



# **VISION OF THE ASEAN COMPREHENSIVE INVESTMENT AGREEMENT (ACIA)**

**2<sup>nd</sup> OECD Southeast Asia Regional Forum  
27-28 April 2009, Bangkok**

# FDI Flows into ASEAN

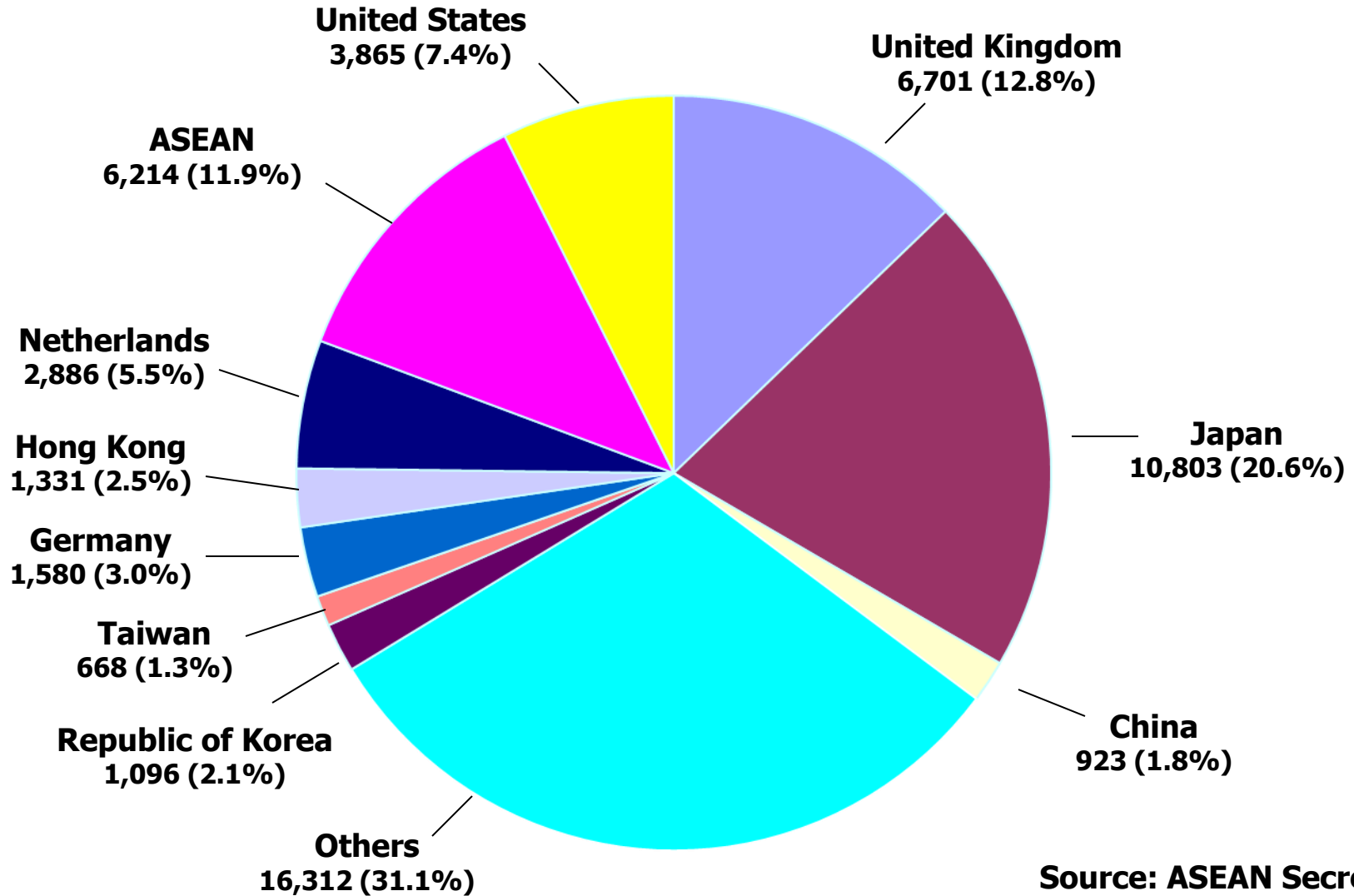
(Value in US\$ million)

