

“The ASEAN Comprehensive on Investment Agreement (ACIA): possible lesson learned”

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Outline Presentation

2

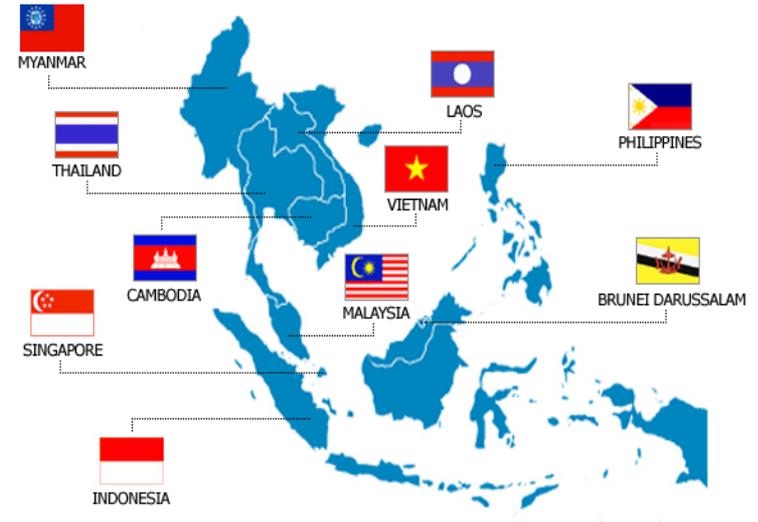
- Overview
- Background: why review the AIA?
- Evolution of ASEAN investment agreements
- The ASEAN investment cooperation institutional structures
- ASEAN Comprehensive on Investment Agreement (ACIA)
- Key Points possible learn
- Challenges ahead



Overview

3

- *Association of South East Asian Nations (ASEAN)* was established in 1967. ASEAN member countries consist of 10 (ten) countries, namely: Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darussalam, Cambodia, Lao PDR, Myanmar, and Viet Nam.
- There are 3 (three) pillars ASEAN economic cooperation:
 1. Trade in Goods (*ASEAN Trade in Goods Agreement/ATIGA*)
 2. Trade in Services (*ASEAN Framework Agreement on Services/AFAS*)
 3. **Trade in Investment (ASEAN Investment Agreement/AIA)**





Overview

Facts and Figures (2009)

- Total population ASEAN has reached **590.6 million** people, recorded to be the third largest in the region after China and India.
- Total GDP ASEAN reached **USD 1.49 trillion**.
- Total trade merchandise in ASEAN amounted **USD 1.54 trillion**
- Meanwhile, total FDI inflows in ASEAN reached **USD 39.6 billion** or 3.6% of global FDI inflows reached USD 1,1 trillion.

Source:

ASEAN database 2009

World Investment Report 2010, UNCTAD

No	ASEAN Member country	Total population (000)	GDP (USD million)
1	Brunei Darussalam	406.2	14,146.7
2	Cambodia	14,957.8	10,368.2
3	Indonesia	231,369.5	546,527.0
4	Lao PDR	5,922.1	5,579.2
5	Malaysia	28,306.7	193,107.7
6	Myanmar	59,534.3	24,972.8
7	The Philippines	92,226.6	161,357.6
8	Singapore	4,987.6	182,701.7
9	Thailand	66,903.0	264,322.8
10	Vietnam	86,024.6	96,317.1
	TOTAL	590,638.3	1,499,400.8

Source: ASEAN database 2009

Overview

Legal framework for investment cooperation

- ASEAN Investment Area (AIA) was signed in 1998. ASEAN Investment Guarantee Agreement (IGA) signed on 1987 and it' protocol in 1996.
- ASEAN IGA was more region-wide investment agreement, covered: protection and promotion elements. Meanwhile AIA was designated to further enhance the process of FDI policy liberalization, promotion, facilitation and harmonization that was already taking place in ASEAN.

