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Learning from the ASEAN+1 Model and the ACIA

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Abstract: *The Regional Comprehensive Economic Partnership (RCEP) is a new regional integration initiative intended to achieve a modern, comprehensive, high-quality, and mutually beneficial economic partnership agreement among the ASEAN Member States (AMSs) and ASEAN's FTA Partners. The RCEP initiative was announced by the ASEAN Leaders in November 2011 during the 19th ASEAN Summit. It is believed that this ASEAN-led process will enable ASEAN to broaden and deepen its economic engagements with its FTA partners. The RCEP will enhance access to a huge potential market, bringing benefits to both businesses and consumers in the participating countries. The agreement is between 16 countries, which make up 45 percent of world population and contribute a third of the world's GDP in total. The RCEP should lead to greater economic integration, support equitable economic development, and strengthen economic cooperation among the countries involved.*

In general, RCEP can be seen as regional economic integration in East Asia on a higher level. It is assumed that RCEP will produce a commitment from AMSs and all partners (although there are several possible exceptions). Commitments from the partners are also expected to be in conjunction with the commitments made with individual AMSs. Additionally, the commitments made under RCEP are supposed to be substantially better compared to the existing ASEAN+1 commitment. This technical note aims to support RCEP through a key point analysis of the current ASEAN+1 FTA agreements. This analysis is expected to become an input for policy on the baseline for RCEP negotiation in the area of investment.

This technical note is composed of the following parts: 1) a narrative on the background, which is then followed by an account of the evolution of IGA, AIA, and ACIA[1]; 2) a discussion on the progress of the ASEAN+1 FTA Agreements on Investments; and 3) the reservation lists in the ACIA. The note ends with a brief conclusion.

Keywords: ASEAN, International Trade Agreements, FDI
JEL Classification: F130, F210

[1] IGA - Investment Guarantee Agreement, AIA - ASEAN Investment Agreement, ACIA - ASEAN Comprehensive Investment Agreement.

1. Evolution of IGA, AIA, and ACIA

The acceleration of industrialisation in ASEAN countries has been a most important issue for ASEAN leaders. In order to reach that goal, there was a need for healthy flows of technology and investment into ASEAN countries. There was also a need for ASEAN nations and ASEAN companies in other ASEAN territories to create profitable conditions for investment. This background led to the establishment of the Investment Guarantee Agreement (IGA) which was signed in 1987. The objective of IGA was to **promote greater investment flows** between pairs of countries by providing a legal framework that clearly sets out the investment **norms and protection** applying when investing in the other country.

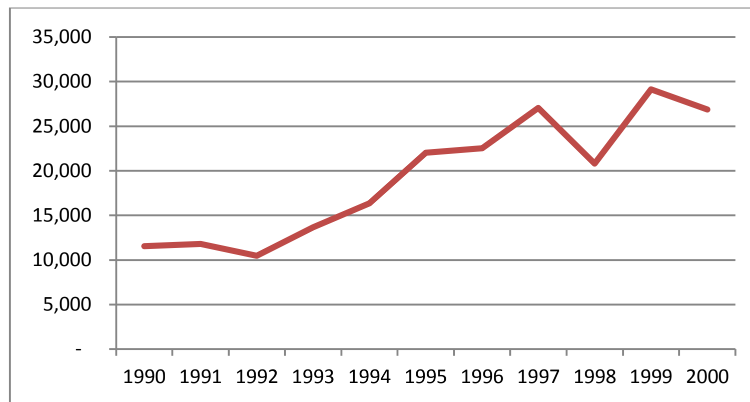
Several basic principles underline IGA:

1. principle of fair and equitable treatment,
2. principle of non-discrimination (National Treatment and/or Most Favoured Treatment),
3. compensation in the event of expropriation,
4. free transfer of funds, and
5. investor-state dispute settlement mechanisms.

Furthermore, the ASEAN countries' objectives shifted from not only developing the number of investment inflows to each country but also towards developing ASEAN into an integrated united economic system, thus, reducing restrictions in the investment inflows among ASEAN countries. The expansion of the ASEAN market through economic integration and the wider acceptance of investment inflows among ASEAN countries will eventually increase the total of foreign direct investment (FDI) entering each ASEAN country.

The factors above led to thoughts of the need for a more comprehensive agreement than the existing IGA agreement, resulting in the signing of the ASEAN Investment Agreement – an enhancement of IGA – on 7 October 1998. Another event propelling the implementation of the AIA was the economic crisis experienced by ASEAN countries in 1998.