Country	2007	2006	2005	2004	2003	1995
<b>Total</b>	<b>60,514</b>	<b>51,243</b>	<b>39,091</b>	<b>25,661</b>	<b>19,664</b>	<b>28,231</b>
Singapore	24,137	24,743	13,930	14,819	10,376	11,503
Malaysia	8,403	6,048	3,967	4,624	2,473	5,815
Indonesia	6,928	4,914	8,337	1,895	-596	4,346
Thailand	9,575	9,010	8,048	1,414	1,952	2,070
Viet Nam	6,739	2,360	2,021	1,610	1,450	1,780
Brunei	184	434	289	212	3,123	583
Philippines	2,928	2,921	1,854	688	491	1,577
Myanmar	428	143	236	251	291	318
Lao PDR	324	187	28	17	20	88

Source : World Investment Report 2007, UNCTAD

# FDI Flows to ASEAN by Source Country - 2006

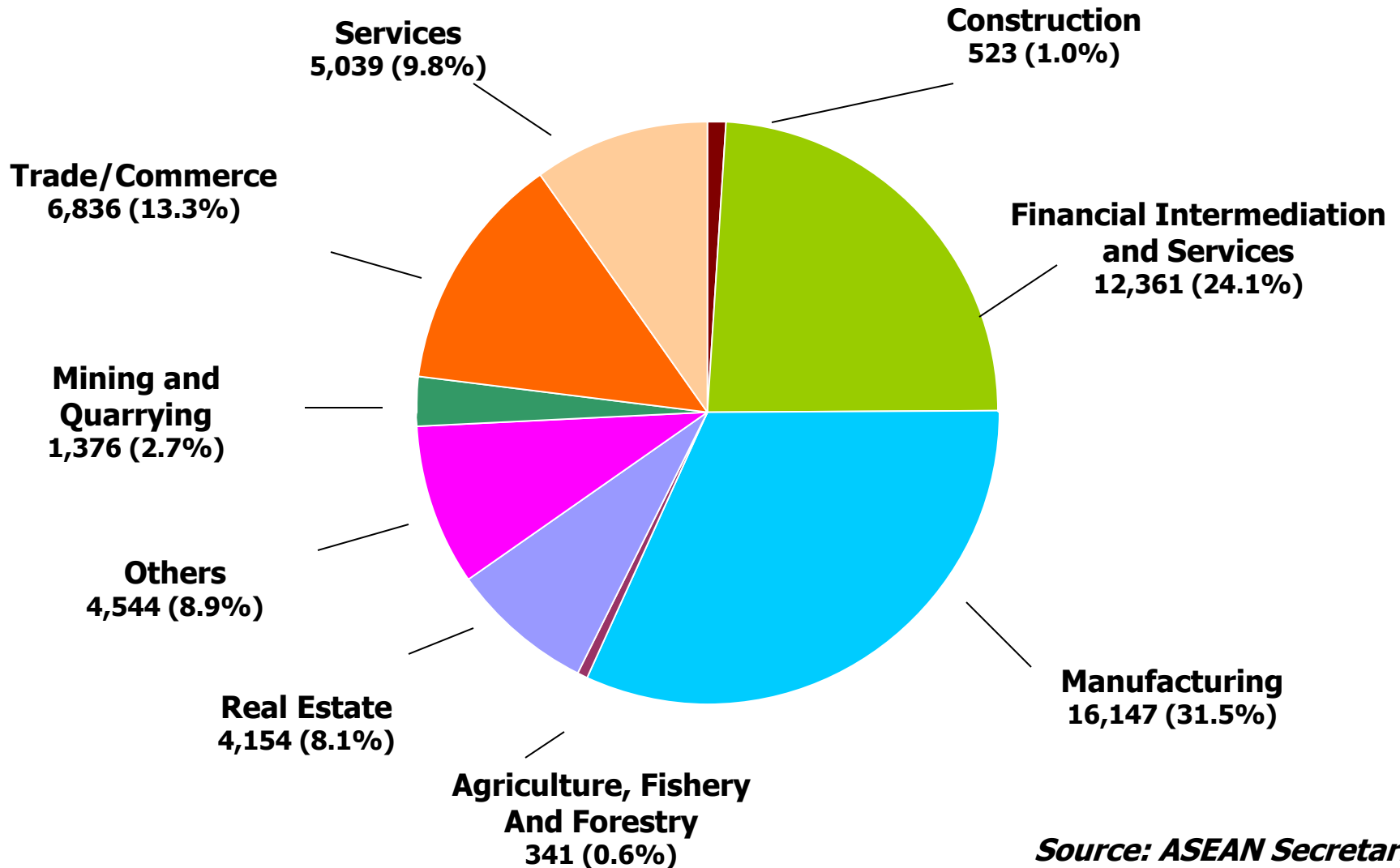
US\$ million



Source: ASEAN Secretariat

# FDI Flows to ASEAN by Economic Sector - 2006

US\$ million



Source: ASEAN Secretariat

# Intra-ASEAN Investment

Year	Intra-ASEAN (US\$ billion)	% to Total Investment Inflows to ASEAN
1995	3.5	13.3
1997	3.9	12.0
1998	2.0	9.1
1999	1.2	4.9
2006	6.1	11.9
2007	8.2	13.6

