policies, the OECD also serves as a forum to discuss issues and concerns emerging in the international investment community. These concerns have recently included protection of national security and strategic industries, access to natural resources, the rise of new types of global investors, green protectionism and emergency measures taken to address the global crisis. A series of discussions have been held at Freedom of Investment Roundtables hosted at the OECD. Since 2009, the OECD has been tasked, in cooperation with WTO and UNCTAD, with monitoring investment policies in G20 member countries with a view to avoiding protectionism.
- The fourth presentation by Nor Ashikin Johari, Government of Brunei Darussalam, considered the evolution of investment agreements in ASEAN leading up to the ACIA in 2009. ASEAN agreements have grown from the Agreement for the Promotion and Protection of Investments in 1987 to the ASEAN Investment Area Agreement in 1998, then to ACIA in 2009. ACIA was needed to meet ASEAN Economic Community Goals by 2015 by expanding the scope of existing agreements, keeping up with provisions of ASEAN +1 FTAs and bilateral agreements, and improving the region's investment climate vis-à-vis China and India.
- The fifth presentation by Jaratrus Chamrathirong, Government of Thailand, summarised investment policy liberalisation in ASEAN economies multilaterally through the WTO (GATS and TRIMs), bilaterally through BITs and regionally through ASEAN. The multilateral framework at the WTO is limited in terms of the dispute settlement mechanism, the scope of commitments, the clarity in the definition of investment and in its disciplinary policies. While ASEAN countries have entered into many BITs with each other since the 1990s, these BITs are not comprehensive in coverage and are primarily focused on investment protection rather than investment liberalisation. ACIA is intended to overcome these limitations with WTO and BIT approaches
- The presentation then introduced Thailand's investment policy development and co-operation with ASEAN. Responsibilities for investment liberalisation, protection and promotion are shared among the Ministry of Commerce, the Ministry of Foreign Affairs and the Board of Investment within the Thai government. The Thai government maintains specific positions on the coverage of sectors, scope of investment, prohibition of performance requirement, approach to liberalisation, and safeguard measures. The

Thai government has participated fully in all ASEAN agreements and is actively negotiating BITs. It has recently approved a negotiating framework for BITs.

- Success in benefitting from these various levels of co-operation in ASEAN depends on flexibility and partnership. Meeting the deadline for ASEAN EC Goals and implementing ACIA is still a challenge.

## **Session II: Achieving a Better Investment Environment in ASEAN**

- The first presentation by Misuzu Otsuka, OECD Secretariat, gave an overview of the Policy Framework for Investment (PFI) which was developed by some 60 governments as a checklist in 10 policy areas for policy makers wishing to improve the investment climate in their respective countries. As a flexible tool, PFI has been used in various manners such as horizontal country reviews, platform for regional dialogues, thematic/sector specific country reviews, ODA programmes and capacity building tools.
- The PFI may be useful for ASEAN since it can provide an opportunity for regional dialogue, create a network of ASEAN and OECD policy makers, help to identify specific reform and capacity building needs, facilitate monitoring of the progress towards ASEAN EC Goals and develop a useful policy database for the region.
- The second presentation by Huda Bahweres, Government of Indonesia, explained Indonesia's experience in conducting a PFI-based review together with the OECD. Indonesia's reform efforts after the Asian crisis have made the country more resilient in the face of external economic shocks, and as a result, Indonesia has maintained a relatively good economic performance through the current global crisis. Indonesia is on track to attract the targeted amount of FDI for 2010.
- Against this backdrop, Indonesia decided to conduct an investment policy review with the OECD to benchmark Indonesia's investment policies to OECD best practices. A review process in co-operation with the OECD involved 25 government agencies including around 100 representatives and was co-ordinated by the Co-ordinating Ministry for Economic Affairs. Ms. Bahweres underscored the importance of fully understanding the PFI questions, engaging all the agencies involved at the high level and creating an effective inter-departmental taskforce in the process. She concluded that the review process was very productive.
- The third presentation by Toru Homma, JICA, showed how the PFI can be used as part of development assistance programmes where JICA assists many Asian governments in investment climate reforms. JICA's approach to investment climate reform involves both hardware assistance (infrastructure provision) and software assistance (policy reform). In support of investment policy reform and promotion, JICA has promoted the use of the PFI in its ODA programmes. For example, JICA assists the OECD-NEPAD initiative in Africa as well as using the PFI as an important analytical tool in bilateral projects with Cambodia and Zambia. The Cambodian project focused on the second chapter of PFI (investment promotion and facilitation) and assessed the current situation and constraints at the Cambodian Investment Board, resulting in 16 action plans, publication of a Cambodia Investment Guidebook and increased investor interest in the country.

