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Services and Investment Liberalisation in ASEAN

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Services and Investment Liberalisation in ASEAN

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Table of Contents

List of Figures

List of Tables

Executive Summary

Transformational changes are taking place in the Association of Southeast Asian Nations (ASEAN) economies as they progress as a regional grouping. These include ASEAN's liberalisation initiatives, which have enhanced the grouping's economic growth in the last 2 decades as ASEAN gained from the progressive opening of its economies. The paper looks at services and investment as the main drivers of growth as ASEAN's development takes a firm hold in the region. It examines key areas for foreign direct investment (FDI) and the major services sectors with the highest levels of FDI; the extent of liberalisation in these sectors under the ASEAN Comprehensive Investment Agreement (ACIA), ASEAN Framework Agreement on Services (AFAS), and Regional Comprehensive Economic Partnership (RCEP); and concludes with proposals to strengthen ASEAN liberalisation in investment and services.

The evolution of ASEAN into an economic community, from its aspirations as a free trade area in the early 1990s to the move to declare ASEAN an economic community by 2015, has seen a significant positive impact on its overall economic expansion. Moving forward as a bloc, ASEAN economies have witnessed rising gross domestic product (GDP) and per capita growth, as well as substantial FDI inflows, with more seamless trade and investment policies in place and improving connectivity.

The paper reviews the welfare gains from liberalisation and integration, looking at the trajectory of GDP growth and GDP per capita increases, both at the ASEAN and individual country levels. ASEAN's annual real GDP growth consistently outstripped global economic growth between 2001 and 2022 (except in 2020 due to the coronavirus disease (COVID-19) pandemic). ASEAN has expanded at an average annual rate of 4.8% per annum in the last 2 decades. Average growth was higher, at 5.3% between 2000 and 2010, but tapered off to 4.3% during the decade between 2011 and 2022 because of an economic downturn from COVID-19. The biggest gains accrued to the four most recent ASEAN entrants or CLMV countries, (Cambodia, the Lao People's Democratic Republic (Lao PDR), Myanmar, and Viet Nam). Real GDP growth in these four economies averaged 6.5%–7.5% per annum between 2000 and 2022.

During the same period, welfare gains were enhanced, with per capita income quadrupling or more for most ASEAN Member States (AMS). Six AMS (Cambodia, Indonesia, the Lao PDR, Myanmar, the Philippines, and Viet Nam), which had GDP per capita of less than US$1,000 in 2000, saw their per capita GDP exceeding this threshold by 2013. The compound annual growth rate (CAGR) for per capita GDP income growth of these countries was 8%–11% annually between 2001 and 2022, except for the Philippines with a lower CAGR of 6.8%. Overall, ASEAN's GDP per capita rose from US$1,091 in 2001 to US$5,392 in 2022. The region's rapid growth has seen a transition in its economic structure from agrarian to manufacturing and latterly to services. Currently, the services sector is the dominant sector in all AMS except Brunei Darussalam.

The shift to an economy dominated by the services sector is characteristic of the progression to a higher level of development for an economy. The services sector has become the dominant sector in almost all AMS. The higher level of growth and development was also made possible by strong FDI inflows, reflecting growing confidence in the region. FDI inflows surged to a high of US$225.8 billion in 2022 (from a mere US$22 billion in 2001), representing 17.4% of total global FDI flows. The services sector received the bulk (65.2%) of ASEAN FDI inflows in 2022. Financial services represent the largest inflow of FDI to the services sector (US$63.3 billion), just slightly below that of investment in the manufacturing sector (US$65.9) in 2022.

The strong welfare gains from regional integration have been spearheaded by liberalisation initiatives towards building an ASEAN Economic Community (AEC), mainly in four main areas: trade in goods, trade in services, investment, and integration into the global economy through free trade agreements (FTAs). The paper traces the establishment of the ASEAN Free Trade Area in 1992; the conclusion of the services and investment agreements in 1995 and 1998, respectively; and upgrades to these agreements, together with six bilateral FTAs and a regional FTA, the RCEP. In realising the AEC, these developments have instilled much confidence in ASEAN and enabled sustainable and robust growth over the past 2 decades.

However, much work remains to be done in integrating the 10 economies for ASEAN to expand and strengthen its position as a global hub for manufacturing and services. To harness the potential of investment in the era of the Fourth Industrial Revolution and new digital technologies, ASEAN must re-examine issues such as greater consistency and openness in its economic policies, as well as institutional support and facilitation, and do more to enable the talent pool to move seamlessly across the region as these are the main drivers of FDI inflows. As the main component of GDP, the services sector is one of the key areas for further liberalisation. Revisiting the AEC 2015 targets towards full achievement under the ASEAN Trade in Services Agreement (ATISA), as well as moving up the timetable for the ATISA and RCEP transition to the negative lists, have the potential for transformational change in ASEAN services liberalisation.

The changing geopolitical dynamics, the possible shift to ASEAN as an alternative to China, and the transition to a digitalised economy with the advent of artificial intelligence, the internet of things, and new disruptive technologies – reflected in the digital and green economy – are factors that must be considered. ASEAN cannot sit on its laurels but should accelerate its integration goals, including concluding more FTAs, such as with the European Union. ASEAN must also deal with competition amongst AMS for inward FDI, with the increasingly complicated unilateral liberalisation environment, but this will augur well for more ambitious standardised liberalisation to be realised in its quest to achieve a truly economic community.

Chapter 1
Introduction

Three decades of economic integration amongst the 10 Association of Southeast Asian Nations (ASEAN) Member States (AMS) have yielded immense benefits and brought rapid economic progress to the AMS. The region has become synonymous with a progressively open and liberal trade and investment regime. It can attract high levels of foreign direct investment (FDI) by harnessing synergies from its collective strength and integration, supported by a more prosperous and growing population base.

The first serious attempt at deepening economic integration was undertaken through the ASEAN Free Trade Area (AFTA) agreement in 1992 and framework agreements on services and investment. This later deepened into the launch of the ASEAN Economic Community (AEC) in 2015, with the goal of free movement of goods, services, investment, skilled labour, and freer flow of capital.

While emphasising liberalisation of goods in the early years of the AFTA, two framework agreements – one on services in 1995 (the ASEAN Framework Agreement on Services (AFAS)) and the other on investment liberalisation in 1998 (the ASEAN Investment Area (AIA)) – added depth to this initial AFTA pact. Subsequent revisions to the investment (ASEAN Comprehensive Investment Agreement (ACIA)) and goods (ASEAN Trade in Goods Agreement (ATIGA)) agreements were made by 2009 and 2010, respectively, to augment liberalisation commitments. These were followed by the successor services agreements, the ASEAN Movement of Natural Persons (MNP) Agreement in 2012, and the ASEAN Trade in Services Agreement (ATISA) in 2020, in line with the goals under the AEC Blueprint 2015 and the AEC Blueprint 2025 for strengthening the AEC.

The welfare gains from ASEAN's economic integration are high, as ASEAN's economic progress since the AFTA days has been remarkable. Nominal gross domestic product (GDP) more than quadrupled, while real GDP grew by an annual average of 4.8% in the last 2 decades between 2001 and 2022. This was despite three intervening periods of uncertain global growth, i.e. the bursting of the 2000 dot-com bubble, the 2007–2008 sub-prime mortgage crisis, and the 2020–2021 coronavirus disease (COVID-19) pandemic.

The region has reaped benefits from its internal integration process, with the elimination of tariffs on 99% of tariff lines for the ASEAN-6 (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand) by 2010, and 98.6% of the total number of tariff lines of all AMS. Similarly, almost all AMS have undertaken liberalisation in the 12 main services subsectors under AFAS, to varying degrees, while investment liberalisation had already been undertaken via the adoption of a single reservation list approach under the ACIA by 2012.

Further, ASEAN has concluded bilateral free trade agreements (FTAs) with other major trading partners: Australia, China, Japan, the Republic of Korea (henceforth, Korea), India, New Zealand, and Hong Kong. Its recently concluded plurilateral FTA, the Regional Comprehensive Economic Partnership (RCEP) agreement amongst 15 parties, was ground-breaking in its scope and reach, representing about 30% of global GDP and about a third of the world's population.

Regional economic integration, in terms of transforming ASEAN into a single market and production base, has attracted enormous amounts of FDI to the region, both in manufacturing as well as services. By 2012, annual FDI inflows in ASEAN consistently topped US$100 billion, compared with a mere US$22 billion in 2000. In 2022, FDI inflows were an unprecedented US$225.8 billion. ASEAN data showed that AMS have been able to garner more than 10% of global FDI since 2018, with a remarkable 17.4% share of global FDI in 2022 (ASEAN, 2023a). This compares with about 5% in the early years of the 2000s, just after the onset of the ASEAN integration process. Such robust FDI flows are one of the key drivers of the region's strong economic expansion.

The remarkable achievement of ASEAN in attracting FDI, especially after 2015 following the launch of the AEC, can be attributed to the relatively stable political environment and attractive synergies from the 10 integrated markets of ASEAN. Increasingly, the economic potential of the single market has become a main draw, with a combined market of more than 600 million people and a rising middle class. Further, given current international geopolitical developments, with de-risking and de-coupling of the Western economies from China, ASEAN with its relatively open and liberal regime and its seriousness in creating a single market, seems to be a natural choice for some investors seeking to diversify their production and services bases. In this changing scenario, while tariff liberalisation for the internal markets of AMS has mostly been achieved since 2010, the scope for services and investment liberalisation still has considerable potential for ensuring continued resilience in the economic growth and attractiveness of the region to FDI.

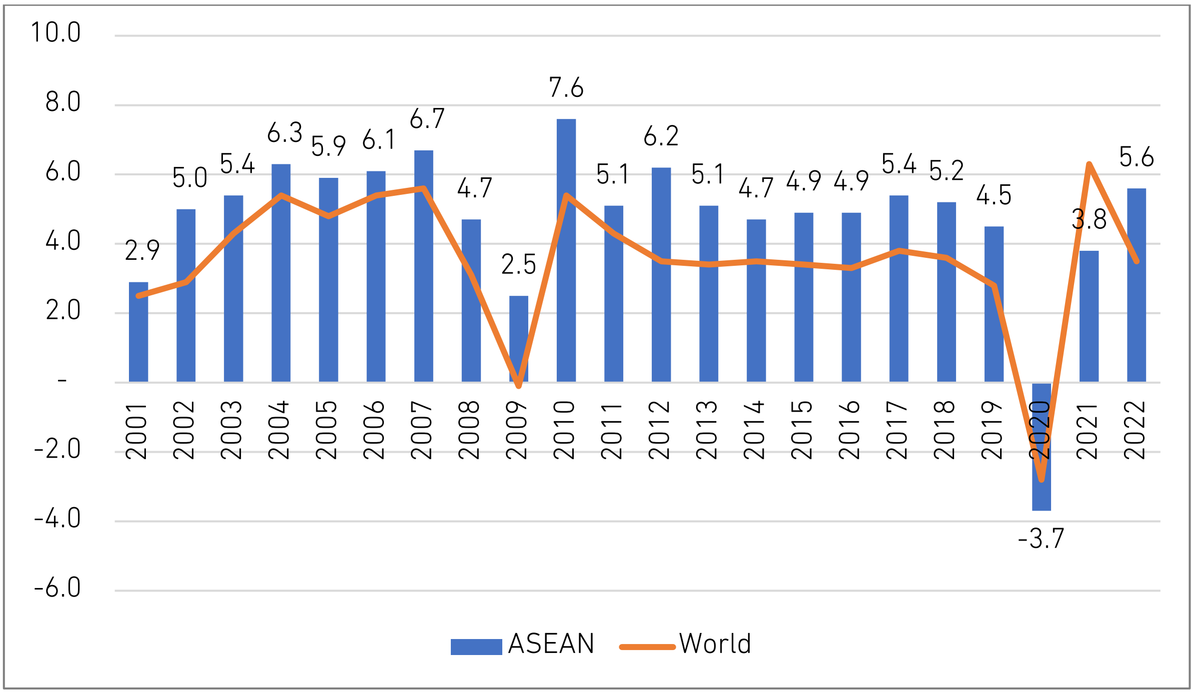
ASEAN is uniquely positioned to be the next powerhouse of the global economy as it seeks to better secure gains from the Fourth Industrial Revolution, which, to paraphrase the World Economic Forum (n.d.), is about merging the physical, digital, and biological worlds in ways that create huge potential that goes beyond technology-driven change. ASEAN could use the opportunity of further opening its economies to foreign investment, including in its services sectors, and promoting economic growth, by leveraging advances in the digital and green economy. This would help enhance its competitiveness and productivity through better use of resources and improving the delivery of goods and services using the latest information technology (IT) tools.

Chapter 2
Welfare Gains from Liberalisation

GDP is seen as a measurement of economic activity in terms of production and the resulting value of goods and services. It thus provides an indication of the economic welfare gains resulting from policy measures and both organic and inorganic growth. From the GDP perspective, the ASEAN region has witnessed remarkable and enviable economic expansion in the last 2 decades. This can be in some measure be ascribed to outcomes from measures to deepen ASEAN economic integration and to broaden liberalisation in trade, investment, and liberalisation. These measures included the implementation in the 1990s of the AFTA, with a focus on tariff reduction and elimination, as well as investment and services liberalisation and facilitation. Subsequent initiatives, through the launch of the AEC in 2015 and key liberalisation and integration measures implemented under the AEC Blueprints 2015 and 2025, contributed to the region's economic growth and reflected the growing recognition that the region's progress is premised on its regional integration and liberalisation initiatives.

From 2001 to 2022, ASEAN's average annual real GDP growth exceeded average annual world economic growth (except in 2020 and 2021 due to the COVID-19 pandemic), surpassing 6% in several years but maintaining a strong growth trajectory of 4%–6% in most years. The exceptions were the after-effects of the bursting of the dot-com bubble (2001), the sub-prime mortgage financial crisis (2009), and the COVID-19 pandemic (2020/2021) (Figure 2.1). Overall, between 2001 and 2022, ASEAN achieved commendable average annual real GDP growth of 4.8%, with growth scaling back up after the pandemic.

Figure 2.1. Real GDP Growth – ASEAN vs Global, 2001–2022
(%)



ASEAN = Association of Southeast Asian Nations, GDP = gross domestic product.
Note: Global GDP figures are from IMF (2023).
Sources: ASEAN (2008, 2014, 2019, 2022b, 2023c).