Figure 1: FDI Inflows, in million US$



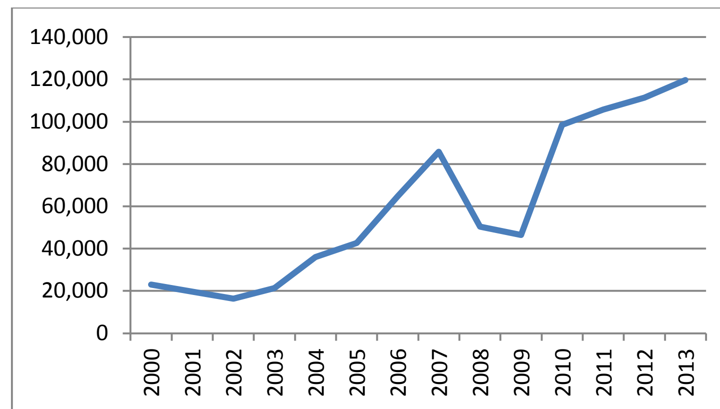
Source: EIU.

The trend of FDI inflows in ASEAN countries showed a significant increase between 1992 and 1997 from US$11,549 million in 1992 to US$27,042 million in 1997. The economic crisis suffered by ASEAN countries in 1998 resulted in a drastic decline of FDI to US$20,817 million in that year. Several ASEAN countries such as Malaysia and Thailand underwent a rapid recovery but others, including Indonesia, needed several years to do so.

As stated in the Framework Agreement on ASEAN, the objectives of the AIA were: (i) To establish a competitive ASEAN Investment Area, with **a more liberal and transparent investment environment** among Member States, so as to increase FDI inflows into ASEAN; (ii) To jointly promote ASEAN as the most attractive **investment area**, and to strengthen and increase the competitiveness of ASEAN's economic sectors; (iii) To **reduce or eliminate regulations and conditions which impede investment flows** and the operation of investment projects in ASEAN; and (iv) To contribute towards **free flow of investment by 2020**.

In 2008 a global financial crisis occurred, initiated by the collapse of the financial sector in the US. As newly emerging countries, ASEAN countries ran the risk of investment fund withdrawal from the developed countries which invested in ASEAN territories.

Figure 2: Inward Direct Investment to ASEAN



Source: EIU.

With the failure of negotiations of the World Trade Organization (WTO) – due to prevailing ascendancy of national egotism and territorialism – both bilateral and multilateral free trade agreements (FTAs) had developed between ASEAN as an economic union with neighbouring countries which had quite comprehensive economical relationships, such as China, Korea, Japan, India, Australia, and New Zealand. Additionally, each ASEAN country had individually conducted bilateral agreements with one another. All of these FTA agreements had more comprehensive provisions compared to the AIA or the ASEAN IGA. For that reason, ASEAN countries felt the need to review the AIA and tried to redesign a new agreement which suited the current situation and condition. A review of the AIA and the ASEAN IGA was then conducted in the 34th ASEAN Economic Ministers (AEM) meeting. A set of principle guidelines as a basis for formal negotiations had also been developed by AIA/AEM. Eventually, the ASEAN Comprehensive Investment Agreement (ACIA) was completed and signed by the AEM on 26 February 2009.

As stated in the ACIA Agreement, the aims of the ACIA were (i) progressive liberalisation of the investment regimes of member states; (ii) provision of enhanced protection to investors of all member states and their investments, (iii) improvement in transparency and predictability of investment rules, regulations, and procedures conducive to increased investment among member states; (iv) joint promotion of the region as an integrated investment area; and (v) cooperation to create favourable conditions for investment by investors of a member state in the territory of the other member states.

The AIA Agreement covered manufacturing, agriculture, fishery, forestry, mining and quarrying, and services incidental to these five sectors. The ACIA has the same scope as the AIA. The difference between the two is that in the AIA it was stated that the agreement did

not include portfolio investments, while ACIA clearly states in the definition of 'investment' that its scope includes portfolio investments. In addition, according to the ACIA it is possible to add new sectors to the reservation lists. In the head note of the ACIA Schedule, it is stated that each member state reserves the right to make future reservations, including new and emerging sectors or subsectors or existing sectors that are unregulated at the time of submission of the reservation lists.