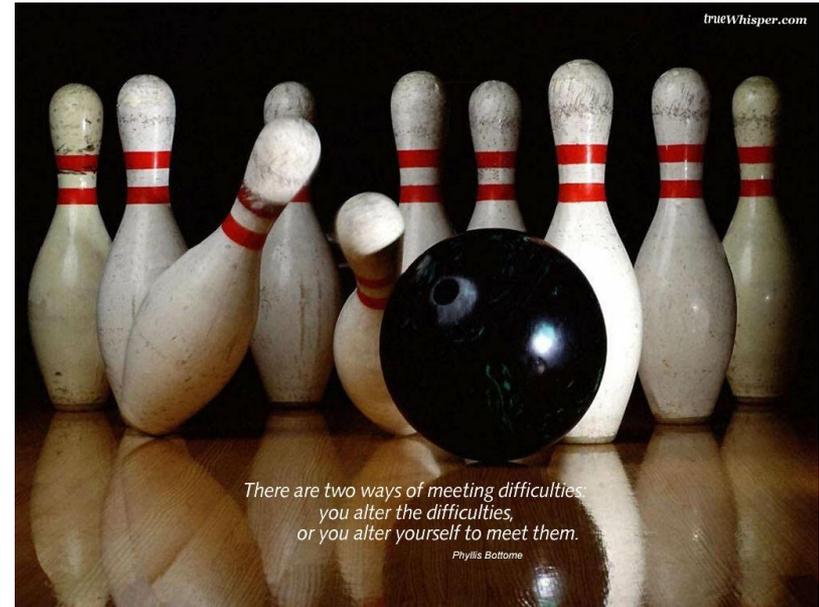
Background: why review the AIA?



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- Global economic conditions after financial crisis in 1997-1998 was still affected
- Inadequacy of AIA to meet AEC objectives
- Developments in bilateral and regional FTAs investment agreements
- The new emerging country: China and India.



Background: why review the AIA?

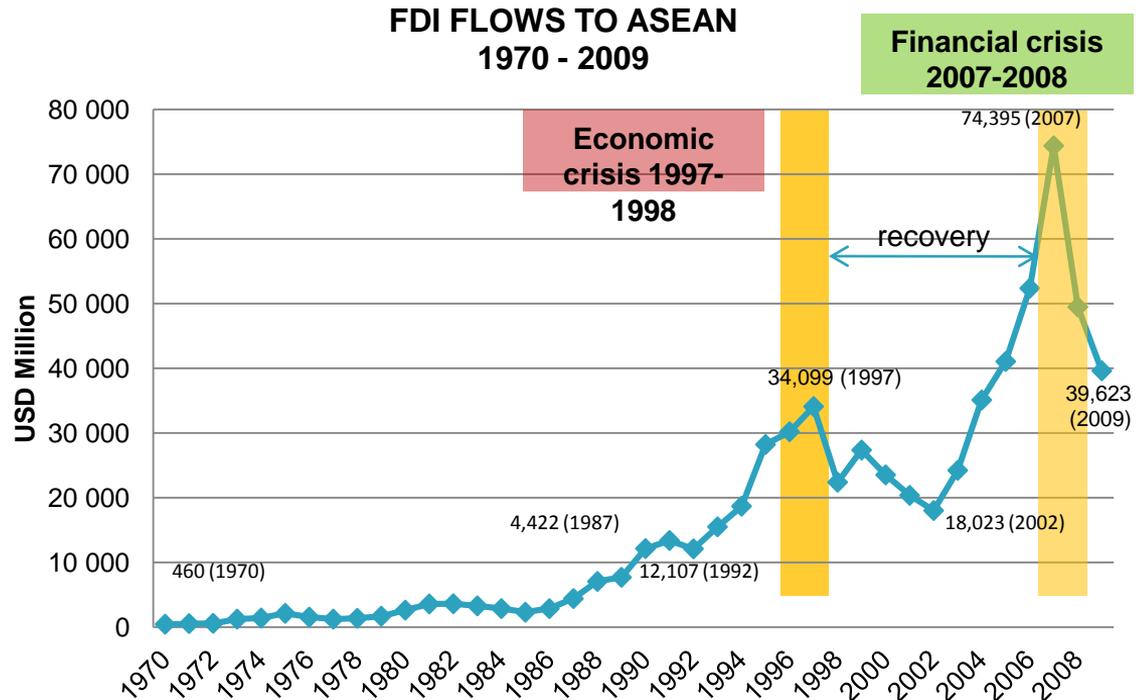


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■ Global economic conditions after financial crisis in 1997-1998 was still affected

- FDI inflows to ASEAN has been increased drastically, from USD 460 mil (1970) to **USD 34,099 mil (1997)**. Gain momentum in 2007 reached **USD 74,395 mil**
- FDI get slow down due to economic crisis in 1997-1998. Some developing countries have recovered but some others still struggling to quit from the impact.



Resources: UNCTAD Stats and ASEAN Database

Background: why review the AIA?



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- Inadequacy of AIA to meet AEC objectives
 - **AEC objectives**: single market and production base
 - **Insufficient scope**:
 - * AIA cover only market access
 - * Protection of investment is under 1987 IGA
 - **Irrelevant measures**: AIA was drafted before Asian economic crisis 1997



Background: why review the AIA?