Amongst the ASEAN-6, real GDP growth during 2001–2022 was also laudable, with several of these AMS achieving average annual real GDP growth beyond 5% in many of these years, and Singapore managing much higher rates of growth from 2000 to 2010, while the Philippines stood out with more rapid rates of growth than its peers after 2010 (Table 2.1).

It is noted however that Singapore, with its very open economy, can be vulnerable to global uncertainties as economic growth dips during periods of slower global economic expansion (2001, 2008/2009), while AMS with greater reliance on the domestic economy could ride out periods of slower global growth more easily. Nevertheless, Singapore remains resilient with its ability to attract strong investment inflows, especially to the financial and technology-based industries, and remains the top investment destination in ASEAN.

Table 2.1. ASEAN-6 – Real GDP Growth, 2001–2022

(%)

Country	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Brunei Darussalam	2.7	3.9	2.9	0.5	0.4	4.4	0.6	0.4	-1.8	2.6	3.7	0.9	-2.1	-2.5	-0.4	-2.5	1.3	0.1	3.9	1.1	-1.6	-1.6
Indonesia	3.6	4.5	4.8	5.0	5.7	5.5	6.3	6.0	4.6	6.2	6.5	6.0	5.6	5.0	4.9	5.0	5.1	5.2	5.0	-2.1	3.7	5.3
Malaysia	0.5	5.4	5.8	7.2	5.3	5.6	6.3	4.8	-1.5	7.4	5.3	5.5	4.7	6.0	5.0	4.4	5.8	4.8	4.4	-5.5	3.3	8.7
Philippines	4.5	4.4	3.7	6.4	4.8	5.2	6.6	4.2	1.1	7.6	3.7	6.9	6.8	6.3	6.3	7.1	6.9	6.3	6.1	-9.5	5.7	7.6
Singapore	-2.4	4.2	3.1	8.8	7.4	8.6	9.0	1.7	-0.6	15.2	6.4	4.1	5.1	3.9	2.2	3.6	4.5	3.6	1.3	-3.9	8.9	3.6
Thailand	2.2	5.3	7.1	6.3	4.6	5.1	5.0	2.5	-0.7	7.8	0.9	7.2	2.7	1.0	3.1	3.4	4.2	4.2	2.1	-6.1	1.5	2.6
ASEAN	2.9	5.0	5.4	6.3	5.9	6.1	6.7	4.7	2.5	7.6	5.1	6.2	5.1	4.7	4.9	4.9	5.4	5.2	4.9	-3.7	3.8	5.6

ASEAN = Association of Southeast Asian Nations, GDP = gross domestic product.
Sources: ASEAN (2008, 2014, 2019, 2022b, 2023c)

Indonesia and the Philippines also demonstrated relatively high levels of real GDP growth, especially during 2010–2020. Indonesia's GDP growth was 6% or more between 2010 and 2012 and hovered around 5% thereafter. The Philippines, after an uneven growth period between 2000 and 2011, began to improve considerably in its economic performance, with notable growth spurts of over 6% between 2012 and 2019. Once performing below its ASEAN peers, the economic growth of the Philippines outperformed the other ASEAN-6 countries during this period.

Malaysia's growth has been more moderate in the last decade, as the economy settled into a more mature phase. Attempts are ongoing to transform the country towards a more technology and digitally driven economy. These include measures aimed at upskilling the workforce and moving to more advanced production processes. However, in the last 2 decades, it has remained vulnerable to fluctuations in oil and non-oil commodity prices as well as geopolitical trade tensions given the open nature of its economy.

Brunei Darussalam's real GDP growth remains the slowest amongst the AMS due to the relatively narrow base of its economy and its small population. Oil exports constitute its main source of revenue, and periods of low energy prices have a detrimental impact on its GDP growth, as seen in 2013 and 2014.

A more remarkable transformation is seen within the CLMV countries (Cambodia, the Lao People's Democratic Republic (Lao PDR), Myanmar, and Viet Nam). Most years, economic expansion in these AMS surpassed the 5% range of the ASEAN-6, reaching 6%–10% (Table 2.2). The CLMV countries exhibited very strong economic performance, with average growth per annum in the last ten years (2013-2022) of 5.7%, 6.0%, 5%, and 6%, respectively. Myanmar's economy had earlier seen a sterling run between 2005 and 2009, with strong annual GDP growth above 10% in these 5 years. Nevertheless, the impact of the COVID-19 pandemic and political events in Myanmar are expected to affect its growth performance in the 2020s.

Table 2.2. CLMV – Real GDP Growth, 2001–2022

(%)

Country	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Cambodia	5.5	5.2	12.6	10.0	13.6	10.8	10.2	6.7	0.1	6.0	7.1	7.3	7.5	7.1	9.0	6.9	7.2	7.5	6.8	-3.1	3.0	4.8
Lao PDR	5.7	5.9	5.8	6.9	7.3	8.3	6.0	7.8	7.5	8.1	8.0	7.9	8.0	7.6	7.3	7.0	6.9	6.3	5.5	3.3	3.5	4.4
Myanmar	10.5	5.5	5.1	5.0	13.6	13.6	13.1	12.0	10.5	9.6	5.6	7.3	7.3	8.4	8.0	7.3	5.8	6.4	6.2	3.8	-5.9	2.8
Viet Nam	6.9	7.0	7.4	7.8	8.4	8.2	8.5	6.3	5.4	6.4	6.2	5.2	5.4	6.0	6.7	6.7	6.9	7.5	7.4	2.9	2.6	8.0

CLMV = Cambodia, the Lao PDR, Myanmar, and Viet Nam; GDP = gross domestic product.

Sources: ASEAN (2008, 2014, 2019, 2022b, 2023c).

The robust performance of the CLMV countries has often been cited as an outstanding example of the benefits of regional economic integration and liberalisation, with its positive spillover effects on investment and trade, particularly for the less advanced economies. The fact that these synergies continue to impact the region over such a long period is sound testimony to the resilience and robustness of the ASEAN integration process in enhancing the attractiveness of the region as a viable single economic entity.

The strong economic expansion has also strengthened the GDP per capita of AMS. Of the six AMS with GDP per capita of less than US$1,000 in 2001 (Table 2.3), all exceeded this threshold by 2013. Indonesia and the Philippines crossed this level in 2003 and 2004, respectively, while Viet Nam achieved it in 2008, the Lao PDR in 2010, and Cambodia in 2013. In the past 2 decades, the compound annual growth rate (CAGR) for GDP per capita for these six countries (except the Philippines) was 8%–11% between 2001 and 2022, an incredible achievement.

Table 2.3. GDP per Capita of Selected AMS, 2001–2022

(US$)

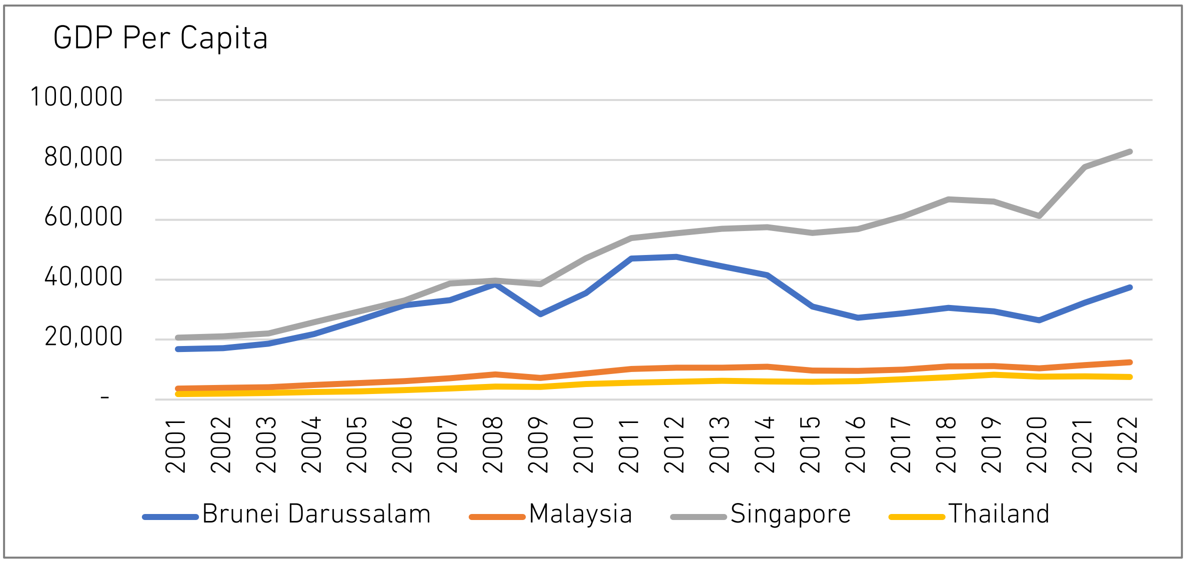
Country	2001	2005	2010	2015	2022	CAGR, 2001–2022 (%)
Cambodia	295	453	785	1,191	1,758	**8.9**
Indonesia	775	1,295	3,032	3,345	4,778	**9.0**
Lao PDR	365	511	1,079	2,161	2,022	**8.5**
Myanmar	136	198	811	1,023	1,093	**10.4**
Philippines	916	1,209	2,147	3,018	3,624	**6.8**
Viet Nam	415	643	1,338	2,5,96	4,109	**11.5**

AMS = ASEAN Member States, ASEAN = Association of Southeast Asian Nations, CAGR = compound annual growth rate, GDP = gross domestic product.
Sources: ASEAN (2008, 2014, 2019, 2022b, 2023c).

Viet Nam's GDP per capita growth was exceptionally strong, expanding by a CAGR of 11.5% between 2001 and 2022, reflecting the burgeoning process of industrialisation in its economy and growing levels of investment and consumption growth. Overall, the vigorous industrialisation process in these countries, particularly from FDI and trade growth, is fuelling their rise in GDP growth and per capita income (UNCTAD, n.d).[1]

[1] While these six AMS have since surpassed the $1,000+ per capita level, Cambodia and Myanmar technically still have least developed country status until their review in 2024.

Figure 2.2. GDP per Capita of Brunei Darussalam, Malaysia, Singapore, and Thailand, 2001–2022
(US$)



Sources: ASEAN (2008, 2014, 2019, 2022b, 2023c).

Of the remaining AMS, Singapore and Brunei Darussalam have by far the highest GDP per capita (Figure 2.2). Singapore's per capita GDP reached US$82,794 in 2022 from US$20,670 in 2001, with a CAGR of 6.8% during this period. Although Brunei Darussalam's per capita GDP was much lower than Singapore, at US$37,446 in 2022, it is still about three times that of the closest AMS (Malaysia).

The changing structure of ASEAN's economies reflects the strong industrialisation and modernisation push engendered by liberalisation and integration policies over the last few decades. Today, ASEAN as a bloc is the fifth largest economy in the world, with a combined GDP of US$3.6 trillion in 2022, representing 3.6% of global GDP (IMF, 2023).

This transition over the last 2 decades towards greater concentration in the manufacturing and services sectors reflects higher levels of investment and faster growth in these sectors, as liberalisation and integration by AMS have attracted the most investment into these areas. The growing share of the services sector in AMS economies is more significant after 2010, with the services sector being the largest sector in all AMS, except Brunei Darussalam and Cambodia, by 2022. (Table 2.4).

Table 2.4. ASEAN GDP Share by Sector

Country/Year	2005			2010			2020			2022		
	A	I	S	A	I	S	A	I	S	A	I	S
Brunei D.	1.3	67.2	**13.5**	1.1	52.5	**46.3**	1.2	59.1	**41.6**	1.1	67.8	**32.4**
Cambodia	31	28.3	**40.7**	29.4	28.6	**42.0**	22.7	34.6	**36.6**	22.2	37.9	**33.8**
Indonesia	14.5	44.1	**41.4**	13.2	41.1	**45.7**	13.7	38.2	**44.6**	12.4	41.4	**41.6**
Lao PDR	45	29.6	**25.5**	31.6	27.7	**40.7**	16.5	33.3	**39.8**	17.8	34.1	**36.9**
Malaysia	8.4	44.3	**47.3**	7.7	38.6	**53.8**	8.2	36.0	**54.9**	8.9	39.1	**51.0**
Myanmar	-	-	**-**	39.9	22.6	**37.5**	20.9	38.6	**40.4**	22.6	37.6	**39.7**
Philippines	19.1	32.8	**48.1**	11.6	32.6	**55.8**	10.2	28.5	**61.5**	9.5	29.2	**61.5**
Singapore	0.1	32.6	**67.3**	0.0	33.6	**66.3**	0.0	24.5	**75.5**	0.0	25.4	**74.5**
Thailand	9.0	46.9	**44.0**	8.3	48.7	**43.0**	8.7	33.4	**58.0**	8.8	35.0	**56.2**
Viet Nam	19.6	40.2	**40.3**	16.5	41.9	**41.6**	12.7	36.7	**41.8**	11.9	38.3	**41.4**

ASEAN = Association of Southeast Asian Nations, GDP = gross domestic product.

Notes:

1. Agriculture comprises fishery and forestry; industry comprises mining and quarrying, manufacturing, construction, and utilities; services comprise wholesale & retail trade, transportation & storage, accommodation & food services, information & communications, finance & insurance, business services, and other services industries.
2. The sum of the GDP shares of agriculture, industry, and services may not equal 100% in some ASEAN Member States, mainly due to the separate treatment of GDP associated with balancing items from the total GDP, including taxes, and subsidies on particular products and services.

Source: ASEAN (2014, 2021a, 2023c).

Malaysia, the Philippines, and Thailand, where the industrialisation phase has been in place longer and the economies are more advanced, have transitioned in the last decade towards a much broader service-oriented economy. The services sector accounted for over 50% of GDP in these countries by 2010, reaching over 60% in the Philippines in 2020, while hovering at over 50% in Malaysia and Thailand. In Singapore, the services sector accounted for a large share of GDP and currently stands at well over 70%.