Both the AIA and ACIA have lists of sectors/subsectors and the arrangement of whether an investment is open or not which is known as the reservation list. In relation to the reservation lists, the AIA applied a two-track approach, using a Temporary Exclusion List in which a sector/subsector was to be reviewed every two years and to be phased out in general by 2010, and a Sensitive List which would also be reviewed periodically. The ACIA, in contrast, applies a single negative list approach, in which the progressive reduction or elimination of reservations refers to the Strategic Schedule of ASEAN Economic Community (AEC) over three phases (2008–2010, 2011–2013, and 2014–2015).

The AIA consisted of three main programmes: (i) a co-operation and facilitation programme, (ii) a promotion and awareness programme, and (iii) a liberalisation program. The ACIA consists of more comprehensive provisions covering the 'four pillars of investment', namely, liberalisation, protection, facilitation, and promotion.

Associated with the protection pillars, the ACIA has broadened its scope to include investors from outside ASEAN. As stated in the ACIA agreement, 'investor' means a natural person of a member state or a juridical person of a member state that is making, or has made an investment in the territory of any other member state. Thus, a person can be considered as an ASEAN investor as long as he/she founds a juridical entity in one of the ASEAN countries even though the person comes from a non-ASEAN country. Afterward he/she can invest in other AMSs.

Another difference between ACIA and AIA is about the period of limitation. According to the AIA, all industries were planned to be open for investment by ASEAN investors by 2010, and for all investors by 2020. The ACIA, however, sets a target of 2015 for both ASEAN investors and ASEAN-based foreign investors.

2. The Progress of ASEAN+1 FTA Agreements in Investment

One means by which ASEAN countries have sought integration with other global economies has taken the form of the ASEAN+1 agreement. This scheme aims to open opportunities for economic cooperation, investment, and market development both inside and outside ASEAN.

The first ASEAN+1 agreement was between ASEAN and China. The Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China was signed on 4 November 2002. The Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of ASEAN and the Republic of Korea was signed on 13 December 2005. The ASEAN-Japan Comprehensive Economic Partnership Agreement (AJCEP) was signed in April 2008. The ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) was signed in February 2009. These four agreements were all ratified on 1 January 2010 and among the areas they cover are trade in goods, trade in services, and investment. Another ratified agreement is the ASEAN-India FTA which only covers the trade-in-goods aspect. Another version of the ASEAN+1 FTA model – the ASEAN-European Union (EU) FTA – was paused in negotiation by the Joint Committee in 2009, and the approach is to be changed to a bilateral model.

Both Korea and China have made specific agreements on investment with ASEAN which were signed on 2 June 2009 and 15 August 2009, respectively. Australia and New Zealand have entered a specific chapter on investment into their FTA comprising protection, promotion, and facilitation. Exclusively for ASEAN-Japan collaboration, a subcommittee on trade in service and investment has been founded to deal with negotiations.

FTAs emerged as the multilateral trade process (WTO) stagnated. Gains from FTAs can be identified through traditional and non-traditional benefits (Zhang, 2013). Some traditional benefits are trade creation and trade diversion by cutting tariff barriers, improving terms of trade by having common standards for production technology, product regulations, distribution and after-sales service, increasing returns to scale by export expansion, more efficient allocation of resources, and stimulating regional and outside investment which will subsequently create more jobs and facilitate transfers of advanced technology. The non-traditional benefits can be identified as having insurance through regional cooperation, a more secure international environment, improving bargaining power in external negotiations, and promoting domestic reforms.

Nonetheless, there are also some concerns with regard to ASEAN+1 FTAs, such as trade diversion effects on FDI. By utilising an ASEAN+1 agreement, multinational companies are enabled to have less investment in each ASEAN country (Chirathivat, 2013). This implies that ASEAN countries which have a high reliance on their FDI will face a drawback with the application of a trade diversion effect. Moreover, the implementation of a cumulative regional policy on rules of origin (ROO) based on an ASEAN+1 agreement can lead to intensification of exports from the ASEAN partner country. This is all in addition to the other long-term concern that an ASEAN+1 FTA might lower ASEAN's potency as the hub of Asia.

Another concern relates to the weak bargaining power between ASEAN and each of its dialogue partners, since no official resolution binds all ASEAN members prior to negotiations with a dialogue partner (Chirathivat, 2013). An ASEAN+1 agreement is regarded as a result of the negotiations by each ASEAN country with one powerful trade partner, not for ASEAN as a whole.