- The fourth presentation by Andrew Proctor pointed out the institutional and organisational factors for successful IPAs which include separation of regulatory and promotional responsibilities. A one-stop shop is not always an easy solution for IPAs and IPA's overall strategy should be shaped by decisions made for each of the four generic IPA functions of image building, investment generation, investor servicing and policy advocacy.
- The importance of investor facilitation was emphasised through all four possible phases of the investment: pre-decision, approval process, start up, and operational phase. Aftercare is important since keeping an investor is less costly and more effective than attracting a new investor in terms of generating employment.
- International best practices are useful but each IPA should understand its specific circumstances before adopting any "internationally-recognised" good practices. It is advisable to start with less ambitious steps to improve IPA performance.
- The fifth Presentation by Lenka Hrebickova, CzechInvest, outlined the role of CzechInvest in business development and introduced its cluster promotion approach. A cluster can benefit companies, universities and the public by improving the results of each company in the cluster through synergies; increasing the number of innovations, spin-offs and start-ups through the common research base; and increasing exports and attracting investments. CzechInvest provides financial and technical support to identify, develop and operate clusters under its Cluster Support Programme. Such clusters have been created in various areas such as machinery, biotechnology, wood and furniture, new materials, information technology and renewable energy. The cluster approach has proven to be a useful tool for investment promotion since a cluster can provide a potential supplier base as well as represent its members in discussions with potential investors.
- The automotive industry cluster is one of the success stories in investment in the Czech Republic. For example, the Moravian-Silesian Automotive Cluster with 43 cluster members owns common cluster laboratories for R&D and testing, has adopted a common strategy towards foreign partners from Korea, and operates common marketing and training projects.
- To make a cluster approach successful, it is necessary to increase the awareness of clusters in general and motivate cluster members to co-operate.
- The sixth presentation by Ponciano Intal, ERIA, first set ASEAN region in an international perspective. While the ASEAN region displays a higher rate of intra-regional trade than many other regional groupings, the rise in the share of intra-regional trade has been gradual. The ASEAN region is losing out to China in terms of exports and FDI inflows. As a major economic transformation shifts regional production networks to China it is important for ASEAN to respond to the challenges by realising the AEC Blueprint towards a more open integrated and connected region.
- Intal showed some of the results of an exercise to score: (1) FDI policy regime of ASEAN countries using the method similar to OECD FDI restrictiveness index and (2) the quality of investment facilitation and promotion. The second measure tries to capture the characteristics of an IPA such as institutional arrangements, salaries, research capabilities and information handling; and the characteristics of effective investment facilitation such

as the ease of starting up business, the transparency and efficiency of the process, one stop shops, and the quality of investor-government interactions. Singapore's EDB and Malaysia's PEMUDAH demonstrate good features of an IPA. These exercises can bring out several recommendations for ASEAN countries to improve their investment climate including more transparent processes, better coordination between central and local governments, addressing the bottleneck in doing business, strengthened linkages between governments and investors, and further liberalisation of FDI policies.