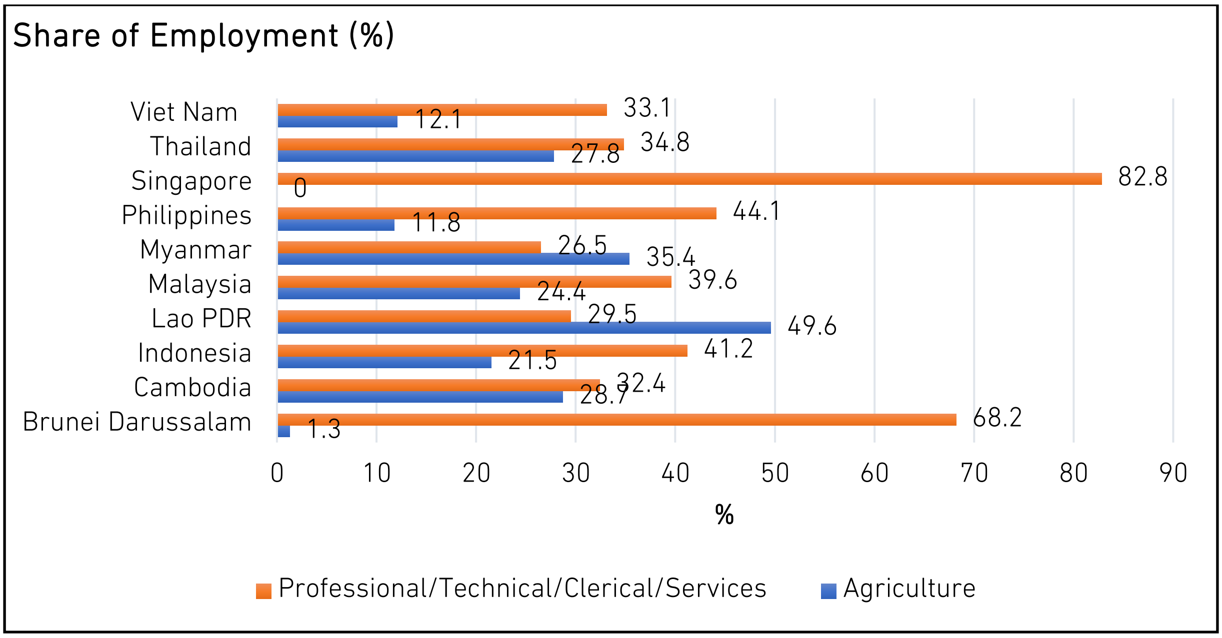
In Indonesia, Myanmar, and Viet Nam, the share of the services sector to GDP was just over 40% in 2020, with manufacturing activities remaining strong in these economies, and the share of manufacturing to GDP was almost on a par with the services sector, or slightly lower.

Another important indicator in ASEAN's changing economic profile is the change in the share of employment in agriculture and fisheries versus services/professional technical employment. In 1991, 50% or more of the population of all AMS (except Brunei Darussalam, Malaysia, the Philippines, and Singapore) were employed in the agriculture sector. By 2016, this applied only to the Lao PDR, and the share was 30% or less for most economies (much less for Brunei Darussalam, Malaysia, and Singapore) (ASEAN, 2017: 3). Indeed, the 2022 figures showed that the share of agriculture employment was already under 50% for all AMS, while for the professional/technical, clerical and services sectors, employment in these sectors as in the majority of the AMS, have exceeded 30%. (Figure 2.3).

Of note is that employment in the agriculture sector of the Philippines and Viet Nam has dropped even lower to just around 12%. The region's shift from agriculture as the main source of employment to manufacturing and services is one manifestation of a fundamental transformation of ASEAN's economy. Nevertheless, the agricultural sector is still significant in many AMS, reflecting the central role of the agrarian society in these countries, especially in food production. Given the prevailing global food security tensions in the context of the war in Ukraine, agriculture is expected to remain a strong component of the economy.

Figure 2.3. Share of Employment in AMS, 2022

(%)



AMS = ASEAN Member States, ASEAN = Association of Southeast Asian Nations.
Note: Figures for 2022 for all AMS except Cambodia, Myanmar (2019).
Source: ASEAN (2023c).

Chapter 3
Evolution Towards the AEC

The strong economic welfare gains enjoyed by the ASEAN region in the past few decades reflect the increasing importance of regional economic integration in contributing to its resilient economic performance. In this context, ASEAN appears to be determined to stay the course in its economic integration efforts to advance the region as a production and investment hub, though progress in liberalisation seems to be slower than targeted, especially in services.

In pursuit of its regional integration goals, ASEAN Leaders in 2003 (Bali Concord II) declared that the AEC would be the goal of regional economic integration by 2020. This goal was advanced to 2015 at the 12th ASEAN Summit in 2007, with the aim of transforming ASEAN into a region with free movement of goods, services, investment, and skilled labour; freer flow of capital; and greater integration into the global economy. ASEAN has been proceeding with its goal of an economic community through the adoption of two AEC blueprints (2009–2015 and 2016–2025), which detailed targets, outcomes, and timelines towards the AEC. Work is in progress on a new 20-year plan, the AEC 2045.

The first two blueprints have several areas of focus, but the four areas with the most impact on liberalisation are trade in goods, investment, trade in services, and integration with the global economy via FTAs. Much has been achieved in these areas, including the review and upgrade of the three main trade agreements on goods, investment, and services, i.e. the ATIGA in 2010, the ACIA in 2012, and the ATISA in 2021.

ASEAN economic integration gained momentum in the early 1990s with the adoption of the AFTA agreement in 1992. This was one of the first steps towards deepening economic integration, with the objective of enhancing commitments amongst AMS in trade in goods. The signing of the AFTA was considered a momentous achievement as it envisaged the possibility of free flow of trade in goods. Several factors were responsible for this bold step taken by ASEAN after two earlier less successful attempts in 1977 on the Preferential Trading Arrangements and the ASEAN Industrial Projects. Firstly, the conclusion of the Uruguay Round and the formation of the World Trade Organization (WTO) in 1995, with its resultant strengthening of the multilateral system, have overshadowed what ASEAN has achieved so far as a regional grouping. As far back as 1985, ASEAN was mulling more ambitious initiatives to liberalise trade, but no concrete actions were realised. With the fast-changing global scenario, ASEAN must demonstrate further value added as a regional grouping, setting the stage for ASEAN to seize the initiative and demonstrate that it can accomplish much more beyond the initiatives under the multilateral trading system.

Secondly, the ASEAN leadership was deemed to be crucial in lending support to a free trade area, which was previously considered an overly ambitious goal, and it took some time for acceptance, especially by Indonesia (Akrasanee, 2017). A third factor was events unfolding in Europe in the late 1980s, the trendsetter in regionalism. During this period, Europe was setting a very ambitious agenda with the lofty goal of establishing an economic and monetary union. This was concretised with the signing of the Treaty of Maastricht on European Union (EU) in February 1992. The EU has always been a benchmark for regional integration, and this may have spurred ASEAN to take more concrete action in its own integration goals.

The AFTA was thus the impetus that provided a more competitive edge to turn ASEAN into a production hub for the global market. It was to be completed within 15 years (by 2003), using the mechanism of the Common Effective Preferential Tariff (CEPT) agreement (Singh, 2017). Under the 1992 AFTA/CEPT agreements, AMS adopted a schedule of tariff reductions in which the tariffs of AMS would eventually fall to 0%–5%.

In line with ASEAN's aspiration to be an economic community by 2015, the ASEAN Economic Ministers (AEM) in 2007 agreed to a review of the CEPT. In 2009, the AEM signed the ATIGA to provide a legal framework to realise the free flow of goods in the region with entry into force in 2010. The ATIGA inherited the core principles of the CEPT agreement and incorporated modern features of international trade-in-goods matters at that time, to the extent possible. The ATIGA is designed to deepen the commitments amongst AMS to contribute to the free flow of goods in the region. It is envisioned that by 2025, ASEAN will achieve competitive, efficient, and seamless movement of goods within the region as a true AEC.

Currently, 99.3% of all tariffs have been eliminated by the ASEAN-6, while the corresponding figure for CLMV is 97.7%. Overall, AMS have eliminated 98.6% of the total number of tariff lines amongst themselves.

1. ASEAN Investment Agreements

An ASEAN-wide agreement on investment already existed as far back as 1987 when the then six AMS concluded the ASEAN Agreement for the Promotion and Protection of Investment, commonly known as the ASEAN Investment Guarantee Agreement (IGA), which focused on investment protection. With the signing of the AFAS in 1995, another investment agreement focusing on cooperation was adopted in 1998, known as the Framework Agreement on the AIA. The AIA, which entered into force in 1999, aimed to establish a competitive and dynamic ASEAN through a more liberal and transparent investment environment that would contribute towards the free flow of investment.

Under the AIA, coverage of direct investment involved industries in the manufacturing, agriculture, fishery, forestry, mining, and quarrying sectors, as well as services incidental to these five sectors (excluding portfolio investment and sectors covered under the AFAS).

AMS also agreed to open these industries for investment to ASEAN investors by 2010 and to other investors by 2020. Similar timelines were also set for the extension of national treatment to ASEAN and non-ASEAN investors.

However, the ACIA superseded the IGA and AIA in 2012. The ACIA was signed by the AEM in February 2009 and entered into force in March 2012. The ACIA was the result of ASEAN's intensified regional integration measures under the AEC, by upgrading existing agreements with the intention of fire-proofing ASEAN against future crises, learning from the debilitating effects of the 2007/08 financial crisis. The ACIA aims to create a liberal, facilitative, transparent, and competitive investment environment in ASEAN.

The ACIA is considered a comprehensive agreement that covers investment liberalisation, protection, facilitation, and promotion. Given the competitive global environment for FDI, the ACIA was drafted with the aim of creating a free and open investment regime towards the achievement of ASEAN economic integration, based on international best practices.

The ACIA had several notable features (ASEAN, 2015), including:

(i) adopting international best practices in granting protection to ASEAN investors and their investments in another AMS;

(ii) embedding recent trends in international investment rule-making in advocating for less restrictive investment regimes;

(iii) introducing innovations such as a broader definition of investors and investments, as well as the inclusion of portfolio investment and intellectual property;

(iv) providing an opportunity for third-country juridical persons to benefit from the ACIA;

(v) promoting a higher level of transparency in investment rule-making;

(vi) affording greater protection to ASEAN investors and their investments; and

(vii) adopting the Investor-State Dispute Settlement mechanism and promoting alternative routes to dispute resolution, such as the use of arbitration centres in AMS.

Thus, there are several significant differences under the ACIA (Yap, 2010). Firstly, the ACIA granted national treatment and most favoured nation (MFN) benefits to ASEAN investors,[2] while the AIA extends national treatment to ASEAN investors by 2010 and non-ASEAN investors by 2020. By adopting national treatment and MFN principles, AMS thus agreed not to treat ASEAN investors less favourably than either local or foreign competitors (or like businesses).

[2] Defined as natural and juridical persons of AMS, as well as juridical persons of third-party states based in ASEAN.

Secondly, the ACIA adopted a single list of reservations (negative list), while the AIA used a two-track approach comprising a temporary exclusion list (which was to be phased out by 2010/2015) and a sensitive list (which remains closed to both ASEAN and non-ASEAN investment but is subject to a review, under which the list could be reduced/transferred to a temporary exclusion list).

Thirdly, ACIA reservations cover national treatment and the senior management and board of directors. The AIA limitations differ in the sense that they are just a listing of sectors to be closed to foreign participation, without specifying the type of limitations to be imposed in that sector. The ACIA also prohibits the use of the WTO Agreement on Trade-Related Investment Measures (TRIMS) performance requirements and has a built-in review to include the need for additional commitments. Therefore, the liberalisation elements of the ACIA are far wider in scope than those of the AIA.

Fourthly, other provisions such as investor-state protection included explicit guidelines on issues such as fair and equitable treatment of investors, the treatment of subsidies and government procurement, and the conditions under which MFN treatment applies to investor-state disputes (ASEAN, 2017: 12).

Several protocols amended the ACIA. The latest achievement is the substantial conclusion of the Fifth Protocol to Amend the ACIA in 2023, which operationalises the transition of the ACIA reservation list to a two-annex negative list, expanding the scope beyond manufacturing, agriculture, fishery, forestry, mining, and quarrying and incidental services, and introducing the ratchet clause.[3] These improvements are expected to provide even greater certainty and transparency to investors on the investment regime in ASEAN, as well as ensuring that ASEAN's own investment agreements keep abreast of its FTA agreements. The resulting reservation lists will also operationalise the new obligation on the prohibition of performance requirements (PPR) under the Fourth Protocol to Amend the ACIA, which entered into force on 10 January 2023. AMS will finalise the remaining legal procedures for signing the Fifth Protocol in 2024.

In tandem with improvements to the ACIA and ASEAN's post-COVID-19 recovery attempts, AMS noted the urgency to strengthen initiatives to facilitate investment, seen also in the context of tapping the potential from global supply chain restructuring and diversification. The ASEAN Investment Facilitation Framework (AIFF) was adopted in 2021 with the intention to improve the accessibility and transparency of investment measures, streamline and speed up administrative procedures and requirements, promote the adoption of digital technologies to improve investment applications and approval, and encourage the establishment or maintenance of a single digital platform for the submission of all documents (ASEAN, 2021b). This is a significant effort, as the proposed WTO Investment Facilitation for Development (IFD) agreement, which concluded negotiations in July 2023, is expected to be adopted as a plurilateral agreement and not a

[3] 'Ratchet' means to maintain or bind measures at the current level without backtracking.

WTO-wide undertaking. The WTO IFD agreement has similar objectives to improve the investment and business climate and to make it easier for investors in all sectors of the economy to invest, conduct their day-to-day business, and expand their operations.

With services being integral to the ASEAN economies, ASEAN embarked on negotiations for the AFAS in 1995, in the context of the WTO General Agreement on Trade in Services (GATS) and ASEAN's aspiration for greater economic integration. The AFAS was signed on 15 December 1995, but no specific deadline or targets were set immediately unlike under the AFTA. Despite this, the AFAS provided a formal platform for progressive negotiations on the liberalisation of trade in services, noting that the services sector was increasingly becoming the dominant sector in the economy and further liberalisation would support intra- and extra-ASEAN investment in services. In addition, one of the aims of the AFAS was to commit AMS to undertake negotiations on progressive liberalisation and to make commitments beyond those inscribed under the GATS.