The two sections below discuss several matters regarding the ASEAN+1 FTAs, especially those which already contain Investment Agreement with ASEAN, namely, ASEAN-China, ASEAN-Korea, and ASEAN-Australia-New Zealand.

2.1. Negotiation Modalities

In general, the approaches in conducting negotiations between ASEAN and FTA partners are classified into two: (i) the negotiation regarding the topic agreement and (ii) the negotiation regarding ASEAN member countries.

(i) Based on their *topic*, the ASEAN-China and ASEAN-Korea FTAs employ the gradual/sequential approach when conducting FTA negotiations with trading partners. As a general rule, the first phase relates to goods, then services, and then investment.

In the case of the ASEAN-China FTA, the Trade in Goods, Trade in Services, and Investment Agreements under the Framework Agreement of Comprehensive Economic Cooperation were concluded and signed in November 2004, in January 2007 and August 2009, correspondingly. The ASEAN-Korea Trade in Goods, Trade in Services, and Investment Agreements were signed in August 2006, November 2007, and June 2009, respectively.

By contrast the ASEAN-Australia-New Zealand FTA uses the 'comprehensive and single undertaking upon signing' approach. In the agreement, there are 18

substantive chapters, with the schedule of specific commitments annexed. Among those chapters, one specific chapter on investment and another on economic cooperation provide a framework for trade and investment-related cooperation. In order to complete the agreement above and to ease its implementation, there is another agreement called the Implementing Agreement for a Five-year Economic Cooperation.

As a whole, these negotiation approaches only consider practical concerns in which the decision on which method should be employed for a certain negotiation is based on the situation and conditions at the time the agreement is composed and on the agreement among member countries.

(ii) In the *country-based* negotiation approach, in general the negotiations between ASEAN and a developing partner are conducted inclusively and comprehensively as a unity. The negotiations, however, also consider sensitive issues and discrepancies in the level of development among ASEAN member countries. This consideration could include the provision of Standard and Differential Treatment to ASEAN and consideration of the flexibility of some ASEAN countries, especially the CLMV[2] countries, in implementing the points of agreement.

2.2. Objectives and Principles of ASEAN+1 FTAs

In general, all ASEAN+1 FTA countries have similar backgrounds, which means that all have several main points that they want to achieve. These are to:

(i) Minimize barriers and deepen as well as widen economic linkages among parties.

(ii) Lower business costs.

(iii) Increase trade and investment.

(iv) Increase economic efficiency.

(v) Create larger markets with more opportunities and greater economies of scale for business.

[2] CMLV refers to Cambodia, Myanmar, Lao PDR, Viet Nam.

More specifically, the FTA agreement goals are, among others:

(i) to progressively liberalise and, through progressive eliminations of tariff and non-tariff barriers, to facilitate trade in goods among parties;

(ii) to promote investment flows and create a liberal, facilitative, transparent, and competitive investment regime; and

(iii) to establish a cooperative framework which further strengthens economic relations among the countries.

In addition, there are also some main principles which were developed into the objectives for ASEAN countries and their partners in settling the FTA agreements. These objectives are:

(i) The FTA should be consistent with and build on members' commitments in the WTO.

(ii) There should be special differential treatments, because there are discrepancies in the level of development and capacity among member countries, both in the ASEAN countries and the potential ASEAN partners.

(iii) The FTA has to boost economic cooperation which mutually benefits all parties, both the ASEAN countries and the potential ASEAN partners.

Thus, in essence, an ASEAN FTA is a supplement to the multilateral WTO agreement framework and not its substitute. Generally and principally, the FTA agreements will refer to the pillars of the ACIA, i.e., liberalisation, protection, promotion, and facilitation. These pillars are then elaborated further in a specified chapter in the FTA agreements.

Regarding ***protection***, this entry can be found in the provisions of the third agreement of an ASEAN+1 FTA Investment Agreement, especially in the article on the Treatment of Investment and the article on Transfer and Repatriation of Profits.

The principles on ***promotion*** and ***facilitation*** of investment are specifically set out in Articles 20 and 21 in the ASEAN-China Investment Agreement, as mentioned in the ACIA. There is no specific article in the Investment Agreement between ASEAN-Korea and ASEAN-Australia-New Zealand regarding the promotion and facilitation of Investment. However, specifically for the ASEAN-Korea FTA, the entries regarding Promotion and Facilitation of Investment are stated in the ASEAN-Korea Framework Agreement on Comprehensive Economic Cooperation. For the ASEAN-Australia-New Zealand FTA, both items are part of the main objectives in the Investment Agreement.