- The seventh presentation by Bruce Tolentino, The Asia Foundation, introduced the Asia Foundation's Economic Governance Index (EGI) which is used to measure the quality of economic governance across sub-national units. EGI consists of 10 sub-indices measuring entry costs. EGI was applied to 8 Asian economies including 5 ASEAN countries. The use of EGI resulted in specific reform initiatives by provincial governments in Vietnam and Cambodia. Indonesia is interested in applying a more comprehensive EGI to measure local government performance so that the government can link the score to the inter-governmental fiscal transfer mechanism.

### **Session III: The role of international investment agreements in ASEAN**

- The first presentation by Walter van Hattum, EU Delegation to Indonesia, outlined changes in the EU's investment policy after the Lisbon Treaty which made investment policy part of the common commercial policy of the EU. While EU member states can continue to enter into new BITs in the short to medium term, the EU is interested in exercising the newly acquired competence in the long term by setting out the general outlines of a common EU policy. The EU plans to conclude FTAs with selected priority partners which have good economic climates, large markets and high growth potential, as well as a certain degree of local legal protection for investors. The aim is to add value to existing BITs.
- The EU is ASEAN's largest export partner and third largest import partner, providing a healthy trade surplus for ASEAN. The EU is also the largest investor in ASEAN. Given this strong economic relationship, EU-ASEAN FTA negotiations started in 2007 but paused in 2009 due to a mismatch in the levels of ambition. However, the EU is ready to negotiate ambitious bilateral FTAs with willing countries.
- The second presentation by Yang Sooyoung, Government of Korea, introduced the ASEAN-Korea FTA. ASEAN is Korea's third largest trade partner and investment destination. Korea's FDI in ASEAN stagnated after the Asian economic crisis but is improving recently due to the worsening investment climate in China and ASEAN's strong economic recovery. The ASEAN-Korea FTA includes agreements on trade in goods (signed in 2006), on a dispute settlement mechanism (signed in 2005), trade in services (signed in 2007) and on investment (signed in 2009) under the framework agreement.
- Investment provisions under the ASEAN-Korea FTA grant national treatment and MFN treatment to pre-established investors, prohibit nationality/residence requirements for senior management and the board of directors, and allow investors to choose the most favourable agreement among this FTA and other BITs. The schedule of reservations must be concluded within five years from the date of entry into force of this agreement and

each member state needs to start negotiations on its liberalisation plans. The ASEAN Korea Investment agreement can be used as a model of ASEAN's future investment agreements as it is more advanced in terms of liberalisation than ASEAN's agreements with other countries.

- The third presentation by Elly Lawson, Australian Embassy in Indonesia, introduced the ASEAN-Australia-New Zealand FTA which entered into force in January 2010. While ASEAN is one of Australia's largest trade partners, the investment relationship is not as strong as its trade relationship. Hence, there is scope for significant improvement in FDI flows between ASEAN and Australia; and AANNZFTA can provide a strong framework to increase investment over time by offering greater transparency and certainty for investors, a forward-looking built-in agenda on market access and economic co-operation.
- The economic co-operation component under AANNZFTA provides financing over 5 years for projects which can assist ASEAN countries to implement the Agreement. Eligible projects may include participation in OECD investment policy reviews by ASEAN countries and implementation of recommendations under the reviews.
- The fourth presentation by Marc Proksch, UNESCAP, summarised the evaluation of IIAs, pointing out a trend away from bilateral agreements to a more integrated and inclusive approach and regional agreements, shifting from protection/promotion to liberalisation, rebalancing between investor and host country rights and obligations, using more innovative and precise language and reviewing arbitration rules. Asia, including ASEAN, has been active in concluding IIAs with various commitments made, but ACIA is more comprehensive and contains more advanced commitments than most ASEAN BITs and FTAs.
- The impact of IIAs in attracting FDI is generally limited compared to other economic factors. The impact could be maximised when the conclusion of IIAs is embedded in broader policies covering all host country determinants of FDI. Only a few IIAs include obligations relating to pre-establishment and most governments still want to retain the right to decide the type of FDI to be allowed and the sectors to be given incentives.
- Emerging issues in IIAs concern rebalancing the rights and obligations of investors and host countries, addressing economic and other policy objectives such as environment protection and ensuring policy space. Current IIAs have been criticised for focusing too much on the rights of foreign investors and not enough on their obligations, and too strong investment protection and weak investment promotion provisions. New BITs including ACIA may include language related to the environment. There are several ways to adopt IIAs to increase policy space for host countries.
- The fifth presentation by Antony Crockett, Clifford Chance, gave a perspective from private practice on approaches to IIAs in ASEAN. So far ASEAN has a very minor share in ICSID arbitration cases, probably due to cultural preferences for informal dispute resolution, relative stability, limited liberalisation, consistently good treatment of foreign investors, lack of awareness of IIAs and lower FDI flows into ASEAN. As IIA 'literacy' improves, agendas for ASEAN could be to make laws/regulations related to a particular investment clear and readily accessible along with liberalisation and to implement liberalisation commitments in a predictable, fair and transparent manner.