More work was undertaken subsequently to ensure the effective implementation of the AFAS. On 29 November 2004, the ASEAN Framework Agreement for the Integration of Priority Sectors and the Roadmaps for the Integration of Priority Sectors were signed by the ASEAN Leaders; this was augmented by the ASEAN Framework (Amendment) Agreement for the Integration of Priority Sectors signed by the AEM on 8 December 2006. These agreements identified four priority integration sectors for accelerated liberalisation, including four services sectors – air travel, healthcare, e-ASEAN (telecommunications and IT services), and tourism – and provided measures to deepen and broaden internal economic integration and linkages, with the participation of the private sector.

By 2006, four rounds of negotiations and five sets of schedules of specific commitments had been tabled. AMS took a more ambitious route in 2007 at the 37th ASEAN Economic Ministers Meeting, by agreeing under the AEC Blueprint 2015 to schedule no restrictions under modes 1 and 2 for both market access and national treatment, although an exception was made that for those subsectors where an AMS could not schedule no restrictions, the concerned AMS would have to provide an explanation detailing the reasons for this.

In addition, mode 3 foreign equity participation targets for the priority integration sectors were scheduled as follows (with flexibility): 49% by 2006, 51% by 2008, and 70% by 2010. For other services sectors, the targets with flexibility were as follows: 30% by 2006, 49% by 2008, 51% by 2010, and 70% by 2015. For construction services, the target foreign equity participation for the fourth round of negotiations (or by 2006) was not to be less than 51%. The AEC Blueprint 2015 (signed in 2009) also reflected the AEM agreement as well as more specific targets for liberalisation.

Under the AFAS, AMS scheduled 10 packages of commitments for non-financial services, eight packages for financial services, and 11 packages for transport. These were the final packages under the AFAS, as it was replaced by the ATISA, which was signed in 2020. The ATISA differed substantially from the AFAS in its approach to liberalisation, by adopting the negative list approach versus the positive list approach under the AFAS. Under the ATISA, a timeline was set for the submission of negative lists, with the ASEAN-6 given 5 years after the entry into force of the ATISA (5 April 2021) to submit its schedules of non-conforming measures. Viet Nam was accorded 7 years, while Cambodia, the Lao PDR, and Myanmar were allowed 13 years.

Chapter 4

Approach Towards Investment and Services Liberalisation Under the AFTA and the AEC vis-à-vis Other Related Regional FTAs

Amid regional integration and the evolution into an economic community focused on the removal of internal barriers, AMS had another important consideration – integration into the global economy. As many AMS were outward-oriented market economies dependent on exports and FDI, ASEAN was determined to deepen relations with its trading partners, mainly by concluding FTAs. Over the last 20 years, ASEAN has concluded six Plus One FTAs and one regional FTA, the RCEP (Table 4.1). FTA negotiations with Canada are ongoing.

The first ASEAN FTA was signed with China in 2002 (i.e. the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China), while the ASEAN–India Framework Agreement on Comprehensive Economic Cooperation was signed in 2003. However, the more specific goods, investment, and services agreements with China and India were concluded much later. ASEAN also entered into FTAs with Japan, Korea, and Australia/New Zealand, as well as the regional FTA (RCEP).

The FTAs negotiated have different approaches. The ASEAN–China Free Trade Area (ACFTA), ASEAN–Korea Free Trade Area (AKFTA), and ASEAN–India Free Trade Area (AIFTA) adopted a more gradual and step-by-step approach whereby a framework agreement was negotiated followed by specific agreements on goods, services, and investment. The ASEAN–Japan Comprehensive Economic Partnership (AJCEP), ASEAN–Australia–New Zealand Free Trade Area (AANZFTA), ASEAN–Hong Kong Free Trade Agreement (AHKFTA), and RCEP followed a single undertaking approach whereby all the different areas were negotiated at the same time.

Amongst the Plus One FTAs, the AANZFTA is considered to be the most comprehensive, as it included not only traditional areas such as trade in goods, services, and investment but also covers areas like electronic commerce, intellectual property, and competition. However, the RCEP is the broadest agreement, with additional areas such as small and medium-sized enterprises (SMEs) and government procurement.

Table 4.1. ASEAN Plus One FTAs and the RCEP

Area	ACFTA	AJCEP	AKFTA	AIFTA	AANZFTA	AHKFTA	RCEP
Approach	Gradual	Single undertaking/ review in 2019 (services/ investment chapters replaced)	Gradual	Gradual	Single undertaking/ Second Protocol: (upgrade of AANZFTA in 2023)	Single undertaking	Single undertaking
EIF	ACTIG: 2004 ACSA: 2007 ACIA: 2010 Review of all three (WIP)	2008	AKTIGA: 2007 AKTISA: 2007 AKIA: 2009	AITIGA: 2010 (review in progress) AITISA: 2015 AIIA: 2015	2010 First Protocol: 2014 (signed)	AHKFTA/ AHKIA: 2019	RCEP: 2022
Trade in goods	91.9%	90.4%	90.3%	76.4%	93.5%	85%	ASEAN: ≥92% AU/NZ: 92%–95% JP: around 92% KR: 92% CH: 90%
Trade in services	GATS positive list	GATS positive list	GATS positive list	GATS positive list	GATS positive list	GATS positive list	GATS positive list approach with transition to negative list
MNP	None	Separate chapter	None	None	Separate chapter	None	Separate chapter
Services sectoral annexes	None	Financial services, telecom services	Financial services	None	Financial services, telecom services	None	Financial services, telecom services,

Area	ACFTA	AJCEP	AKFTA	AIFTA	AANZFTA	AHKFTA	RCEP
							professional services
Investment	Liberalisation, protection, promotion, facilitation, NCM lists	Liberalisation, protection, promotion, facilitation	Liberalisation, protection, promotion, facilitation	Liberalisation, protection, promotion, facilitation	Liberalisation, protection, promotion, facilitation	Liberalisation, protection, promotion, facilitation	Liberalisation, protection, promotion, facilitation

AANZFTA = ASEAN–Australia–New Zealand Free Trade Area, ACFTA = ASEAN–China Free Trade Area, ACIA = ASEAN Comprehensive Investment Agreement, ACSA = ASEAN–China Services Agreement, ACTIG = ASEAN Trade in Goods, AHKFTA = ASEAN–Hong Kong Free Trade Agreement, AHKIA = ASEAN–Hong Kong Investment Agreement, AIFTA = ASEAN–India Free Trade Area, AIIA = ASEAN–India Investment Agreement, AITIGA = ASEAN–India Trade in Goods Agreement, AITISA = ASEAN–India Trade in Services Agreement, AJCEP = ASEAN–Japan Comprehensive Economic Partnership, AKFTA = ASEAN–Korea Free Trade Area, AKIA = ASEAN–Korea Investment Agreement, AKTIGA = ASEAN–Korea Trade in Goods Agreement, AKTISA = ASEAN–Korea Trade in Services Agreement, ASEAN = Association of Southeast Asian Nations, AU = Australia, CH = China, EIF = entry into force, FTA = free trade agreement, GATS = General Agreement on Trade in Services, JP = Japan, KR = Korea, MNP = Movement of Natural Persons, NCM = non-conforming measures, NZ = New Zealand, RCEP = Regional Comprehensive Economic Partnership, WIP = work in progress.

Sources: ASEAN Secretariat/ASEAN FTA agreements.

As several of these agreements were concluded quite some time ago, there have been moves to review or upgrade them. A review of the ASEAN–China agreements, as well as the ASEAN–India Trade in Goods Agreement, is in progress. More progress is observed with the AANZFTA agreement, as the Second Protocol was signed in August 2023. The Second Protocol includes amendments to the 13 existing chapters, such as trade in goods, rules of origin, and trade in services, as well as three new chapters on government procurement; micro, small, and medium-sized enterprises; and trade and sustainable development. The upgraded AANZFTA also includes elements that go beyond the existing AANZFTA, with a view towards strengthening supply chain resilience, digital technology adoption, cooperation on trade and sustainable development, inclusive trade, and transparency (ASEAN, 2023b). The First Protocol of the AHKFTA was finalised in 2023, while the ACFTA 3.0 upgrade negotiations and the Review of the ASEAN–India Trade in Goods Agreement are ongoing.

1. Investment

The ACIA, which entered into force in 2012, covers investment liberalisation, protection, promotion, and facilitation in manufacturing, agriculture, fishery, mining, and quarrying and related services. The ACIA's aim is to create an improved investment environment that ensures no backtracking of commitments under the AIA Agreement and the ASEAN IGA. The ACIA adds value over the AIA in terms of the broader definition of investors and investments, which includes any foreign juridical entity established in an AMS that makes an investment in another AMS. It also provides for national treatment and MFN. In addition, the ACIA extends protection to covered investments, with the option of dispute resolution through different channels including mediation, domestic AMS courts, and international arbitration.

The ACIA also permits foreign investors to appoint senior management of different nationalities and disallows AMS from imposing performance requirements such as production quotas or export targets. The freedom to transfer funds and profits is also guaranteed.

ASEAN's six other bilateral FTAs follow an almost identical format, covering the four pillars of investment protection, liberalisation, facilitation, and promotion. Most of the key provisions, such as coverage of investment, national treatment, and MFN, are present in the investment agreement or chapter. In terms of coverage, most of the FTAs cite covered investments, which are investments made in the territory of the parties. However, the exception is the ASEAN–India Investment Agreement (AIIA), which specifies that coverage of the agreement is related only to the manufacturing, agriculture, fishery, forestry, mining, and quarrying sectors (Table 4.2).

Table 4.2. Investment Provisions in ASEAN FTAs

Provisions	ACIA	AJCEP	AKIA	AIIA	AANZFTA	AHKIA	RCEP
Coverage	All[a]	All[a]	All[a]	Partial[b]	All[a]	All[c]	All[a]
National treatment	✓	✓	✓	✓	✓	✓	✓
MFN[d]	✓	X	✓	✓	✓	✓	✓
NCM approach[e]	✓	✓	✓	✓	✓	✓	✓
Dispute settlement options	✓	✓	✓	✓	✓	X	X

ACIA = ASEAN–China Investment Agreement, AIIA = ASEAN–India Investment Agreement, AJCEP = ASEAN–Japan Comprehensive Economic Partnership, AANZFTA = ASEAN–Australia–New Zealand Free Trade Area, AHKIA = ASEAN–Hong Kong Investment Agreement, ASEAN = Association of Southeast Asian Nations, FTA = free trade agreement, MFN = most favoured nation, NCM = non-conforming measures, RCEP = Regional Comprehensive Economic Partnership.
Note: The AANZFTA is based on the Second Protocol of the agreement.
[a] Covered investments (investment in the territory of the parties) but no *a priori* exclusion.
[b] Covers manufacturing, agriculture, fisheries, forestry, mining, and quarrying, but excludes services.
[c] Excludes services.
[d] The other FTAs carve out the application of MFN concluded under future FTAs. Under AJCEP, this is still to be negotiated.
[e] Negative list.
Source: ASEAN FTA agreements.

In terms of MFN treatment, while providing for MFN in terms of the treatment of investors of the parties, most of the FTAs also seek to carve out the application of MFN on preferential treatment granted to other parties concluded under future FTAs. However, this principle is not reflected in the AJCEP which is still to be negotiated. Under the RCEP, parties should grant MFN, i.e. treatment no less favourable than that given to parties or non-parties, but this provision does not apply to CLMV countries. The AANZFTA and RCEP included a new non-conforming measure, which is the prohibition on performance requirements. Although prohibition on performance requirements is part of the ACIA, it is not listed as a non-conforming measure to be entered as a reservation.

In terms of protection, most of the agreements provided for multiple dispute resolution channels, including local courts and international mechanisms such as the International Centre for Settlement of Investment Disputes convention and arbitration under the rules of the United Nations Commission on International Trade Law. The exceptions are the ASEAN–Hong Kong Investment Agreement and the RCEP, where these dispute settlement rules for investment are still to be negotiated. Nevertheless, as ASEAN has bilateral FTAs with the five non-ASEAN RCEP countries, the implications may be minimal unless it pertains to areas with additional commitments under the RCEP.

2. Services

Another critical area in the liberalisation process for ASEAN is services. With the services sector's share of GDP rising and moving towards being the largest segment of GDP in most AMS, the liberalisation of this sector is deemed important not only in attracting investment to the area but also because such investments should support the efficient functioning of the economy and ASEAN's integration in the global supply chain, especially in the financial and logistics sector. Indeed, due to the significant and increasing links between services and the production of goods, the impact of liberalisation is not confined solely to the services sector but spread across the entire economy by linking various blocks of production activities within and across national borders. This is often referred to as a 'service link', i.e. 'a composite of activities such as transportation, insurance, telecommunications, quality control, and management co-ordination to ensure that the production blocks interact in the proper manner' (Arndt and Kierzkowski, 2001, quoted in OECD and ADB, 2002: 4).

In addition to ASEAN's own services agreement, ASEAN's six bilateral FTAs contain services liberalisation provisions, with stand-alone services agreements under the ASEAN–China, ASEAN–India, and ASEAN–Korea FTAs, while in the other FTAs, these form part of the main FTA agreements. Service provisions in these FTAs are mainly based on the WTO GATS, with progressive liberalisation as the main objective, except under the ATISA and RCEP, which are using the negative list approach. The scheduling approach adopted in the former FTAs is the positive list approach, while the ATISA and RCEP used the negative list approach (Table 4.3). The RCEP agreement provides for the transition to negative list scheduling of 3 years for the submission of negative list schedules by the parties, except for Cambodia, the Lao PDR, and Myanmar (CLM), which are given 12 years. The ATISA transition timing is 5 years for the ASEAN-6, 7 years for Viet Nam, and 13 years for CLM for submission of the lists. Several AMS submitted these negative schedules under the RCEP ahead of the deadline, while none have been published under the ATISA.