Source: ASEAN Secretariat

# FDI Flows into Selected Developing Countries

US\$ million

	2005	2006	2007
<b>ASEAN</b>	<b>39,091</b>	<b>51,243</b>	<b>60,514</b>
<b>China</b>	<b>72,406</b>	<b>72,715</b>	<b>83,521</b>
<b>India</b>	<b>7,606</b>	<b>19,662</b>	<b>22,950</b>
<b>Brazil</b>	<b>15,066</b>	<b>18,822</b>	<b>34,585</b>
<b>Mexico</b>	<b>20,954</b>	<b>19,291</b>	<b>24,686</b>

# Share of FDI Inflows to Total Global FDI Inflows to Developing Countries

Country	FDI Inflow as % of Total Global FDI inflows to all developing economies						
	1995	1996	1997	2000	2005	2006	2007
<b>ASEAN</b>	<b>22.8</b>	<b>19.2</b>	<b>15.9</b>	<b>6.5</b>	<b>12.3</b>	<b>12.4</b>	<b>12.1</b>
China	26.1	26.3	23.2	22.9	22.9	17.6	16.7
India	0.9	1.7	1.9	1.7	2.4	4.8	4.6
Brazil	2.7	7.1	9.9	11.0	4.8	4.6	6.9
Mexico	10.9	6.5	7.4	12.1	6.6	4.7	4.9

# ASEAN Outward Investment

US\$ million

Country	2005	2006	2007
<b>ASEAN</b>	<b>13,790</b>	<b>22,232</b>	<b>33,466</b>
Indonesia	3,065	2,703	4,790
Malaysia	2,971	6,041	10,989
Singapore	6,943	12,241	12,300
Thailand	503	1,032	1,756
Philippines	189	103	3,442

# Intra-ASEAN Trade 2006-2007

(US\$ Million)

No	Country	Export				Import			
		2006	2007	Change		2006	2007	Change	
				Value	%			Value	%
1	Brunei	1,887.3	2,149.5	262.2	13.9	745.8	1,043.2	297.4	39.9
2	Cambodia	235.4	251.4	16.1	6.8	991.2	1,283.0	291.8	29.4
3	Indonesia	18,483.1	22,292.1	3,809.0	20.6	19,379.2	23,792.1	4,413.0	22.8
4	Lao PDR	290	n/a	n/a	n/a	501	n/a	n/a	n/a
5	Malaysia	40,979.6	45,359.2	4,379.6	10.7	32,290.7	37,297.7	5,007.1	15.5
6	Myanmar	2,149.7	3,427.7	1,278.0	59.5	1,174.7	1,413.1	238.4	20.3
7	Philippines	8,192.2	8,031.9	-160.3	-2.0	10,218.3	12,875.1	2,656.8	26.0
8	Singapore	83,802.0	95,332.5	11,530.5	13.8	62,300.6	66,020.3	3,719.7	6.0
9	Thailand	26,944.2	34,690.0	7,745.8	28.7	23,539.8	24,992.5	1,452.7	6.2
10	Viet Nam	6,214.0	7,730.8	1,516.9	24.4	12,453.7	15,444.5	2,990.7	24.0
	<b>TOTAL</b>	<b>189,177.5</b>	<b>219,265.3</b>	<b>30,377.8</b>	<b>16.1</b>	<b>163,595</b>	<b>184,161.6</b>	<b>21,067.6</b>	<b>12.9</b>

*Source : ASEAN Secretariat*

# Total ASEAN Trade 2006-2007

(US\$ Million)