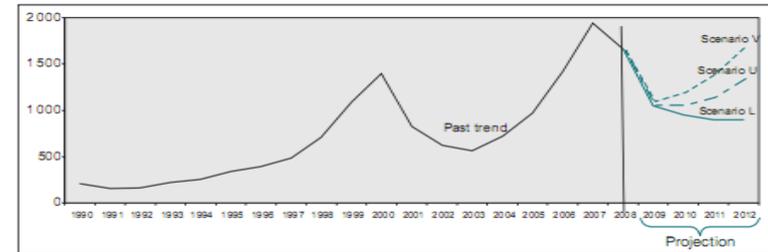
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■ Developments in bilateral and regional FTAs investment agreements

- **Bilateral:** Most AMSs have more comprehensive FTA with developed and developing countries
- **Regional:** ASEAN+1 FTA more comprehensive than AIA, i.e. Australia-New Zealand, China, Korea.
- **Unilateral:** Several AMSs undertook liberal investment policy reforms
- **Multilateral:** DDA negotiation was going no where.

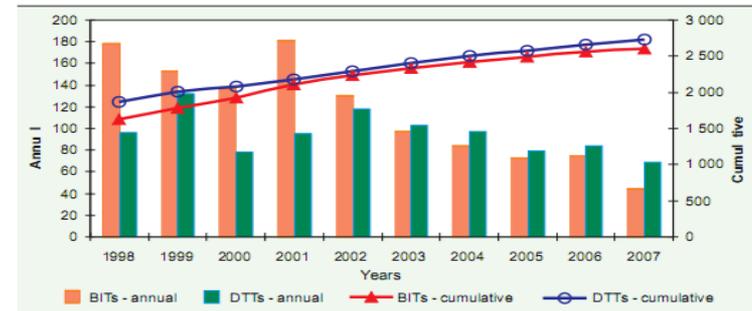
Figure 8. Worldwide FDI inflows with three different trajectories, 1990-2012 (Billions of dollars)



Source: UNCTAD, based on FDI/TNC database (www.unctad.org/fdi/statistics) and UNCTAD own estimates.

Note: The shapes of V, U and L scenarios are based on different assumptions regarding recovery for illustrative purposes only and not based on any statistical analysis.

Figure I.10. Number of BITs and DTTs concluded, annual and cumulative, 1998-2007



Source: UNCTAD (www.unctad.org/ita).



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Evolution of ASEAN Investment Agreement

10



**ASEAN
IGA
(1987)**

**AIA
(1998)**

**ACIA
(2009)**

**ASEAN
Economic
Community
(AEC)**



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ASEAN

Comprehensive Investment Agreement (ACIA)



ACIA = IGA + AIA

ASEAN Investment Guarantee Agreement (IGA) 1987

Covered: Protection and Promotion elements

ASEAN Investment Area (AIA), 1998

Covered: Liberalization, Facilitation and Promotion elements

5 sectors and services incidental to 5 sectors

Liberalization commitment with TEL/SL mechanism

ASEAN Comprehensive on Investment Agreement (ACIA), 2009

Covering 4 pillars: Liberalization, Protection, Facilitation and Promotion
5 sectors and services incidental to 5 sectors

Liberalization commitment with a single reservation list

ASEAN Comprehensive on Investment Agreement (ACIA)



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- The 10th AIA/39th AEM agreed to review the AIA (1998) and ASEAN IGA (1987)
- The formal negotiation began on January 2008 based on guiding principles approved by AIA/AEM
- ACIA completed and signed by AEM on 26 February 2009, Hua Hin, Thailand
- ACIA has not entry into force yet

IMPORTANT: “ACIA brings a new dimension to IIAs, namely that it is, on the one hand, an instrument which is carefully designed to achieve ambitious, comprehensive goals. On the other hand, it incorporates many built-in flexibilities to accommodate the effective implementation. The combination of ambitious aims, flexibilities, and effective implementation mechanism are the important ingredients for the desired accomplishment.”