Table 4.3. Services Provisions in ASEAN FTAs

Provisions	ACSA	AJCEP	AKATS	AITISA	AANZFTA	AHKFTA	RCEP	ATISA
Coverage	GATS+	GATS+	GATS+	GATS+	GATS+	GATS+	GATS+/NCMs	NCMs
National treatment	✓	✓	✓	✓	✓	✓	✓	✓
MFN	X	✓	X	X	X	X	✓	✓
MNP	✓	✓	✓	✓	✓	X	✓	X
Approach	PL	PL	PL	PL	PL	PL	Negative list	Negative list
Annexes	X	✓	✓	✓	✓	X	✓	✓

AANZFTA = ASEAN–Australia–New Zealand Free Trade Area, ACSA = ASEAN–China Services Agreement, AHKFTA = ASEAN–Hong Kong Free Trade Area, AITISA = ASEAN–India Trade in Services Agreement, AJCEP = ASEAN–Japan Comprehensive Economic Partnership Agreement, AKATS = ASEAN–Korea Agreement on Trade in Services, ASEAN = Association of Southeast Asian Nations, ATISA = ASEAN Trade in Services Agreement, FTA = free trade agreement, GATS = General Agreement on Trade in Services, MFN = most favoured nation, MNP = Movement of Natural Persons, NCM = non-conforming measures, RCEP = Regional Comprehensive Economic Partnership.
Note: AJCEP refers to the First Protocol to amend the agreement.
Source: ASEAN FTA agreements.

In all the FTAs, the principle of MFN is a vital component of the agreement. Not surprisingly, however, MFN treatment for future FTAs is usually not part of the agreements with a positive-list approach, as preferential treatment accorded in future FTAs is not provided for. However, there are some differences. Under the AJCEP, parties are allowed to inscribe exclusions to MFN in a separate schedule such as allowed under GATS. For the AANZFTA, a provision allows requests for consultations to discuss the possibility of extending MFN in future FTAs with a non-party if this results in more favourable treatment for the non-AANZFTA party. The ATISA and RCEP, which follow a negative list approach, provide for the scheduling of reservations on MFN. Under the RCEP, AMS reserves the right to grant each other more preferential treatment which it may not grant to other RCEP parties. Under ATISA, any preferential treatment granted to another AMS/non-parties after entry into force, will also have to be granted to other AMS, unless otherwise stated in the reservations.

The treatment of natural persons also differs in terms of placement. There is a separate chapter for the MNP under the AJCEP, AANZFTA, and RCEP (first group), whereas under the ASEAN–China Services Agreement (ACSA), ASEAN–India Trade in Services Agreement (AITISA), ASEAN–Korea Services Agreement (AKSA), and ASEAN–Hong Kong Free Trade Agreement (AHKFTA) (second group), the provisions on MNP form part of the services agreement/FTA agreement. ASEAN's MNP provisions are in a separate agreement, the ASEAN MNP Agreement. Under the first grouping, MNP is scheduled as a separate schedule of commitments, while under the second group, MNP is part of the schedules of specific commitments.

Beginning with the ATISA and RCEP, ASEAN is transitioning to the negative list approach. This approach is seen to promote transparency, lock in the status quo in committed sectors, and encourage a domestic regulatory audit of service sector regimes. Additionally, it should ensure no rollback of commitments, and parties are not expected to introduce more discriminatory or access-impairing measures in future (standstill). This provides for more certainty and security for investors at a time when competition for FDI is strong and ASEAN as a region must be seen to be unwavering in its commitment towards the goal of free trade and investment.

Chapter 5

Investment and Services Sector Liberalisation under the AFAS, AANZFTA, RCEP, and CPTPP

1. Investment Liberalisation

Investment liberalisation under the ACIA follows a single list approach. Pending the transition to a two-annex approach, as agreed under the ACIA Fifth Protocol and the operationalisation of the new obligations on the prohibition on performance requirements under the ACIA Fourth Protocol, the latest commitments of AMS under the ACIA reservation lists include the 2012 amendments. As stated earlier, the ACIA covers manufacturing, agriculture, fishery, forestry, mining, and quarrying and the services incidental to these sectors, while the Fifth Protocol expands this coverage.

In the main, AMS reservations on investment are usually on national treatment exceptions for land ownership; SMEs; senior management/board of directors; hiring of expatriates; and protection of traditional industries such as batik, silkworm farming, and local handicrafts. In addition, issues relating to food security, newspaper publication and printing, privatisation, and portfolio investment are also subject to reservations. Several AMS also specify specific industries that are subject to prohibitions or licensing restrictions in the manufacturing, agriculture, forestry, and mining sectors (Table 5.1).

Table 5.1. Reservations Under the ACIA

Country	Reservations
Brunei Darussalam	• At least one director must be a resident, or two if the board of directors has more than two persons • Investment in the manufacturing, fishery, and agriculture sectors, and services incidental to these sectors utilising government sites subject to 30% local equity • No national treatment for privatisation, divestment of government assets, or imposition of new measures • No national treatment for fisheries; food security; privatisation; activities using certain natural resources, including oil and gas; mining, and quarrying; newspaper printing; and publishing • No new permits for logging and saw milling • No land ownership
Cambodia	• National treatment on land, hiring policies, portfolio investment,

Country	Reservations
	forestry, mining, oil, and gas • Prohibition on sand-mining production of narcotics/dangerous chemicals/pesticides
Indonesia	• Divestment requirement for 100%-owned companies in all sectors • No national treatment for existing licences, privatisation, food security, land use, fishery, or portfolio investment • Appointment of local distribution/sales agents • SMBD reservations applicable to all sectors, including employment of locals to certain positions/expatriates • Certain activities reserved for SMEs such as various traditional industries, agriculture farming, certain forestry activities closed to foreign investment, special permits for various natural resources, and ownership limitations for certain industries • Prohibition/special licences for weapons/dangerous industries, processing of certain plantation products beyond certain limits, forestry activities, and horticulture • Prohibition on certain industries for SMEs, i.e. traditional handicrafts, food processing, tobacco, motorcycle repair, wood, furniture, and investment in agriculture activities less than a certain hectarage • Requirement of integrated processing facilities above certain sizes for estate crops • Prohibition on sand extraction and limitations on equity for certain mining operations
Lao PDR	• Land can only be leased by foreign investors • Foreign investors in a joint venture must contribute at least 30% of capital and minimum registered capital is US$100,000 • Mining and quarrying subject to joint ventures • Fishery and aquaculture in Mekong
Malaysia	• Land ownership restrictions • At least two directors with residence in Malaysia • No national treatment on listed securities, privatisation, employment of expatriates, issuance of licences or permits, certain local food processing, weapons, petroleum refining, timber extraction, oil and gas, mining and quarrying, and rights of bumiputras • No foreign fishing in the exclusive economic zone; specific conditions applied for sugar refining and motor vehicle manufacture/assembly; prohibition of certain sectors involving alcoholic beverages, toxic wastes, optical discs, and Portland cement

Country	Reservations
	• Equity conditions for agriculture subject to national objectives, 30% for batik manufacturing
Myanmar	• Prohibitions on the manufacture of alcohol, cigarettes, iron sheets, pulp and paper, pharmaceuticals, petroleum refining, logging, and gemstones • Fishery and petroleum exploration subject to approval • Publishing and printing of newspapers • Land ownership restrictions
Philippines	• Land ownership restrictions • National treatment and/or SMBD restrictions on businesses (fishery, aquaculture, and SMEs) reserved for nationals (citizens or companies with 60% local ownership); certain sectors where national interest dictates; portfolio investment; export requirements for foreign enterprises; licensing conditions; privatisation, printing, and publishing; manufacture of certain dangerous items; iron and steel products; wood products; food security; poverty alleviation; and mineral resources • Foreign equity restrictions on SMEs
Singapore	• Foreign equity limits in certain national companies, including Singapore Airlines and PSA • SMBD reservations on directors and agents • No national treatment for land matters, manufacture/sale of dangerous goods, alcoholic beverages, cigarettes, optical discs, publishing, and printing of newspapers • No new licences for pig farming or quarrying
Thailand	• Equity limits of 50% for certain activities, including newspaper printing, rice/animal farming, forestry, and fishery • Minority equity in certain traditional manufacturing activities such as rice milling; silkworm farming; aquaculture; forest plantation; services incidental to agriculture; fishery; and forestry; higher equity subject to approval • Mining subject to 60% equity limits • Prohibitions on sugar manufacturing, tuna, and lobsters • Restrictions on tobacco products, playing cards, and alcoholic beverages • No house ownership except condominiums; land residential ownership subject to investment of ฿40 million • No national treatment for SMEs or portfolio investments

Country	Reservations
Viet Nam	• No national treatment for the employment of expatriates; land matters; fishery activities, including equity limitations; services incidental to mining and quarrying; forestry; and services incidental to agriculture • No national treatment/SMBD for the establishment, acquisition, organisation, operation, and equity of foreign enterprises, where socio-economic interest may prevail; SMEs; and mining and quarrying • No licences for the manufacture of certain dangerous goods, tobacco products, and alcoholic beverages; cultivation of rare plants; and services incidental to a number of these and other products in manufacturing, agriculture, and mining • Preference given to local manufacturers in cement, motorcycles, and motor vehicles • Raw material requirements in certain manufacturing processes such as aqua and dairy products, household appliances, and bicycles • Foreign equity on certain services incidental to manufacturing restricted to 30% • Investment in oil and gas subject to approval • Foreign equity limit of 49% for aircraft manufacture and rolling stock

ACIA = ASEAN Comprehensive Investment Agreement, SMBD = senior management and board of directors, SMEs = small and medium-sized enterprises.
Source: ACIA Reservation Lists.

In agriculture, several AMS have specified rice farming, fisheries, and forestry (logging) as being subject to either national treatment carve-outs or no more new licences. Food security is also an important area where national treatment reservations are inscribed. In mining and quarrying, mining activities are also subject to certain restrictions such as sand mining, oil and gas exploration, and other mineral extraction.

In the manufacturing sector, most of the prohibitions are on the manufacture of dangerous goods such as narcotics, certain chemicals, tobacco products, and weapons, while protection is also accorded to local food producers. In some AMS, caveats are placed on local food processing such as rice milling and fish/fruit processing, furniture, and traditional industries, to support domestic participation in these areas. Some protectionist elements are also in play, with some AMS registering national treatment reservations on motor vehicle manufacturing, petroleum processing, and certain construction materials such as cement and tiles.

In August 2023, AANZFTA member countries signed the Second Protocol, which acts as an upgrade of the original AANZFTA with a new chapter on investment. The Second Protocol amends the existing AANZFTA agreement to modernise its commitments while adding new areas. The agreement is still to be ratified. Under the current AANZFTA agreement, there are no schedules of commitments on investment.

Under the RCEP, reservations made by AMS are similar to those under the ACIA. Foreign participation is generally open in the manufacturing sector, including services incidental to it, other than reservations on SMEs, licensing requirements, and national interest considerations. Under the ACIA, most AMS prohibited or restricted land ownership; the manufacture of dangerous items (e.g. weapons) and certain products (e.g. narcotics or tobacco); and the manufacture of traditional products (e.g. certain textiles, handicrafts, and wood items). Most reservations are on foreign investment in agriculture, aquaculture, forestry, and mining. The first three are mainly to protect local farmers and fishers, while mining restrictions are mainly in the oil and gas sector, particularly concerning exploration and extraction. Reservations on portfolio investment also appear in the schedules of Cambodia, Myanmar, Thailand, and Viet Nam, but not in those of other countries, though Malaysia reserved measures on listed securities under the ACIA. Many AMS also cited national security, public interest, and privatisation as part of the reservations under the RCEP. All AMS, except the Lao PDR and Viet Nam, have also undertaken MFN carve-outs for preferential treatment in future FTAs.

Brunei Darussalam specified equity limits for investment in agriculture, forestry, and fishing in government sites under the ACIA, but specified a 30% foreign equity limit for forestry only under the RCEP. Cambodia provided more specificity regarding restrictions on portfolio investment and the need for the approval of large investments under the RCEP, which do not appear under the ACIA. Cambodia also made reservations on SMEs, which did not appear under the ACIA. Indonesia maintained reservations in the RCEP similar to those of the ACIA, including the need to divest 100%-owned foreign-owned enterprises.

Indonesia has national treatment reservations on land ownership under the ACIA, but specified that land ownership is only for Indonesians under the RCEP. The Lao PDR specified in more detail certain industries that it reserves for citizens – mainly handicrafts, local fishery, and forestry-related activities. It also stipulated restrictions on hiring foreigners and investment in fishery and mining. Further, it reserved rights on performance requirements. Malaysia imposed investment restrictions similar to those under the ACIA, but stated that foreign participation in mining and quarrying, forestry, and agriculture is subject to the approval of the relevant authorities rather than specifying the restrictions. Malaysia also maintained reservations on the manufacture of certain food products and the manufacture and distribution of motor vehicles. It also made reservations related to PPR in connection with the transfer of technology, production processes, or other proprietary knowledge. In addition, it scheduled reservations on its future development plans and policies.

Myanmar allowed up to 80% foreign equity in selected manufacturing activities (e.g. chemicals, confectionery, and food processing), while certain other manufacturing activities are subject to approval, with a specification of equity limits. These constitute a much more detailed list compared with under the ACIA. Certain mining activities can be carried out as joint ventures with the government, such as oil and gas exploration. However, Myanmar reserves the right to take future measures in these areas. It reserved PPR for health and security, the development of indigenous communities, and SMEs.

The Philippines continues to reserve participation in domestic small and medium-sized domestic enterprises; rice farming; the use of marine, fisheries, and aquatic resources; small-scale mining; the manufacture of defence equipment; printing and publishing for its nationals; and processing of certain iron and products. The right to take measures in respect of land, water and natural resources, fisheries, and forestry, and to adopt measures on investment based on the national interest and the operation of local utilities, were added – including for the rationalisation of industries.

Singapore maintained reservations on land matters, adding real estate matters. It continued to reserve foreign equity limits in certain national companies, including Singapore Airlines and PSA. It also kept reservations on the manufacture/sale of dangerous goods, alcoholic beverages, cigarettes, and optical discs; and added products related to non-automatic licensing.

Thailand highlighted equity limitations of 49% for oil and gas extraction and marble mining, whereas mining activities with up to 60% equity were allowed under the ACIA. Similarly, foreign equity restrictions were put on onion seed propagation and cattle farming (49%) and breeding of tuna and lobsters (51%). Thailand also reserved the right to impose measures on forestry activities and on certain manufacturing sectors not listed in the schedules, which were not mentioned under its ACIA reservations.