No	Country	Export				Import			
		2006	2007	Change		2006	2007	Change	
				Value	%			Value	%
1	Brunei	7,619.4	7,653.2	33.9	0.4	1,488.9	2,096.7	607.8	40.8
2	Cambodia	3,514.4	3,905.5	391.1	11.1	2,923.0	3,675.1	752.1	25.7
3	Indonesia	100,798.6	114,100.9	13,302.3	13.2	61,065.5	74,473.4	13,408.0	22.0
4	Lao PDR	403	n/a	n/a	n/a	588	n/a	n/a	n/a
5	Malaysia	157,226.9	176,409.1	19,182.3	12.2	128,316.1	147,135.2	18,819.1	14.7
6	Myanmar	3,514.8	5,933.4	2,418.6	68.8	2,115.5	2,789.1	673.6	31.8
7	Philippines	47,410.1	50,465.7	3,055.6	6.4	51,773.7	55,513.7	3,740.1	7.2
8	Singapore	271,607.9	301,376.5	29,768.7	11.0	238,482.0	267,227.6	28,745.6	12.1
9	Thailand	121,579.5	153,534.7	31,955.3	26.3	127,108.8	138,690.4	11,581.6	9.1
10	Viet Nam	37,033.7	48,288.9	11,255.3	30.4	40,236.8	61,693.6	21,456.7	53.3
	<b>TOTAL</b>	<b>750,708.3</b>	<b>861,668.1</b>	<b>111,362.9</b>	<b>14.8</b>	<b>654,098.3</b>	<b>753,294.9</b>	<b>99,784.6</b>	<b>15.3</b>

**Source : ASEAN Secretariat**

# Background of ACIA

## Decision of 39<sup>th</sup> ASEAN Economic Ministers Meeting in 2007:

- review the Framework Agreement on the 1998 ASEAN Investment Area (AIA) and the 1987 ASEAN Agreement for the Promotion and Protection of Investment (ASEAN IGA).
- A comprehensive ASEAN investment agreement (ACIA) to be drafted based on agreed guiding principles.
- Main objectives:
  - ❖ to create a free and open investment regime to attract investments
  - ❖ to achieve ASEAN economic integration (i.e. AEC)
- Signing of ACIA by AEM completed in February 2009.

# Structure of ACIA

- **A comprehensive agreement:**
  - **Covering liberalisation, protection, facilitation and promotion.**
  - **Inclusion of new provisions**
  - **Improvement of existing AIA/IGA provisions**
- **A total of 49 Articles, 2 Annexes, and 1 Schedule (reservation list of Member States)**

# Articles in the ACIA

- Objectives
- Guiding Principles
- Scope of Application
- Definitions
- National Treatment
- Most Favoured Nation Treatment
- Prohibition of Performance Requirements
- Senior Management and Board of Directors
- Reservations
- Modification of Commitments
- Treatment of investment
- Compensation in Case of Strife
- Transfers
- Expropriation and Compensation
- Subrogation
- Measures to Safeguard BOP
- General Exceptions
- Security Exceptions
- Denial of Benefits
- Special Formalities
- Transparency
- Entry, Temporary Stay of Personnel
- Special and Differential Treatment
- Promotion of Investment
- Facilitation of Investment
- Enhancing ASEAN Integration
- State-State Dispute Settlement
- Investor-State Dispute Settlement
- Annex – Approval in Writing
- Annex - Expropriation

# **Contents of ACIA: an Assessment**

# **Contents of ACIA: an Assessment**

- **ACIA reflects international best practices:**
  - **US Model Investment Agreement**
  - **NAFTA**
  - **OECD Guidelines for Multinational Enterprises**
  - **ASEAN FTAs (Investment chapter)**
  - **UNCTAD' publications on international investment agreements**

# ACIA vs AIA/ASEAN IGA

## ACIA

- A single investment agreement. Provides clear interaction of the provisions, e.g. liberalisation and protection.
- Grants immediate benefits to ASEAN investors and ASEAN-based foreign investors. Shorter deadline to achieve free and open investment environment (2015).

## AIA/ASEAN IGA

- AIA and ASEAN IGA are 2 separate agreements. No clear interaction between the two.
- AIA benefits ASEAN investors first (2003-2010) and non-ASEAN investors (by 2020).

# ACIA vs AIA/ASEAN IGA

## ACIA

- Clear and transparent procedures for obtaining specific approval in writing.
- Comprehensive and clear definitions in line with international investment agreements.
- Covers portfolio investments.

## AIA/ASEAN IGA

- No procedures on obtaining approval in writing.
- Limited definitions. Investment not defined in AIA.
- AIA excludes portfolio investment.

# ACIA vs AIA/ASEAN IGA

## ACIA

- **Commitment on Prohibition of Performance Requirements (TRIMs). Assessment within 2 years to consider additional commitments (TRIMs-Plus).**
- **Commitment on SMBD to encourage inflow of key foreign senior management personnel and directors.**
- **Clear procedures on Modification of Schedules of Commitments.**
- **Modification of Schedules may include provisions for compensatory adjustment to ensure balance of benefits.**

## AIA/ASEAN IGA

- **No commitment on Prohibition of Performance Requirements.**
- **No commitments on Senior Management and Board of Directors (SMBD)**
- **Modification procedures not provided.**
- **No provisions on compensatory adjustment.**

# ACIA vs AIA/ASEAN IGA

## ACIA

- ISDS provisions are comprehensive, with detailed procedures.
- New article on consultation among Member States on ACIA matters and its implementation.