In general, no article specifically deals with the ***liberation*** pillar. The liberation aspect is only mentioned as one of the principles in conducting negotiations. As already stated in the Framework Agreement on Comprehensive Economic Cooperation between China and ASEAN (Article 5), the negotiation between ASEAN and its partner(s) is intended to progressively liberalise their investment regimes; to promote investments; and to create a liberal, facilitative, transparent, and competitive investment regime. However, generally, no specific guidance is related to the liberal aspect in the agreements, especially in terms of attaining a certain level of liberalisation.

Box 1. Liberalisation Principle under ACIA

The ACIA clearly has four pillars: liberalisation, protection, promotion, and facilitation. However, different from the other three pillars, there is no explicit article in the agreement regarding liberalisation. In principle, each ASEAN Member State (AMS) does not need to set any rules or guidance on liberalisation, but will achieve the liberalisation level that is consistent with its capacity. In addition, as an expression of the forward-looking nature of the ACIA, AMSs further commit to progressively clarify and reduce or eliminate their reservations in the future, based on the Strategic Schedule of the AEC Blueprint (Guidelines of ACIA). Thus, technically, each AMS can make any amendments or modifications to any reservations which have been submitted as a way to achieve a more liberalised investment policy regime. However, legally, the revision of the reservation list may be executed after the ratification of a protocol to amend the ACIA, which at the moment is postponed, awaiting legitimate government in place in Thailand.

3. Reservation List in ACIA

In order to implement the transparency principle towards investors on a host country investment regime, each AMS has submitted a list of reservations which provides non-conforming measures[3] and regulations maintained in the sectors under ACIA: manufacturing, agriculture, fishery, forestry, mining and quarrying, as well as services incidental to these five sectors (ACIA Guidebook, 2013).

[3]A non-conforming measure is any law, regulation, procedure, requirement, or practice which violates certain articles of the investment agreement. For example, a law prohibiting an investor of another member state from owning a factory would not conform to the article on national treatment.

The Schedule of Reservations is based on a single reservation list which provides AMSs with a policy space in the liberalisation of investment in the above-mentioned five sectors. This also means that all other parts of the five above-mentioned sectors not stated in a single reservation list are, subject to the national policy, liberalised and open to ASEAN investors.

Some of the major measures or regulations stated in the reservation list are:

1. **Closed sectors for investment**

   Among AMSs which present closed commitments to foreign investors, Indonesia is among those which are very detailed in proposing this kind of list of reservations. This relates to the Presidential Regulation No. 36 of 2010 Concerning the Lists of Closed and Open Businesses with Reservation in the Investment Sector.

   Most of the time, certain sectors are closed to foreign investments because of several concerns, such as:

   a. To provide safety and control

      Cambodia applied closed investment treatment for foreign investors especially in the fields of: poisonous chemicals, agricultural pesticides/insecticides, and other goods which use chemical substances. ***Indonesia*** also closed the possibilities for foreign investors to get involved in the production of weapons, ammunition, explosive devices, and war equipment. However, these subsectors are still open for local investors with a special permit from the Ministry of Defence.

   b. To provide protection for traditional or small-scale economy

      Generally, this category includes fishery, manufacturing, and agriculture for some AMSs. The traditional fishery subsector is closed for foreign investors in ***Indonesia, the Philippines, and Malaysia*** (using the term 'captured fisheries'), since many people with small incomes work in this field. In ***Brunei Darussalam*** particularly, the reservation is also applied for fishery and services incidental to fishing which stipulate that national treatment shall not apply to any measures relating to any fishing activities, including in its exclusive economic zone.

      In the manufacturing sector, ***Indonesia, Lao PDR***, **and Myanmar** also closed foreign investments in traditional/micro-economic sectors, such as: salting/drying fish, hand-painted batik, handicrafts including specific cultural assets, arts value using natural or artificial raw materials, etc. in ***Indonesia***;

or production, processing, and preserving meat and meat products (cattle, pigs, sheep, horses), traditional textiles, etc. in the ***Lao PDR***; and manufacture of bakery products, etc. in ***Myanmar***.