Contents of ACIA

14

- Consist of 50 articles, 2 annexes and a single reservation list
- Key Features
- More comprehensive investment agreement than existing ASEAN IGA and AIA
- Taken into account International “good” practices



Contents of ACIA

15

- Consist of 50 articles, 2 annexes and a single reservation list

■ Key Features

- More comprehensive investment agreement than existing ASEAN IGA and AIA
- Taken into account International “good” practices

- Forward looking
- Reaffirming the relevant provisions of AIA and ASEAN IGA
- Flexible treatment taken into account individual countries sensitivities
- No-backtracking of commitments except with compensation
- Balanced in its focus: incorporating liberalisation, protection, facilitation and promotion



Contents of ACIA

- Consist of 50 articles, 2 annexes and a single reservation list

■ Key Features (2)

- More comprehensive investment agreement than existing ASEAN IGA and AIA
- Taken into account International “good” practices

- Progressive liberalisation to achieve free and open investment environment, in line with AEC
- Benefit ASEAN-owned investors and companies and foreign-owned ASEAN based investors
- Granting special and differential treatment (S&D) for the newer AMS
- Preservation of ASEAN preferential treatment
- Allow expansion to cover other sectors in the future
- Reciprocal treatment in enjoyment of the concessions as in the AIA



Contents of ACIA

17

- Consist of 50 articles, 2 annexes and a single reservation list
 - Key Features
 - **More comprehensive investment agreement than existing ASEAN IGA and AIA**
 - Taken into account International “good” practices
- The revision of AIA and ASEAN IGA into a single agreement (more clearer interaction: liberalization and protection).
 - ACIA grants immediate benefits to both ASEAN investors and ASEAN-based foreign investors (with shorter deadline).
 - Clear and comprehensive scope of application on inclusions and exclusions.
 - Clear and transparent procedures for obtaining specific approval in writing.
 - Comprehensive coverage of definitions in line with international investment agreements.
 - Extended to portfolio investment. However, reservations can be taken.



Contents of ACIA

- Consist of 50 articles, 2 annexes and a single reservation list
- Key Features
- More comprehensive than existing ASEAN IGA and AIA
- **Taken into account International “good” practices**

- Compared to the model text of developed countries, ACIA had some limitations [No TRIMs plus commitments]
- ISDS provisions covers only post establishment. [Could be further expanded to cover the whole life cycle of investment].
- Does not provide for automatic binding (ratchet) of autonomous liberalization. ASEAN still need policy flexibility to develop domestic industries.
- These element could be looked into when ASEAN economies become more developed.
- Adoption of a single negative list approach with progressive liberalization commitment with clear timelines is considered new by

Key Points possible learn

19

- Domestic policy environment
- Complementary vs. substitutability argument
- Framework of the ACIA
- Political will and commitment
- “The ASEAN way”: go slow approach but sure does
- The role of ASEAN Secretariat
- Other aspect of ASEAN investment cooperation

Challenges ahead

20

- The unfinished agenda
- The challenge of deeper economic integration
- The rising regionalism in East Asia



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Key Points possible learn

■ Domestic policy environment

- AMS have been undertaking an internal policy reforms during mid 1980's – today, i.e. on trade and investment policy
- In trade performance, ten years after AFTA established in 1992, the AFTA has reached its initial targets. ASEAN-6 as the original signatories to AFTA agreement have lowered their tariffs to **0-5%** in about **96% their tariff lines**, in accordance with agreed schedule. In fact, in 2010, ASEAN has reached their tariff to 0-5% in **99.1% their tariff lines**.
- The domestic industries became more efficient and competitive.

Table 1. Average CEPT rates by country 1993-2003 (percent)

Country	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Brunei D.	3.78	2.64	2.54	2.02	1.61	1.37	1.55	1.26	1.17	0.96	1.04
Indonesia	17.27	17.27	15.22	10.39	8.53	7.06	5.36	4.76	4.27	3.69	2.17
Malaysia	10.79	10.00	9.21	4.56	4.12	3.46	3.20	3.32	2.71	2.62	1.95
Philippines	12.45	11.37	10.65	9.55	9.22	7.72	7.34	5.18	4.48	4.13	3.82
Singapore	0.01	0.01	0.01	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Thailand	19.85	19.84	18.16	14.21	12.91	10.24	9.58	6.12	5.67	4.97	4.63
ASEAN-6	11.44	10.97	10.00	7.15	6.38	5.22	4.79	3.64	3.22	2.89	2.39
Cambodia								10.39	10.39	8.89	7.94
Lao PDR						5.00	7.54	7.07	7.08	6.72	5.86
Myanmar						2.39	4.45	4.43	4.57	4.72	4.61
Vietnam				0.92	4.59	3.95	7.11	7.25	6.75	6.92	6.43
CLMV				0.92	4.59	2.98	6.31	7.51	7.17	6.77	6.22
ASEAN-10				7.03	6.32	4.91	5.01	4.43	4.11	3.84	3.33

Source: ASEAN Secretariat.