- International investors are generally concerned about discriminatory application or lack of competition policies in Asia which may cause potential disputes by foreign investors.
- The sixth presentation by Vilawan Mangklatanakul, Government of Thailand, explained technical aspects of ACIA and its implementation plan. Key features of ACIA include more comprehensive coverage, inclusion of forward looking provisions, incorporation of international best practices and institutional mechanism for implementation. ACIA covers both FDI and portfolio investments, extends benefits for ASEAN investors as well as foreign-funded ASEAN based investors and offers unconditional MFN. ACIA's sectoral scope could be extended in future beyond that in the AIA. To provide enhanced protection and strike a balance between investment protection and legitimate regulation, ACIA has more comprehensive and clearer provisions and clarifies safeguard requirements, exceptions and denial of benefits. Clear procedures for mediation of commitments as well as dispute settlements are set in ACIA.
- ACIA's implementation target is 2015. The AIA Council is responsible for implementation, assisted by the ASEAN Coordinating Committee on Investment. As ASEAN has also entered into FTAs with various countries, relationship between these FTAs and ACIA may be a concern. Some agreements, hence, contain a provision governing the relation with other agreements.

#### **Session IV: How to attract more investment in ASEAN and leverage its positive impact on development?**

- Panellists generally agreed on the large potential for ASEAN to attract more foreign investment in spite of more intensive international competition. ASEAN has been particularly successful in developing regional supply chain networks. Challenges are to improve the quality of FDI in ASEAN and to address very diverse business environments in the region.
- Responsible business conduct of foreign investors should be encouraged by all the governments so that there is a level playing field in this regard. Governments consider that investors complying with laws/regulations as well as guidelines on corporate social responsibility such as the OECD Guidelines for Multinational Enterprises make a greater impacts on development and general welfare.

#### **Session V: Conclusions and Next Steps**

- **OECD DSG Mario Amano** expressed the OECD's support for ASEAN's ambitious plan to create the ASEAN Economic Community and welcomed the fact that this regional integration is not happening at the expense of exchanges with the rest of the world. As some ASEAN members have already undertaken or are in the process of undertaking PFI-based investment policy reviews, the OECD invites other ASEAN countries to co-operate with the OECD on a PFI assessment. ASEAN countries are emerging from the current global crisis in relatively good shape, but challenges of competing for investment flows will be more pronounced for ASEAN. Policy reforms to address the challenges should



continue, and the OECD stands ready to assist ASEAN countries with its own experience of best practices in OECD member countries.

- **ASEAN DSG Sundram Pushpanathan** echoed that ASEAN needs to continue taking steps to ensure that ASEAN remains an attractive investment destination, particularly given the muted global demand and heightened uncertainty for investors due to the present crisis. In this regard, ASEAN looks forward to engaging more with OECD countries in investment policy work. The areas for collaboration may include development of SMEs, effective promotion of multinational enterprises, green FDI, corporate governance, statistics and other initiatives to enhance intra- and inter-regional investment for ASEAN. The cooperation may take form of substantive policy dialogues, thematic symposiums, joint analytical work, technical assistance and capacity building programmes.