Viet Nam maintained a foreign equity limit of 49% for aircraft and railway rolling stock. It also reserved the right to impose measures on land ownership; SMEs; establishment of branches by enterprises; the manufacture of certain dangerous goods; printing and publishing; and the manufacture of tobacco products, alcoholic beverages, and large buses. It further reserved the right to impose measures for food security as well as oil and gas, whereas in the ACIA, it is scheduled only as subject to approval. Preference for local manufacturers in cement, motorcycles, and motor vehicles remained.

2. Services Liberalisation

As noted in the preceding section, the services sectors with the most FDI inflows are financial services, wholesale and retail, transport, and telecommunications. In this connection, the market access commitments made by AMS in these sectors are compared to gauge the extent of liberalisation amongst AMS and with FTA partners (the AANZFTA and the RCEP) and including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

3. Financial Services

As the sector with the largest FDI inflows, the financial services sector has seen commitments made under the different FTAs and the AFAS. However, in line with the sensitivity of this sector, in terms of the need to maintain financial stability and for prudential reasons, most AMS have chosen to adopt a more cautious approach in terms of financial services liberalisation.

Under the AFAS, in terms of the financial sector commitments:

- Brunei Darussalam allows foreign entities to establish banking and insurance operations as approved under its laws, though it scheduled 'unbound'[4] for commercial presence.
- Cambodia has scheduled no restrictions for commercial presence other than the need for authorisation to operate.
- The Lao PDR has no market access restrictions on entry to the banking/insurance sectors either in joint ventures (minimum 30% foreign capital) or fully-owned foreign institutions.
- Indonesia allows foreign equity in banking and insurance up to 49% in new ventures and up to 51% for acquisitions of existing banks.
- Malaysia only permits acquisitions of existing banks up to 30%, with no new banking licences, although it is more liberal in terms of insurance companies, which are subject to a national interest clause.
- Myanmar only allows branches of foreign banks or representative offices.
- The Philippines allows only reputable foreign banks, while acquisitions of local banks are subject to a 40% equity cap.
- Singapore does not allow new banking or finance companies, with new foreign banks only permitted to establish offshore bank branches or representative offices. Representative offices cannot conduct business or act as agents, and no equity restrictions are placed on insurance companies.
- Thailand allows foreign bank branches and representative offices, but the foreign equity limit is 25% for the acquisition of locally incorporated banks. For insurance companies, foreign participation is allowed up to a maximum of 49% equity.

[4] Retains the right to impose new restrictions.

- Viet Nam allows joint ventures with up to 50% foreign capital or 100% foreign-owned financial institutions.

In respect of the AANZFTA, which was the broadest in terms of scope amongst ASEAN's bilateral FTAs, AMS generally scheduled less extensive commitments compared with the AFAS. Brunei Darussalam retained similar commitments in insurance and requires licensing in banking and other financial services subsectors, although the unbound condition that appears in the AFAS is not stated. Cambodia's financial services commitments remained the same as in the AFAS. Indonesia scheduled about the same level of liberalisation but imposed a cap of 80% foreign equity for insurance companies. The Lao PDR listed no restrictions for certain banking services but did not schedule insurance or securities subsectors, while Malaysia retained unbound for new banking licences. Myanmar did not make commitments in financial services. The Philippines required that at least 70% of total assets be held by domestic banks, i.e. banks that are majority locally owned. Singapore also maintained no new banking licences and subjected insurance companies to a 49% foreign equity cap. Thailand and Viet Nam maintained the same conditions as under the AFAS.

Similar commitments as in the AFAS were made by Brunei Darussalam, Cambodia, Malaysia, Myanmar, Singapore, Thailand, and Viet Nam in the latest FTA, i.e. the RCEP. However, the Lao PDR has more restrictions under the RCEP in that foreign equity in banking and insurance is subject to a 51% equity limit. Indonesia is scheduled unbound for commercial presence but allows 51% foreign equity for the acquisition of local banks listed on the stock exchange. The Philippines introduced a national interest condition in determining foreign presence and is silent on the acquisition of local banks, which it allowed under the AFAS.

4. Wholesale/Retail

In the wholesale and retail sector, most AMS have allowed foreign equity participation under the AFAS (Indonesia, the Lao PDR, Myanmar, the Philippines, and Thailand), ranging from 35% in Myanmar to 100% for Cambodia, but these are mainly restricted to certain types of wholesale activities. For the Philippines, only wholesale trade of fur articles was scheduled. Malaysia allows foreign equity up to 51% in most wholesale subsectors and 70% in some retail activities. Viet Nam also opened a broad spectrum of wholesale/retail subsectors with no equity limits. Singapore has no equity restrictions except wholesale trade in medical products and pharmaceuticals. Brunei Darussalam did not schedule any commitments.

Under the AANZFTA for wholesale/retail, AMS essentially made fewer commitments. Brunei Darussalam, Cambodia, Singapore, and Viet Nam maintained the same level of commitments as under the AFAS. Indonesia, the Lao PDR, Malaysia, and Thailand did not schedule any commitments.

The commitments made under the RCEP for wholesale/retail are also similar to those of the AFAS for Cambodia, the Lao PDR, Thailand, and Viet Nam in the sense that certain wholesale/retail activities are still restricted, while Myanmar did not schedule this sector. The Philippines made improved commitments, allowing for wholesale services for high-end luxury goods with foreign equity up to 70%, and opened retail sales of petroleum products. Brunei Darussalam made reservations on distribution services and wholesale/retail activities regarding the sale of tobacco. Indonesia reserved the right to take measures regarding wholesale trade in food, beverages, tobacco, and textiles/clothing, as well as multilevel marketing, and limited foreign equity to 51%. Malaysia restricted foreigners from operating supermarkets, mini markets, and provision shops; and made reservations on wholesale/distribution activities pertaining to certain food and other products, with various levels of foreign equity restrictions depending on the type of product. Singapore maintained reservations on the distribution of medical products and products involving non-automatic licensing.

5. Real Estate

In terms of real estate activities, AFAS liberalisation is quite extensive. Brunei Darussalam allows 70% foreign equity for real estate services. The Philippines, although scheduled unbound for commercial presence, offered commitments of 49% equity for mainly residential real estate activities, while Thailand made commitments of 49%–70% depending on the type of real estate services. Cambodia, the Lao PDR, Malaysia, Singapore, and Viet Nam have scheduled no market access restrictions. Indonesia did not schedule this subsector.

Looking at the AANZFTA real estate commitments, AMS did not schedule any commitments, except Singapore, which maintained its AFAS-level commitments in this area.

Under the RCEP, Brunei Darussalam scheduled reservations only for valuers and estate agents. Cambodia, Indonesia, the Lao PDR, and Myanmar maintained their position of not scheduling commitments for real estate services as in the AANZFTA. The Philippines, Thailand, and Singapore made similar commitments as in the AFAS. Malaysia did not schedule any reservations other than the authorisation needed to transact in these activities. Viet Nam is scheduled unbound in market access for this subsector.

6. Transport

AMS have made quite extensive commitments for maritime, road, and rail transport liberalisation under the AFAS. Brunei Darussalam allows up to 70% foreign equity for all modes of transport, including space. Cambodia and the Lao PDR scheduled no restrictions in all modes. Indonesia scheduled 49%–70% foreign equity in most modes of transport, while Malaysia permitted joint ventures with 51%–70% foreign equity in all modes and no restrictions for certain maritime support services. Myanmar offers up to 100% foreign equity for maritime services and its supporting services, roads, and inland waterways, but only 70% for rail transport. The Philippines listed most modes as being subject to 40% foreign equity limits, with commitments of 70% foreign equity for inland waterways and certain services such as shipbuilding and airport limousine services. Singapore allows up to 70% foreign equity in most modes of transport but is unbound in rail. Viet Nam made commitments in all modes of transport, with foreign equity limits mostly up to 70% and in some support services up to 100%. Thailand scheduled 49%–51% foreign equity for maritime passenger and freight, road, and rail for maintenance and support services.

For commitments under the AANZFTA, Brunei Darussalam reduced market access commitments to 30% foreign equity in the maritime sector but did not schedule road and rail subsectors. Cambodia offers limited commitments, with unbound scheduled for maritime transport under market access, but offered no restrictions for road transport. No commitments were made for rail or inland waterways. Indonesia's commitments on maritime services are only limited to maritime cargo handling. No commitments were made by the Lao PDR in this sector. Malaysia offered only maritime transportation, with lower equity limits. Myanmar offered similar commitments as in the AFAS for maritime but did not schedule other modes of transport. The Philippines has similar commitments as in the AFAS, though some support services have lower equity limits under the AANZFTA. Singapore only offered maritime transport services while Thailand's commitments were like those of the AFAS. In the case of Viet Nam, while it made commitments in all modes of transport, equity limits were lower than under the AFAS.

In general, under the RCEP, the commitments made were better than under the AANZFTA but lower than under the AFAS. Brunei Darussalam allows foreign participation in maritime, rail, and space transport (40%), but reserved land transport and certain maritime services. Cambodia scheduled unbound for maritime transport and only submitted commitments for air and road transport, omitting the rail subsector, maritime support services, and auxiliary services. Indonesia scheduled foreign participation for maritime freight and passenger services, while the other sectors are reserved. The Lao PDR scheduled unbound for maritime passenger and freight transport services, but allows up to 100% foreign equity for domestic road transport and 49% foreign equity for cross-border land transport. It imposed an economic needs test on rail transport. Malaysia's commitments basically reduced foreign equity to 49% for freight road transportation and reserved passenger road transportation at 51%, but entered no equity reservations on the other modes. Myanmar offered 70% foreign equity for maritime transport and auxiliary services. The Philippines, Singapore, and Thailand scheduled similar commitments as in the AFAS. Viet Nam listed essentially the same as under the RCEP, except that some foreign equity limits have been reduced.

7. Telecommunications

The telecommunications sector is also relatively open under the AFAS. Several AMS made commitments of 49% (Indonesia and Thailand) to 70% or more of foreign equity (Malaysia and Singapore). However, Cambodia opened most services (e.g. voicemail/email and electronic data interchange) to full foreign ownership. Brunei Darussalam scheduled no equity limitations, except a 70% equity limit on packet-switched services. The Lao PDR imposed no equity limits, like Myanmar, which offered 100% foreign equity for fully owned foreign enterprises. Viet Nam imposed a foreign equity limit of 49% for facilities-based providers and 70% for non-facilities-based providers. The Philippines capped foreign equity limits at 40% for facilities-based and value-added services. As a priority integration sector, the targets of 70% foreign equity have thus not been fully met by all AMS.

Under the AANZFTA, most telecommunications services are subject to licensing or are unbound in Brunei Darussalam, but no mention is made of equity limits. Cambodia imposed a limit of 49% foreign equity for voice, packet, and circuit-switched services, while other services have no market access restrictions. Indonesia capped foreign equity limits at 35%. The Lao PDR, while maintaining the same level of commitments as under the AFAS, had a joint venture requirement in some services. Malaysia only allows the acquisition of existing companies, subject to a cap of 49%. The Philippines and Singapore maintained AFAS-type commitments. Thailand scheduled similar commitments as under the AFAS, while reducing foreign equity limits to 40% and adding a caveat about limited licences. Viet Nam also reduced the equity limit of non-facilities-based operators to 65% and maintained the same level for facilities-based providers. Myanmar did not schedule telecommunications services.

As with the other sectors, commitments by AMS under the RCEP in telecommunications are not as broad as under the AFAS but are of a broader and deeper level than the AANZFTA. Brunei Darussalam reduced foreign equity participation to 51%, Indonesia to 35%, and Myanmar to 70%, but the Lao PDR capped foreign equity limits at 60% for facilities-based services while maintaining the same level for the rest. The Philippines and Thailand maintained the same stance as the AFAS. However, Malaysia and Singapore have not maintained any reservations on equity under the RCEP other than outlining eligibility conditions.

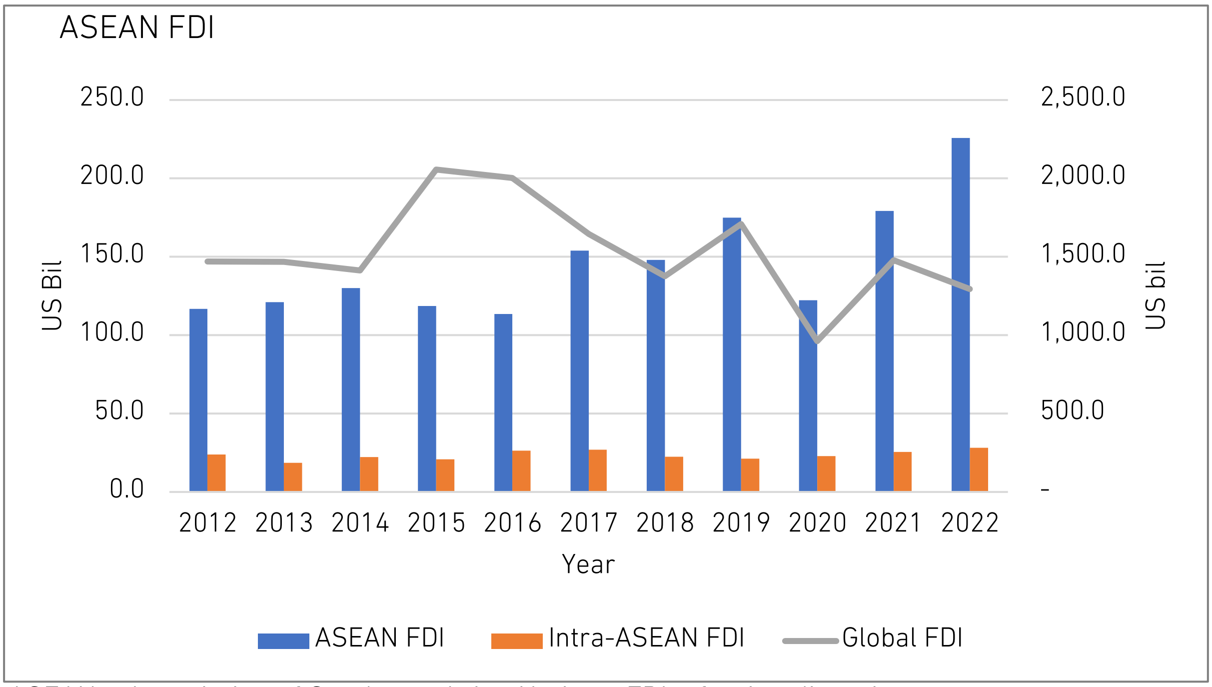
Chapter 6
Trends in FDI

The liberalisation components of ASEAN's internal integration initiatives, as well as the market opening measures under the ASEAN FTAs, are sending the right signals to ASEAN's trading partners. The investment environment in ASEAN has become increasingly attractive due to ASEAN's single market and economic community measures and AMS' own initiatives to attract FDI through FTAs and unilateral initiatives.