## AIA/ASEAN IGA

- ISDS provision under ASEAN IGA are less comprehensive.
- No such provision in AIA.

**ACIA Based on  
Guiding Principles  
Endorsed by AEM**

## **GUIDING PRINCIPLE 1**

**Forward looking, reaffirming, improving and building upon the existing AIA and ASEAN IGA.**

### **ACIA**

**Forward looking with new commitments such as:**

- ❖ **Prohibition of Performance Requirements (PPR)**
- ❖ **Senior Management and Board of Directors (SMBD)**

**Reaffirm the relevant provisions of AIA and ASEAN IGA, such as:**

- ❖ **National Treatment (NT)**
- ❖ **Most Favoured Nation Treatment (MFN)**

**Further improvement of existing AIA and ASEAN IGA provisions:**

- ❖ **Investment Dispute between an Investor and Member State (ISDS)**
- ❖ **Transfers**
- ❖ **Treatment of Investments**

## **GUIDING PRINCIPLE 2**

No back-tracking of commitments except with compensation.

### **ACIA**

ACIA has a provision on compensatory adjustment to deal with modification of schedules of commitments.

## **GUIDING PRINCIPLE 3**

Balanced in its focus: incorporating liberalisation, promotion, facilitation, and protection

### **ACIA**

ACIA incorporates provisions on liberalisation, promotion, facilitation and protection.

## **GUIDING PRINCIPLE 4**

Progressive liberalisation to achieve free and open investment environment, in line with AEC.

### **ACIA**

ACIA adopts a single negative list approach on scheduling reservations. Progressive elimination of reservations in accordance with the AEC Strategic Schedule in 3 phases (2008-2010, 2011-2013, 2014 -2015).

## **GUIDING PRINCIPLE 5**

Benefit ASEAN-owned investors and companies and foreign-owned ASEAN based investors.

### **ACIA**

ASEAN investors and foreign-owned ASEAN-based investors will enjoy benefits of the ACIA.

## **GUIDING PRINCIPLE 6**

Consider granting special and differential (S&D) treatment for the newer ASEAN Member States.

### **ACIA**

New S&D provision through technical assistance, capacity building and facilitation.

## **GUIDING PRINCIPLE 7**

Flexible treatment taking into account individual countries sensitivities.

### **ACIA**

Specific concerns of Member States addressed in ACIA as appropriate, e.g. footnotes.

## **GUIDING PRINCIPLE 8**

Preservation of ASEAN preferential treatment.

### **ACIA**

Extends MFN automatically to all Member States as provided for in the AIA.

## **GUIDING PRINCIPLE 9**

Allow expansion to cover other sectors in the future.

### **ACIA**

Covers manufacturing, agriculture, fishery, forestry and mining and services incidental to these sectors. Allows for inclusion of other sectors in the future.

# **Benefits of ACIA**

# **Benefits of ACIA: ASEAN Investment Environment**

- **Free and open investment regime by 2015 when Member States have reduced or eliminated investment impediments (reservation lists) according to the 3 Strategic Schedules of the AEC;**
- **ACIA's comprehensive provisions on protection of investment can improve investment climate and investors' confidence to invest in ASEAN;**
- **Encourages further development of intra-ASEAN investments, especially among MNCs based in ASEAN through regional production networks, industrial complementation or specialisation; and**
- **Enhances overall ASEAN economic integration.**

# **Benefits of ACIA: Business Sector**

- **ASEAN-based investors can enjoy the benefits of non-discriminatory treatment when they invest in other ASEAN countries. They will be granted similar treatment as domestic (host country) investors, and treatment vis-à-vis other ASEAN-based investors.**
- **In case of investment disputes with host governments, investors have the choice to bring a claim to domestic courts (where applicable), or to international arbitration.**
- **Investors can expect a minimum standard of treatment for their investments, including fair and equitable treatment and full protection and security.**

# **Benefits of ACIA: Business Sector**

- **Assurance that funds (e.g. capital, profits, dividends, etc.) can be transferred freely into and out of host countries.**
- **Investments will not be expropriated, except for public purposes. Clear provisions on compensation based on fair market value.**
- **Non-discriminatory treatment for compensation for losses arising from civil strife, riots, etc.**
- **Cooperation among ASEAN governments in promotion and facilitation of investment.**

# Next Steps

**Drafting the Reservation Lists of ASEAN Member States. To be finalised by August 2009.**

**Phasing out reservations based on AEC Strategic Schedule.**



**Thank You**