Regarding the agricultural sector, ***Indonesia*** has put barriers on foreign investments, especially for individual crop cultivation in the area less than or equal to 25 hectares and many other similar investments.

c. To maintain sustainability of natural resources

Several business fields are closed for foreign investors especially those with issues of sustainability. ***Malaysia*** had closed the opportunity for foreign investors especially in the forestry sector and services incidental to the forestry subsector. More specific is the limitation of foreign investment in the extraction and harvesting of timber. This policy is implemented in Peninsular Malaysia and Sabah. In ***Indonesia*** several business fields are closed, such as fishery, manufacturing, mining and quarrying, and services incidental to the mining and quarrying sectors.

2. Sectors which are open for investment or managed by certain parties

In the ACIA reservation list are also reservations for several industries which can only be handled by certain institutions, such as Petronas, to explore, exploit, win, and obtain petroleum, either onshore or offshore of ***Malaysia***, especially for oil and gas upstream industries. In ***Myanmar***, several fields such as the manufacture of pharmaceutical drugs, the manufacture of refined petroleum products, and some forestry sectors are only allowed to be handled by state-owned enterprises under the associated ministry. In addition, newspapers can be run by government bodies only.

3. Restriction on land ownership

In general, foreign investors cannot own land, but they can acquire certain rights of land use including concessions and leases. The only difference in reservations among AMSs is the length of the lease periods allowed by each AMS.

Countries which restrict land leases include ***Cambodia***, ***Lao PDR***, ***and Myanmar***. ***Cambodia*** allows a land lease period of 15 years or more, or renewable short-term leases. In the ***Lao PDR***, the reservation including the period of lease is between 35 and 50 years and can be extended for another 25 years to a maximum of 75 years in the fields of agriculture, mining, and energy. ***Myanmar's*** period of land lease is

initially 30 years, extendable by two consecutive terms of 15 years subject to the approval of the Myanmar Investment Commission.

Other AMSs, such as ***Indonesia, Malaysia***, ***and Singapore***, assert that the National Treatment[4] may not apply to any measures affecting land, property, and natural resources associated with the land, including acquisition, ownership, and lease of land and property. In some ways, therefore, land use may be seen as 'unbound', just as a term used under WTO and AFAS commitment, or to put it differently the countries have not decided on a particular restriction or provision, but it cannot be said that the sector is totally open or that restriction is 'none'.

4. The obligation to conduct divestment

Provisions regarding the obligation to conduct divestment are applied in ***Indonesia***. Foreign investors are able to own 100 percent of an enterprise, subject to prior notifications before the license is granted. But after a certain period following commencement of commercial production, foreign investors are obliged to sell a part of the company to domestic investors. This provision is applied in every business sector.

In the case of the mineral and coal mining subsectors in Indonesia, foreign investors, subject to prior notification before the license is granted, should sell shares to domestic investors, so that after five years from the commencement of commercial production, domestic investors own at least 20 percent of the company's shares.

[4] The National Treatment obligation means that investors from other AMSs and their investments will not be discriminated vis-à-vis the domestic/local investors and their investments unless specified in their reservation lists.

5. **Restriction on the percentage of the foreign investor ownership**

This restriction is the most common form of reservation, in WTO, AFAS, and other ASEAN FTAs. Among AMSs, there are differences on how each AMS schedules its reservations for ACIA.

Brunei Darussalam has not asserted restriction variables towards foreign investor ownership in the ACIA business sectors, but requires a 30 percent foreign equity limitation for the following sectors: manufacturing, agriculture, fishery, and forestry, including services incidental to those sectors.

Indonesia imposes many restrictions on foreign investors based on different subsectors or business fields starting from 49 percent to 95 percent foreign equity limitation, including partnership terms with SMEs, needs for specific permits or the possibilities of foreign equity in certain areas. The Indonesian reservation list in ACIA corresponds with Presidential Decree No. 36 of 2010 on the Indonesian Negative Investment list.

For the ***Lao PDR***, particularly for joint ventures, the foreign equity limitation is 30 percent, with a minimum registered capital of US$100,000. In addition, the investment term of a foreign investment enterprise must be for a maximum of 75 years, depending on the nature, size, and condition of the business activities or projects.

The reservation list submitted by ***Malaysia*** is quite interesting. It states that all privatised projects are subject to Malaysia's development policies and the Privatisation Master Plan in respect of foreign participation. Privatisation projects must be at least 75 percent owned by Malaysian shareholders. In addition, foreign participation may be considered in the following cases:

- when foreign expertise is needed to upgrade efficiency because such expertise is not available locally,
- when their participation is necessary to promote export markets,
- when local capital is insufficient, and
- when the nature of the business requires international linkages and exposure.