1. FDI Inflows to ASEAN

The period of regional and global integration, which strengthened in ASEAN in the 1990s and has intensified in the last 2 decades, coincided with strong FDI inflows. FDI inflows to ASEAN totalled US$21.8 billion in 2000 and have consistently exceeded the US$100 billion mark since 2012. While a drop in FDI in 2020 was anticipated given the COVID-19 pandemic, there has since been a remarkable turnaround. A record US$225.8 billion of FDI inflows were received by AMS in 2022, compared with US$179.2 billion in 2021, which was similar to the highest level received before the pandemic in 2019 (Figure 6.1).

Figure 6.1. ASEAN/Global FDI Inflows, 2001–2022
(US$ billion)



ASEAN = Association of Southeast Asian Nations, FDI = foreign direct investment.
Sources: ASEAN (2022b, 2023c); and UNCTAD FDI Explorer https://unctad.org/data-visualization/global-foreign-direct-investment-flows-over-last-30-years, 29 March 2024).

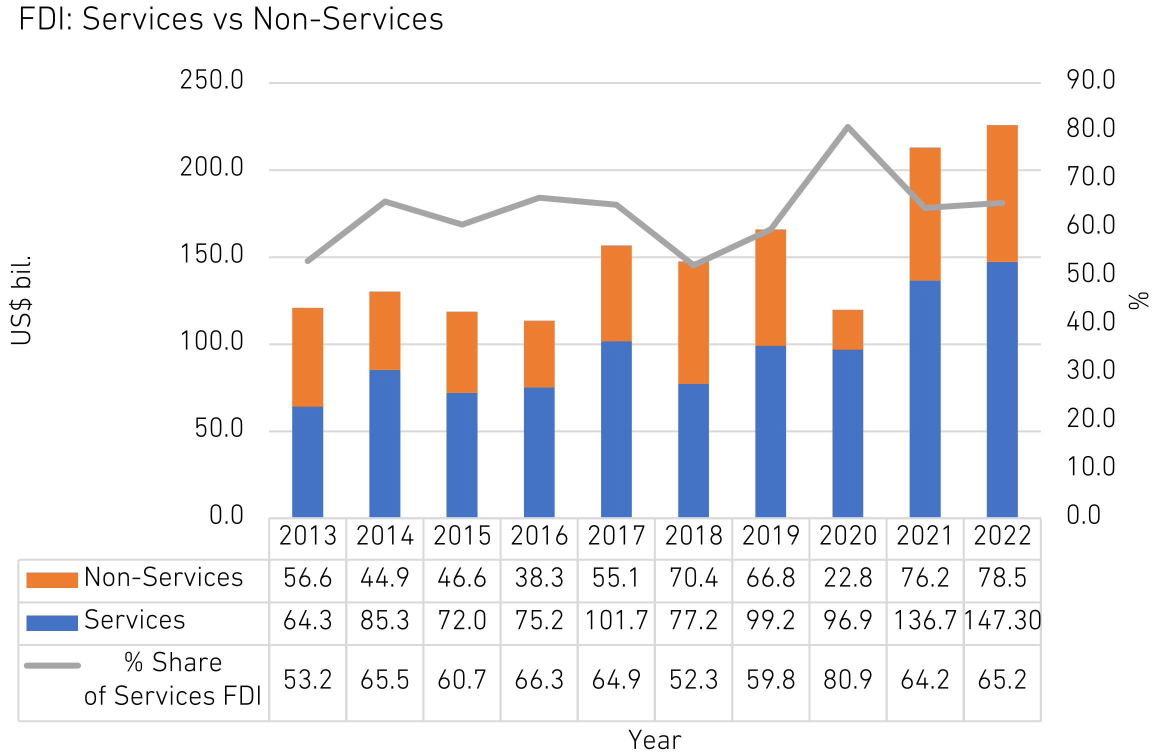
ASEAN's share of global FDI reached a remarkable 17.4% in 2022, compared with a share of 3%–5% between 2001 and 2009. Since 2018, ASEAN's share of global FDI has surpassed 10%. ASEAN achieved this remarkable feat despite slowing global FDI flows following the pandemic and the fallout from the war in Ukraine/Gaza, high inflation and interest rates, and slower global growth.

ASEAN's internal integration through investment and services liberalisation also saw intra-ASEAN FDI rising from 2012 to hover around US$20 billion–US$25 billion annually or 15%–20% of total ASEAN FDI between 2012 and 2019. However, although intra-ASEAN FDI went up to US$26 and US$28 billion, respectively, in 2021 and 2022, its share fell to 14.3% and 12.4%, respectively, due to the spike in FDI from non-ASEAN countries. Nevertheless, in value terms, this is still a significant amount compared with the less than US$10 billion of intra-ASEAN investments from 2001 to 2009.

2. FDI Inflows by Sector

Over the last 2 decades, FDI in the services sector has been steadily increasing.[5] Since 2014, FDI in the various services sub-sectors has breached a 60% share (Figure 6.2), except in 2018 and 2019. This is not unexpected given that the services sector has overtaken manufacturing and agriculture as the major component of GDP, and the huge investment in expanding financial services, transport and storage, and communications to meet the needs of a modern economy and to serve ASEAN's burgeoning status as a production hub.

Figure 6.2. Services vs Non-Services Share of FDI, 2012–2021
(US$ billion)



	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Non-Services	56.6	44.9	46.6	38.3	55.1	70.4	66.8	22.8	76.2	78.5
Services	64.3	85.3	72.0	75.2	101.7	77.2	99.2	96.9	136.7	147.30
% Share of Services FDI	53.2	65.5	60.7	66.3	64.9	52.3	59.8	80.9	64.2	65.2

ASEAN = Association of Southeast Asian Nations, FDI = foreign direct investment.
Source: ASEAN (2022b,2023c).

Further, from the breakdown of FDI by sector, the main inflows are to manufacturing, and in services to finance and insurance, wholesale/retail, and real estate. Other major sectors are real estate, transportation and storage, and telecommunications. The share of

[5] The extremely high 2012 figure is an anomaly due to negative FDI in manufacturing that year.

manufacturing in ASEAN FDI is subject to fluctuations, depending on global macroeconomic and geopolitical conditions. In 2012, manufacturing FDI experienced a negative inflow due to a slowdown in global economic growth in 2011, marked by concerns over the euro debt crisis. However, FDI in manufacturing rebounded strongly, to US$40 billion in 2013, US$27 billion in 2014, and US$28 billion in 2015, before surging to US$61 billion in 2018 and US$66 billion in 2022 (Table 6.1). This translates to a 29% share of FDI for the manufacturing sector in 2022, reflecting ASEAN's resilience and sustainability as a global production base and an integral part of global value chains in areas such as automotives, electronics, and food processing.

Table 6.1. ASEAN FDI by Major Sector

Sector	2012		2015		2018		2022	
	US$ billion	%	US$ billion	%	US$ billion	%	US$ billion	%
Agriculture, forestry, and fishery	1.7	*1.5*	5.4	*4.5*	3.7	*2.5*	-0.1	0.0
Mining and quarrying	6.5	*5.6*	6.5	*5.5*	-6.9	*-4.7*	0.9	0.4
Manufacturing	-8.2	*-7.0*	28.5	*24.0*	60.9	*41.3*	65.9	29.2
Finance and insurance	39.8	*34.1*	32.1	*27.0*	30.7	*28.0*	63.3	28.0
Wholesale and retail trade; repair of motor vehicles and motorcycles	38.3	*32.8*	10.6	*8.9*	13.5	*9.1*	33.4	14.8
Real estate	11.1	*9.5*	8.9	*7.5*	11.2	*7.6*	10.3	4.6
Transportation and storage	3.6	*3.1*	4.3	*3.6*	2.2	*1.5*	22.1	9.8
Information and communications	1.4	*1.2*	3.5	*2.9*	6.5	*4.4*	10.5	4.7
Others	22.6	*19.3*	18.9	*15.9*	25.8	*17.5*	19.5	8.6
Total ASEAN FDI	116.8	*100.0*	118.7	*100.0*	148.0	*100.0*	225.8	*100.0*

ASEAN = Association of Southeast Asian Nations, FDI = foreign direct investment.
Note: Totals and percentages may not sum precisely because of rounding.
Source: ASEAN (2022b, 2023c).

From the services side, FDI inflows to the financial and insurance sector have been getting stronger and more resilient over the last decade, making it the largest services sector in terms of the share of total FDI inflows. In 2022, FDI in this sector reached US$57.4 billion, representing 28% of total FDI in ASEAN. This was followed by the wholesale and retail sector, which attracted US$33.4 billion of FDI in 2022, and a surge in FDI to the transportation and storage sector with inflows of US$22.1 billion the same year. FDI in the information and communication technology (ICT) and real estate sectors are also at high levels, representing 4.7% and 4.6% respectively of total FDI.

3. FDI Inflows by Source Country

In terms of FDI inflows by source country, FDI from ASEAN's FTA partner countries has been increasing. Inclusive of intra-ASEAN FDI (considering ASEAN's own agreements), FDI from ASEAN itself and the seven FTA partners has seen an increase from US$50.2 billion in 2015 to US$82.4 billion in 2021. The total FDI from these countries has been quite consistent, accounting for over 40% of total FDI to ASEAN over this period and even touching 60% in 2016 and 2018 (Table 6.2).

Table 6.2. FDI to ASEAN by FTA Partners, 2015–2021
(US$ billion)

Country/Region	2015	2016	2017	2018	2019	2020	2021	2022
ASEAN	20.8	25.7	25.5	23.2	21.7	22.7	23.5	28.1
China	6.6	8.2	16.8	12.9	9.0	7.4	16.6	15.5
Japan	13.0	15.6	16.0	30.5	22.7	13.9	20.9	27.2
Republic of Korea	5.6	7.0	6.3	5.7	7.7	6.0	10.1	12.5
Australia	1.4	0.9	-1.2	2.1	1.1	0.1	0.6	2.0
India	1.5	1.5	0.8	0.5	1.3	2.0	1.3	0.7
Hong Kong	1.3	9.7	4.6	13.7	12.4	6.9	9.4	13.9
New Zealand	-0.1	0.3	0.2	-0.3	0.2	0.0	-0.0	0.0
Total	**50.2**	**68.9**	**69.0**	**88.3**	**76.1**	**59.0**	**82.37**	**99.9**
% share of FTA partners in ASEAN FDI	**42.2**	**60.7**	**44.8**	**59.7**	**43.5**	**48.2**	**46.0**	***44.2***
US	*22.9*	*13.4*	*29.1*	*-28.3*	*42.9*	*24.1*	*35.5*	*36.9*
EU	*20.4*	*28.9*	*15.6*	*24.2*	*14.7*	*18.5*	*26.5*	*24.4*
% share of US/EU to total ASEAN FDI	***36.5***	***37.3***	***29.0***	***-2.8***	***32.9***	***34.8***	***34.6***	**27.1**

ASEAN = Association of Southeast Asian Nations, EU = European Union, FDI = foreign direct investment, FTA = free trade agreement, US = United States.
Note: Totals and percentages may not sum precisely because of rounding.
Source: ASEANstats (n.d.), Flows of Inward Foreign Direct Investment into ASEAN by Source Country. https://data.aseanstats.org/fdi-by-hosts-and-sources (5 April 2024).

The traditional sources of FDI to ASEAN, i.e. from the United States (US) and the EU, also performed well, consistently accounting for over 30% of total ASEAN FDI between 2015 and 2021 (discounting the net negative inflow from the US in 2018) before dipping to 27% in 2022.

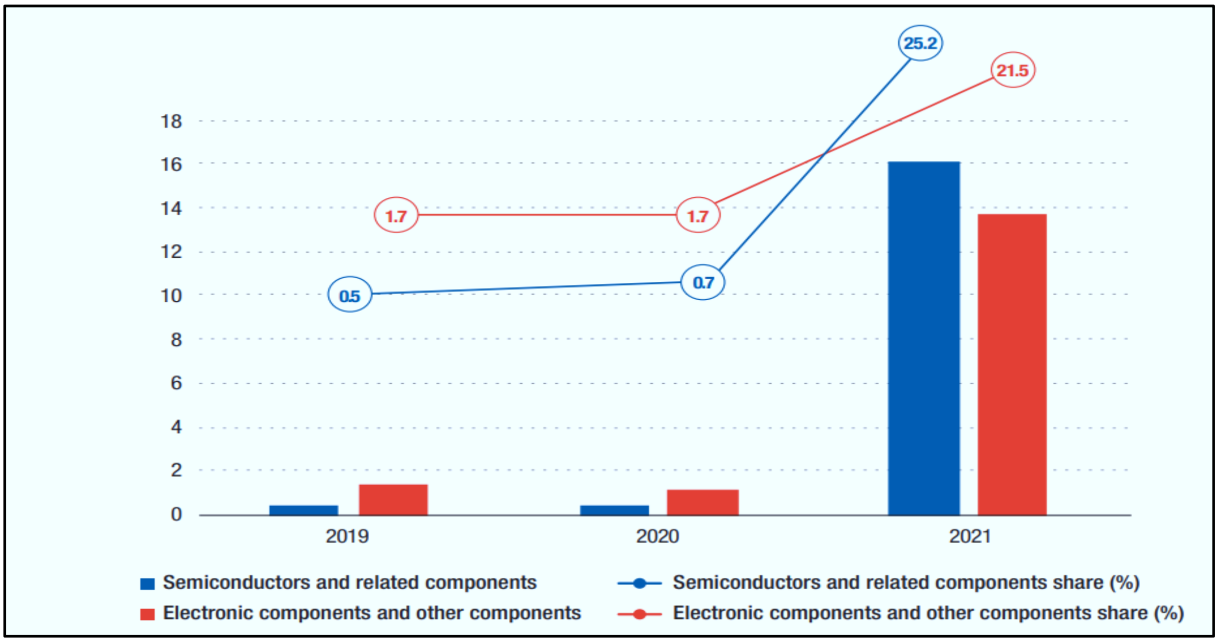
Three areas of growth in FDI have been identified to have strong potential for future growth (ASEAN, 2022a: 22): (i) semiconductors, (ii) products and services linked to the Fourth Industrial Revolution (electronic products), and (iii) electric vehicles (EVs). In the case of semiconductors, increasingly, the experience during the pandemic saw the move towards diversifying production away from China and Taiwan to reduce supply chain disruptions in semiconductors and electronics after the pandemic as well as due to cost factors. The Fourth Industrial Revolution and its ramifications on the digital economy, and the increasing emphasis on the green economy such as the production of EVs and green energy (solar and wind), are expected to drive manufacturing investment in these areas.

