

[re] Balancing public policies vs investor protection

Indonesia's Perspectives

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OUTLINE PRESENTATIONS



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- Overview
- ASEAN Comprehensive Investment Agreement (ACIA)
- Content of ACIA

Overview



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- As of Aug 2010, Indonesia has signed 66 BITs.
- Most of traditional BITs consist of element protection and promotion investment.
- Still negotiating BIT with other partners i.e.: Mexico, Canada, Swiss, France, BLEU etc.
- Indonesia has also signed,
 - *ASEAN Comprehensive on Investment Agreement (ACIA) in 2009, and*
 - ASEAN FTAs (on Investment chapter) with dialogue partners in 2009, i.e.: China, Australia-New Zealand and Korea.

ASEAN COMPREHENSIVE INVESTMENT AGREEMENT (ACIA)

ACIA = ASEAN IGA + AIA ?



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ASEAN Investment Guarantee Agreement (IGA) 1987

Covered: Protection and Promotion

ASEAN Investment Area (AIA), 1998

Covered: Liberalization, Facilitation and Promotion

5 sectors and services incidental to 5 sectors

Liberalisation 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

Liberalisation commitment with a single reservation list

ASEAN FTA with Dialogue Partners (on Investment chapter)



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No	ASEAN - DPs	Pillars	Issues
1.	ASEAN – China FTA (signed 2009)	Protection, Facilitation, Promotion	No commitment in negotiating liberalisation
2.	ASEAN – Australia - New Zealand FTA (signed 2009)	Protection, Facilitation, Promotion	Liberalisation pending issues under work programme
3.	ASEAN – Korea FTA (signed 2009)	Protection, Facilitation, Promotion	Liberalisation pending issues under work programme

Contents of ACIA



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- Covers 4 pillars: Liberalization, Protection, Facilitation and Promotion
- Guiding principles
- More comprehensive than existing ASEAN IGA and AIA
- Taken into account international best practices
 - such as the US Model Text, NAFTA, OECD Guidelines for Multinational Enterprises, inputs from UNCTAD publications on IIAs, and provisions on ASEAN FTA (Investment) with Dialogue Partners (China, Australia & New Zealand, Korea)

GUIDING PRINCIPLES

- Forward looking
- Reaffirming the relevant provisions of AIA and ASEAN IGA
- Improving and building upon the 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

GUIDING PRINCIPLES ... cont'd

- 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



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 liberalisation. 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 liberalisation commitment with clear timelines is considered new by international standard.

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