All conditions imposed on existing privatised entities will continue to be applicable. There is also a limitation on foreign equity (up to 30 percent only) in certain activities/products, of which batik fabrics and apparel, and Integrated Portland Cement are examples. Other provisions in the reservation list only mention that a list

of business fields may be inconsistent with the National Treatment or, in other words, may be considered unbound.

Cambodia has quite a short list of reservations regarding maximum foreign investment, which consists only of tourism and travel-related service sectors and the telecommunication service sector, each sector's limit being 51 percent.

Myanmar and ***Singapore*** have not submitted a reservation list for foreign equity limitation. As implied in the reservation list, all other parts of the said five sectors not in the single reservation list are, subject to national policy, liberalized and open to ASEAN investors (ACIA Guidebook, 2013

For the ***Philippines***, in general, the maximum foreign equity limitation is 40 percent for domestic market enterprises with paid-in equity capital of less than the equivalent of US$200,000. This foreign equality limitation is also applied for forestry and services in incidental sectors, but is also subject to government approval. There is also a requirement that foreign-owned corporations/entities shall export at least 60 percent of their output to be considered as an export enterprise, subject to certain terms and conditions.

In ***Thailand***, generally the foreign equity participation in an enterprise has to be below 50 percent, which means that foreign equity has to be the minority compared to local investment. However, foreign investors still have the opportunity to own more than 50 percent of shares in certain conditions: (i) if they obtain permission from the Minister of Commerce with the approval of the Cabinet, and several other conditions are fulfilled; (ii) if they meet the requirement of the minimum capital used at the commencement of the business operation; (iii) if they obtain a license or certificate from the Department of Business Development, Ministry of Commerce; and (iv) if they comply with other conditions prescribed in the Foreign Business Act and related laws.

Viet Nam has several schemes for foreign equity limitation, depending on the sector. As stated in the reservation list, there are several limits for foreign equity: 30 percent, 40 percent, 49 percent, and 51 percent. The types of sectors included in the ACIA reservation list are only limited to the services incidental to mining and quarrying, fishery and agriculture, hunting and forestry. Manufacturing is limited only to manufacturing related to infrastructure and transportation, which refers to the manufacture of railway rolling stock, spare parts, wagons and coaches, as well as those used in aircraft manufacturing industries.

4. Conclusion

In principle, both general FTA agreements and the more specific investment agreements have the same goals. Based on its development, the ACIA is assumed to be the most comprehensive basis agreement underlying other FTA agreements.

In the commitments which are more specifically sector related, it can be seen that each AMS has its own unique approach to scheduling its sectors in the agreement frame. Indonesia, which already has a regulation providing a negative list of investments, is quite detailed in identifying diverse sectors, business subsectors with their provisions, and an assortment of foreign equity ownership restrictions. Viet Nam also has several restrictions on the amount of foreign equity, while Brunei Darussalam and the Lao PDR have settled on relatively general guidelines for all sectors in general with only one restriction on foreign equity ownership. As a result, it is difficult to standardise the limits of foreign equity ownership because of the many variables.

CLMV countries are not consistent in the reservations they propose in the reservation list under the ACIA. Myanmar differs a little from other CLMV countries in that it does not give a specific limitation to foreign equity ownership. The same model is adopted by Singapore which can be categorised as a developed country in ASEAN.

The relatively consistent sectors are those closed to foreign equity ownership and specifically for traditional trade and micro and medium trades. Both the CLMV and non-CLMV countries have the same concern in the protection of their traditional business fields which are shown in their reservation lists.

There is also a similarity in land ownership restrictions, in which foreign investors cannot own land or properties and only have the right of land use. The differences lie in the duration limits of the land use, where each AMS has a different policy.

Other discrepancies can also be seen in the reservation lists in the ACIA. Several countries, for example, impose an obligation to conduct divestments for foreign investors in their countries. Several AMSs also require certain local institutions to be able to trade in the same field, especially for state-owned enterprises in certain countries.

Thus, the challenge for the Regional Comprehensive Economic Partnership (RCEP) is to formulate a higher level agreement which is able to consolidate various concerns, needs, and national policies of each AMS in a modern, comprehensive, high-quality, and mutually

beneficial economic partnership agreement. It is assumed that this goal can be accomplished through a more general agreement from the agreement on specific sectors.

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