With the pandemic-induced supply chain disruptions in electronics and semiconductors that played out between 2020 and 2022, the growing digitalisation of many products (machinery, consumer electronics, and healthcare devices), and the need to reduce supply chain vulnerabilities (concentration in the Asian region, with potential trade flashpoints), enhanced FDI in the semiconductor sector (research and development, design, fabrication, manufacturing/testing, and packaging/distribution) are expected to bring in higher levels of FDI to ASEAN. Currently, there is a concentration of such facilities in the Asian countries (China, Japan, Taiwan, and Korea), aside from the US. Hence, further diversification could bring in more investments to ASEAN.

ASEAN greenfield FDI in semiconductors and other electronic products rose significantly in 2021 (Figure 6.3). The share of semiconductors in total greenfield investment rose from 0.7% in 2020 to 25.2% in 2021, while that of electronics increased from 1.7% to 21.5%. This translates to US$16 billion for semiconductors and close to US$14 billion for electronics and its components, representing nearly 17% of total ASEAN FDI in 2021. This compares with less than US$5 billion of FDI in these two subsectors in 2019 and 2020.

Figure 6.3. FDI in Semiconductors/Electronics in ASEAN

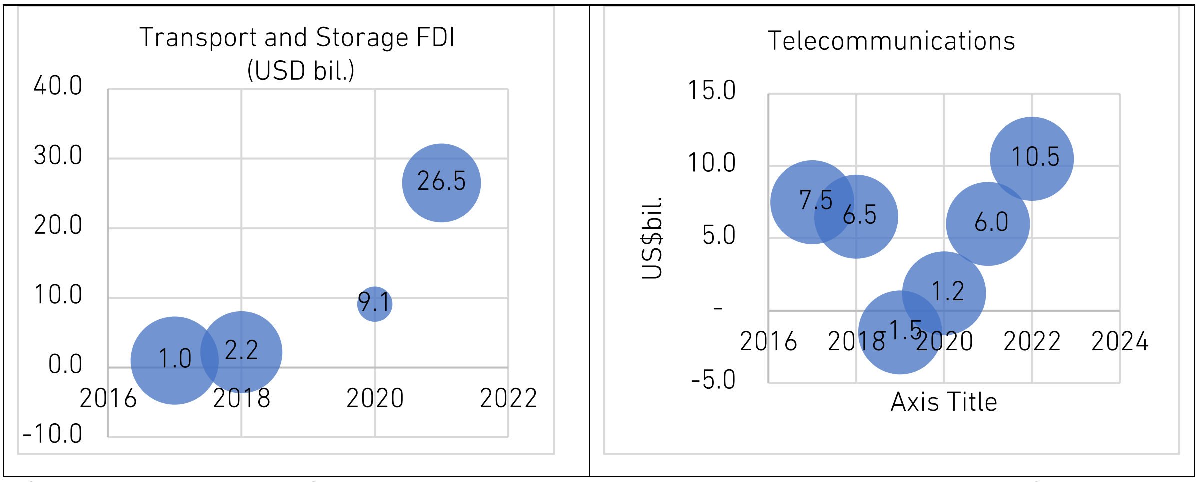
(US$ billion)



ASEAN = Association of Southeast Asian Nations, FDI = foreign direct investment.
Source: ASEAN (2022: 42).

The progress of the Fourth Industrial Revolution is also seeing stronger investment flows into the telecommunications and transport/storage sectors (Figure 6.4). The need for better communications and automation/digitalisation of services to improve efficiency has seen a surge in FDI in these two sectors. For business and enterprises, the need to step up automation in processes and digitalise data and information makes the need for enhanced connectivity and computer capabilities of critical importance. Similarly, the need for better supply chain management, especially in the e-commerce segment, calls for more investment in the logistics chain, including carriers (air and sea), third-party logistics enterprises, couriers and delivery companies, and storage facilities. The region is also seeing a surge in investment in logistics hubs where these hubs provide storage and distribution facilities, especially for e-commerce deliveries.

Figure 6.4. FDI in ICT and Transport/Storage, 2017–2021
(US$ billion)



ASEAN = Association of Southeast Asian Nations, FDI = foreign direct investment, ICT = information and communication technology.
Source: ASEAN (2022b, 2023c).

Several ASEAN economies are ranked relatively high in the Logistics Performance Index (LPI) tabulated by the World Bank, which is a measure of countries' ability to move goods across borders with speed and reliability. Four AMS are in the top 50, with Malaysia and Singapore scoring highest amongst the AMS in the 2023 LPI (Table 6.3). Singapore gained the top spot in the LPI global rankings while Malaysia moved up to 26th, Thailand remained at 34th, and the Philippines improved to 43rd. However, Cambodia, Indonesia, the Lao PDR, and Viet Nam slipped in the rankings in 2023 from the previous index in 2018.

Table 6.3. World Bank LPI, 2018 and 2023

ASEAN Member State	2018	2023
Brunei Darussalam	n.a	n.a
Cambodia	98	115
Indonesia	46	61
Lao PDR	82	115
Malaysia	41	26
Myanmar	n.a	n.a
Philippines	60	43
Singapore	**7**	**1**
Thailand	34	34
Viet Nam	39	43

LPI = Logistics Performance Index, n.a. = not applicable.
Note: Data for Brunei Darussalam and Myanmar are not available.
Source: World Bank (2023), Logistics Performance Index (LPI). https://lpi.worldbank.org/international/global (18 December 2023).

The green economy is gaining traction as climate change concerns and sustainability issues are addressed more urgently. In this connection, the Paris Agreement adopted by 196 parties at the United Nations Climate Change Conference (COP 21) in 2015 aimed to hold 'the increase in the global average temperature to well below 2°C above pre-industrial levels' and pursue efforts 'to limit the temperature increase to 1.5°C above pre-industrial levels' (UNFCCC, n.d.). Currently, all AMS have made pledges to reach net zero carbon emissions by 2050, except Indonesia and Thailand, which have set targets for 2060 and 2065, respectively. Renewable energy (solar/wind) and electric transport are also identified as areas of potential for green investment (Bain & Company, Microsoft, and Temasek, 2022). Potential investment of US$30 billion in renewable energy and US$50 billion in EVs by 2030 is foreseen in the same report.

In terms of the EV value chain (car production, batteries, raw materials, and charging stations), major car manufacturers as well as new entrants to EVs are keen to invest in ASEAN given its supportive investment environment and its stated intention to move towards a zero carbon economy. Other factors include better access to raw materials, a growing ASEAN market for EVs, and emerging investment opportunities in the EV battery production and infrastructure network (ASEAN, 2022a: xvii). Indonesia, Malaysia, Thailand, and Viet Nam remained the favoured destinations for these types of FDI, building on their existing infrastructure for motor vehicle production. The competition is building for these types of investment, with some AMS providing unilateral offers to remove local content, equity requirements, or other restrictions in the quest to promote their countries as EV production hubs. For example, Malaysia relaxed foreign ownership rules for Tesla, while Indonesia and Thailand are offering further incentives to EV producers and battery manufacturers.

Chapter 7

Suggestions and Recommendations for Further Liberalisation

As the earlier analysis has shown, the onset of deeper integration in ASEAN in the late 1990s, which accelerated under the goal of an economic community, has boosted ASEAN's economic growth and attractiveness as an investment destination in the last 2 decades. The region has become a firm favourite with global and regional investors, with inward FDI rising to a remarkable share of 17.4% of global FDI in 2022.

A large proportion of the FDI is present in the manufacturing and services sectors, with major services investments in finance, wholesale/retail, transport, and telecommunications, while real estate transactions also increased, reflecting higher purchases/leasing of residential and commercial property due to strong investor presence and demand for residential/commercial property. Investments in manufacturing also remain resilient as ASEAN maintains an important foothold in the global production chain.

In this context, investment liberalisation and facilitation, as well as higher levels of protection for investors, have served ASEAN well. Further liberalisation of the services sector under the ACIA, AFAS/ATISA, and other FTAs have strengthened ASEAN's attractiveness as an investment destination. Moving forward, ASEAN should relook at issues such as greater consistency and openness in its economic policies, as well as institutional support and facilitation, and do more to enable the talent pool to move seamlessly across the region as these are the main drivers of FDI inflows.

ASEAN is amending the ACIA under the Fifth Protocol towards the adoption of a two-annex approach. ASEAN could take this opportunity to review reservations, with a view to making them more specific and bringing greater clarity. This could include reviewing restrictions on food and crop production in light of growing food supply constraints and high living costs to encourage more investment in food production. Specific measures to expand renewable energy are needed to meet the annual investment of US$1.7 trillion needed by developing countries, as highlighted by UNCTAD. In addition, facilitation such as access to land, simplified permitting and licensing, as well as access to information related to the renewable energy potential and needs of the country, could be policy measures to facilitate investment (UNCTAD, 2023: 82, 144).

Further enhancement of the investment environment could involve promoting investment facilitation through upgrading the accessibility and transparency of investment measures. In the same vein, improving the efficiency of administrative procedures and requirements will be key to this endeavour beyond continuing investment liberalisation through specifying reservations in a more targeted manner. This will support investment in the region rather than using a blanket approach of reservations across whole sectors.

Liberalisation of the services sector appears to be incremental due to prudential and national interest considerations but is a key building block in facilitating economic activities, particularly for trade and finance. ASEAN has set ambitious goals and targets under the AEC Blueprint 2015/2025 for removing substantially all restrictions on trade in services and for mode 3 foreign equity participation targets to be at 70% for priority services sectors by 2010 and for other sectors by 2015. However, these targets have still to be met. Flexibility has been accorded under the AEC Blueprint for reaching these targets, but recourse to flexibility has been the norm rather than the exception.

This flexibility can be seen in terms of scheduling parts of a subsector rather than a full subsector (using the Central Product Classification (CPC) as a benchmark). Some commitments may reflect scheduling of certain activities that may have little economic value, such as the opening of wholesale trade in areas with low market value.

The positive scheduling under the AFAS is also quite complicated, as regulatory and prudential measures are also scheduled and there are additional schedules for MFN and horizontal measures. Under the negative list approach, all reservations are consolidated under a two-annex approach.

Therefore, the move towards a negative list approach under the ATISA is a game-changer for ASEAN. The negative list approach will help to clarify the different non-conforming measures and allow for greater clarity as to the extent of the liberalisation allowed. Under the negative list approach, citing only departures from core obligations shows the no-go areas more clearly while listing relevant rules and regulations makes the process more transparent to potential investors.

However, the negative list approach does not prevent AMS from reserving the right to impose future measures or carving out entire sectors. Hence, this must be approached carefully to ensure that not many subsectors are excluded in line with the AEC Blueprint 2015 aspirations. Care must also be taken to ensure that there is no rollback of commitments.

AMS should also consider a standard product classification list under the ATISA. The AEC 2015 refers to the use of the WTO GATS Services Sectoral Classification List (MTN.GNS/W/120, based on the 1991 United Nations CPC Provisional Code), and it would be useful to consider using a standard classification as much as possible. This is to avoid different interpretations of the scope of the sectors, as some AMS used other versions of the CPC Code under the AFAS. In such a case, it is more difficult to undertake comparisons of commitments.

The transition to the negative list under the AFAS should not be just a *pro forma* exercise to transpose existing commitments. The transformation to a negative list should also provide AMS the opportunity to seek revisions and improvements to commitments made.

Some sectors were scheduled more than a decade ago, and value added from ASEAN Plus One FTAs has not been incorporated. This would help weed out sectors that are narrowly defined and broaden the scope of the commitments. In addition, with the Fourth Industrial Revolution and the push for sustainable development, services related to the digital and green economy, life sciences, and services related to an ageing society could be identified to form part of the sectors for inclusion into the ATISA schedules.

Another main issue is the length of the transition. The RCEP gave the ASEAN-6 plus Viet Nam 6 years from the date of entry into force to undertake submissions/verifications before the schedules are finalised. Under the ATISA, it takes 7 years (5 years for submission and an additional 2 years for amendments) for the exercise to be completed for the ASEAN-6, 9 years for Viet Nam, and 15 years for CLM (which is the same as the RCEP). Given this scenario, where the negative list schedules under the RCEP are to be completed sooner than under the ATISA, there could be room to bring forward the timelines, including for Viet Nam. This would underscore the importance of ASEAN centrality and leadership in moving forward in its integration process.

ASEAN could also take this opportunity to identify additional priority integration sectors such as agriculture and its related industries to address food security issues and the green economy industries and services (e.g. renewable energy, and energy-efficient equipment and vehicles) to mitigate climate change concerns.

The importance of promoting investment facilitation by upgrading the accessibility and transparency of investment measures and improving the efficiency of administrative procedures and requirements will be key as well, beyond continuing investment liberalisation.

Hence, in terms of further liberalisation, AMS could:

- revisit the AEC Blueprint targets of 70% foreign equity to see if more could be done to complete these goals under the ATISA;
- review flexibilities where possible and set parameters around them so that the commitments of AMS are equivalent;
- make submissions comparable and quantifiable by using a standard product classification list or add new sectors based on an agreed list to allow for better comparison and ensure meaningful sector liberalisation;
- improve on the standardised list of services sectors by submitting an additional list of key growth areas based on current and future economic demand, such as the digital and green economy services for further liberalisation;
- review the priority integration sectors to add on or submit a new list of key growth areas for expedited liberalisation by all AMS; and
- strengthen investment facilitation such as transparency processes and procedures and reduce lengthy requirements.

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